

Cu 304/1982

DGR/AJ

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Cu 304/1982

1. My decision is that unemployment benefit is not payable for the inclusive period from 5 February 1981 to 11 May 1981 because the claimant does not satisfy the contribution conditions for the relevant year which ended on 5 April 1979.

2. This is an appeal by the claimant against the decision of the local tribunal confirming the insurance officer's decision shown in box 1 of form IT2, the necessary leave having been given by the tribunal chairman. The claimant asked for an oral hearing, a request to which I acceded, and at that hearing he appeared in person and the insurance officer was represented by Mr I Hodgkinson of the Chief Insurance Officer's office.

3. It is not in dispute that on 22 October 1980 the claimant completed form UB461 on which he claimed unemployment benefit. Unfortunately the actual form cannot be found, but the claimant accepts that he completed a form on that day and accepts further that there is no reason to suppose that in the course of completing it he did not claim unemployment benefit. He continued to sign on, and to claim benefit down to 31 December 1980. In August i.e., before he actually completed form UB461, he obtained on the telephone advice from the Department, to the effect that any claim he might make for unemployment benefit at any time before January of the following year would necessarily fail, in that he had not satisfied the contribution conditions for the year ended 5 April 1979. It is the claimant's case that, when he completed UB461 and continued to apply for unemployment benefit until the end of the year, he did so, not in the hope or expectation of receiving any unemployment benefit as such - his ineligibility had been made clear right from the beginning - but solely with the object of claiming contribution credits.

4. I accept this contention on the part of the claimant. Although I have no doubt that, in completing form UB461, he adopted the standard words "I wish to claim unemployment benefit", I am satisfied that he did so because that was the only form available to him by means of which he might claim contribution credits. I think it wholly unrealistic to expect him to have deleted the standard words and to have spelt it out specifically that his claim related to contribution credits, and contribution credits only. The fact of his having used express words to the effect that he was claiming unemployment benefit is not conclusive of the matter. It is always open to the Commissioner to go behind the words used, in order to ascertain the underlying intention (Unreported Decision C(G)4/79 paragraph 17).

5. The claimant resumed claiming unemployment benefit on 5 February 1981, and he continued so claiming until 11 May 1981. Doubtless, he hoped that the relevant year for determining whether or not he satisfied the contribution conditions would now be that ended 5 April 1980, and it is not in dispute that as regards this year, as distinct from the preceding one, he did in fact satisfy the contribution conditions. However, unfortunately for the claimant, 5 February 1981 is not more than 8 weeks from the end of the period for which he had previously claimed contribution credits, namely the period from 22 October 1980 to 31 December 1980, and the question arises as to whether the linking provisions should operate.

6. These provisions are contained in section 17(1)(c) and (d) of the Social Security Act 1975, which reads as follows:

"17(1) For the purposes of any provisions of this act relating to unemployment benefit -

(c) the expression 'day of interruption of employment' means a day which is a day of unemployment or of incapacity for work;

(d) the following periods, namely -

(i) any two days of unemployment, whether consecutive or not, within a period of 6 consecutive days,

(ii) any four or more consecutive days of incapacity for work;

shall be treated as a period of interruption of employment, and any two such periods not separated by a period of more than 8 weeks ("week" for this purpose meaning any period of 7 days) shall be treated as one period of interruption of employment"

6. The claimant contended before me that, if I accepted, which I do, that he never intended in 1980 to claim unemployment benefit, but only contribution credits, then for the purposes of section 17(1) the period from 22 October to 31 December 1980 was not a period of interruption of employment, and as a result there could be no linking of this period with that from 5 February to 11 May 1981. His claim for unemployment benefit for the latter period was for an independent period, and the relevant tax year was that ended 5 April 1980, in respect of which he satisfied the contribution conditions.

7. Unfortunately for the claimant, for the purposes of section 17(1)(d), it makes no difference, in my judgment, whether the claimant was claiming only for contribution credits, and not for unemployment benefit generally. I accept that unemployment benefit does not include contribution credits. A claimant can, as in the present case, be entitled to the latter without at the same time being entitled to the former. However, for him to be entitled either to unemployment benefit or contribution credits he has to establish, inter alia, that he is genuinely unemployed, and that he is available to be employed in employed earner's employment within section 17(1)(a)(i). In the present instance, it is not in issue that had the claimant actually claimed unemployment benefit for the period from 22 October 1980 to 31 December 1980, he would, but for his inability to satisfy the contribution contentions, have qualified for benefit. Had this not been the position, he would simply have not been entitled to contribution credits. (He was able to satisfy regulation-9(2), (3)(b) and (7)(a) of the Social Security (Credits) Regulations 1975 [S.I. 1975 No 556/.]) It follows that the period from 22 October 1980 to 31 December 1980 was a period of interruption of employment falling within section 17(1). Unfortunately for the claimant that period links with the later period from 5 February 1980 to 11 May 1980, so that the claimant is unable to make title to unemployment benefit for the latter period. The relevant tax year is that ended 5 April 1979, and in respect of that year the claimant simply does not satisfy the contribution conditions.

8. For completeness I should say that the claimant complains that the local office did not advise him of the trap into which he has now fallen and argues that the doctrine of estoppel should apply. However, such a doctrine has no place in this jurisdiction (R(U) 11/80 paragraph 18; R(S) 4/74; R(F) 3/61).

9. Whilst sympathetic to the claimant, I have no option but to dismiss his appeal.

(Signed) D G Rice
Commissioner

Date: 2 March 1983

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