

VGHH/BC

Commissioner's File: CU/405/1984

C A O File: AO 3419/UB/84

Region: North Western

SOCIAL SECURITY ACTS 1975 TO 1985

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Peter Needham

Appeal Tribunal: Stockport and District

Case No: 20/1

[ORAL HEARING]

1. This appeal succeeds. My decision is that payment of unemployment benefit from 13 January 1984 to 16 January 1984 (both dates included) is not precluded by regulation 7(1)(e) and (2) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 ("the 1983 Regulations"). The forward disallowance imposed in respect of claims made in respect of Monday, Friday and Saturday falling in the period 17 January 1984 to 19 January 1985 is discharged.

2. I held an oral hearing of this claimant's appeal. The claimant was represented by Miss Lorne A Findlay of the Child Poverty Action Group. He was not present. The adjudication officer was represented by Mr N Butt of the Solicitor's Office, Department of Health and Social Security.

3. The real issue in this appeal is whether the "full extent normal rule" applies to disentitle the claimant to unemployment benefit for Friday 13 January 1984, Saturday 14 January 1984 and Monday 16 January 1984. (Benefit cannot be paid for Sunday: see section 17(1)(e) of the Social Security Act 1975.) That rule is now contained in regulation 7(1)(e) and (2) of the 1983 Regulations (replacing the 1975 Regulations which contained identical regulations bearing these numbers and letter). Its application in Community Programme cases is fully explained in a recent starred decision numbered 39/86 and there is no need to repeat that explanation here. The claimant's representative and the adjudication officer have both seen copies of that decision.

4. The claimant was born on 19 June 1962. Fuller details of his working history have been provided than were available to the social security appeal tribunal.

The claimant after leaving school worked full time from Easter 1978 to November 1978 with East Cheshire Tyres Ltd, then from November 1978 to September 1981 with Shiloh Spinners Limited. He was unemployed from September 1981 to September 1982. He then worked shifts as a Labourer with Stockport Bakers Ltd from September 1982 to December 1982. From December 1982

to April 1983 he worked full time with Apex Roofing Co as an Improver. After that he was unemployed until he was employed by Stockport M.B.C. on the Community Programme for three days a week, namely, Tuesday, Wednesday and Thursday starting on 18 October 1983. He was promoted to a full-time labourer's position (ie 5 days a week) on 26 April and occupied this post until 15 October 1984 at the end of 52 weeks (which is the maximum duration allowed by the Manpower Services Commission).

5. The claimant claimed and was paid unemployment benefit for Monday, Friday and Saturday from his start on the Community Programme until an adjudication officer disallowed benefit for 13 to 16 January 1984 and imposed a forward disallowance for Mondays, Fridays and Saturdays falling within the period 17 January 1984 to 19 January 1985.

6. There is no doubt that in the period 13-16 January 1984 the claimant had a recognised or customary working week in connection with his employment, since his contract provided that he should work for Tuesdays, Wednesdays and Thursdays. Accordingly, regulation 7(1)(e) is not excluded by the provisions of regulation 7(2) of the 1983 Regulations. Looking forward from the week in question to see whether the claimant's pattern of work was likely to be permanent or transitory there was at that time no clear evidence about what was likely in the future. There was no understanding as in decision CU/255/1984 that this would lead (though in fact it did lead) to full time employment. Looking to the past, the claimant had, from the moment he left school, been continuously in full time employment (except for one period of unemployment) up to April 1983. Then he was unemployed for 5½ months. In my view this is a relatively short period of unemployment in the light of the claimant's employment history. In my judgment, on the particular facts of the present case and answering the question posed by Lord Justice Slade in Riley's case the claimant's pattern of work in the weeks in which 13 to 16 January 1984 fell had not become the normal pattern for him at the time. The part time employment taken by the claimant was truly a "stop-gap" of the kind covered by decision R(U) 30/53 (see especially paragraph 6) which has stood uncriticised for over 30 years. He was well justified in temporarily accepting part-time work as an expedient in the hope that something might turn up, as is shown by the fact that he was re-admitted to full-time employment on 26 April 1984.

7. Accordingly, this appeal succeeds. My decision is set out in paragraph 1.

(Signed) V G H Hallett  
Commissioner

Date: 6 June 1986