

Full extent revised

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JBM/EA

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Susan Thornley

Local Tribunal: Newcastle-upon-Tyne

Case No: 39/3

1. My decision is that the claimant is not disentitled to unemployment benefit for 12 January 1984 by issue of the operation of regulation 7(1)(e) of the Social Security (Unemployment Sickness and Invalidity Benefit) Regulations 1983. The forward disallowance imposed by the insurance officer accordingly lapses.
2. This is an appeal by the claimant's representatives with the claimant's approval against the unanimous decision of the local tribunal confirming the insurance (now adjudication) officer's decision as shown in box 1 of form LT2.
3. The facts and history of the matter are dealt with in box 5 of form LT2 and in paragraphs 1-5 of the submission dated 10 October 1984 of the adjudication officer now concerned on which the claimant's advisers have had the opportunity to comment. I do not propose to set these matters out afresh here.
4. The relevant law (both statutory and otherwise) is adequately set out in the respective submissions of the two adjudication officers who have been involved in these appeals. Nothing is to be gained by my rehearsing that law here save in so far as I do so below and to state that the question whether a person is a person who does not ordinarily work on everyday in a week is a question of fact which can only be decided in the light of the circumstances of each particular case.
5. I turn therefore to the evidence before me. From the claimant's letter of appointment dated 9 December 1983, she was appointed to lecture for 2 classes, one starting on Monday 21 November 1983 and ending June 1984, and the other starting on Friday 25 November 1983 and ending June 1984. Other than the claimant's lecturing work as set out above the claimant's work history since 1977 (the claimant

was born on 24 June 1953) is given by the claimant's representative as follows:-

"The claimant's work history since 1977 is as follows:-

1977-1981	Claimant ran a coffee bar at Newcastle Polytechnic 5 days per week from 9 30 am. to 4 30 pm.;
1981-1982	Claimant was unemployed;
1982-1983	Claimant worked for National Trust 5 days per week 40 hours per week;
1983 [Aug/ Dec]	Claimant worked as manageress of Tyneside Coffee Rooms 6 days per week for at least 40 hours per week."

In the light of the evidence as to the claimant's working history from 1977 I find that the claimant is normally a person who works full-time and the time has not yet been reached when she could be considered a person who did not ordinarily work on everyday in a week. I have given careful consideration to the adjudication officer's detailed and helpful submissions. However I find the decisions of the Commissioner C.W.U.6/48 and R(U) 30/53 persuasive. Though the actual position in the instant case is somewhat different to that in the two above cases the Commissioner at paragraphs 4 and 5 of the decision R(U) 30/53 said:-

"I think it might be true of a man who of his own free will adopted a part-time occupation with the intention of making that henceforth his normal occupation; it could truly be said of such a man that, as soon as he had made the change, part-time employment had become his normal occupation as soon as he undertook it...

It is different however, when a man, who regularly all his life has worked throughout the week, suddenly finds part-time work thrust upon him with no choice but to accept it or lose his employment altogether. I think it is wrong to say of such a man that he is 'a person who does not ordinarily work on everyday in a week' as soon as he accepts part-time employment. A man who has no practical alternative to accepting part-time employment.. must, I think, be allowed a certain time in which to take stock of his position and to decide whether it is worth his while to continue as a part-time employee".

6. Apart from the claimant's 1981-1982 period of unemployment, on the evidence before me, from 1977 to December 1983 the claimant worked at least a 5 day week. It is a question of fact and degree but in the instant case I think it is premature to consider the claimant to be a person who did not ordinarily work on everyday in a week while she was lecturing in the academic year ending June 1984.

7. Accordingly my decision is as set out in paragraph 1 of this decision. The position will require reconsideration for the future. I would add that I do not need to consider in the light of my decision above the claimant's submission in respect of the decision of a Tribunal of Commissioners R(U) 5/57.

8. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 3 January 1985

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