

DGR/SH

FEN

Commissioner's File: CU/349/1984
CAO File: AO 3638/UB/84
Region: North Eastern

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: William Edward Brown

Appeal Tribunal: Middlesbrough

Case No: 36/5

1. My decision is that the claimant is not disentitled to unemployment benefit by reason of regulation 7(1)(e) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 for the inclusive period from 23 May 1984 to 24 May 1984, for 26 May 1984, for 28 May 1984, for 31 May 1984 or for 2 June 1984.

2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 11 July 1984.

3. The question at issue is whether or not the claimant is disentitled to unemployment benefit for the days set out in paragraph 1 by reason of regulation 7(1)(e) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983. This question in turn depends upon regulation 7(2) which provides as follows:-

"7(2) Paragraph 1(e) shall not apply to a person unless -

- (a) there is a recognised or customary working week in connection with his employment; or
- (b) he regularly works the same number of days in a week for the same employer or group of employers."

The claimant contends that he does not fall within either paragraph (a) or (b) and that therefore he is not caught by the disentitling provisions of regulation 7(1)(e), so that benefit should be paid to him for the days in question.

4. The claimant argues that the pattern of his employment is dictated by his current contract, and that although this stipulates that he shall do on average 20 hours per week, there is nothing regular about it. In his letter dated 30 August 1984 he cites his working pattern over a two month period:-

"30.4.84. - 5.5.84.	1 day worked - Friday	10 hours
Week ending 12.5.84.	4 days worked	40 hours
Week ending 19.5.84.	1 day worked - Friday	10 hours
Week ending 26.5.84.	Tuesday and Friday	20 hours
Week ending 2.6.84.	Tuesday and Wednesday	20 hours
Week ending 9.6.84.	Monday, Tuesday, Thursday	20 hours
Week ending 16.6.84.	Monday, Tuesday, Friday	22 hours
Week ending 23.6.84.	Monday, Tuesday, Wednesday	22 hours
Week ending 30.6.84.	Monday and Tuesday	16 hours
Week ending 7.7.84.	Monday and Wednesday	16 hours."

I do not think that information has been challenged.

5. Now, on the basis of a pattern of working as that indicated above I do not see how it could possibly be said that there was a recognised or customary working week in connection with the claimant's employment or that he regularly worked for the same number of days in a week for the same employer. Notwithstanding a contractual arrangement for a 20 hour week made for administrative reasons, it is clear from the evidence, not only of the claimant, but also of the employer, that the working hours are in fact essentially irregular. In those circumstances, I do not think that the claimant satisfies either of the two conditions set out in regulation 7(2), and in consequence of this there can be no question of regulation 7(1)(e) applying, as its operation is made strictly subject to the provisions of regulation 7(2).

6. Accordingly, I allow this appeal.

(Signed) D G Rice
Commissioner

Date: 13 May 1985