

CU 444/1981

DGR/EFM

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

CU 444/1981 = R(U) 5/82

1. My decision is that unemployment benefit is not payable for the inclusive period from 6 April 1981 to 2 June 1981 because the claimant has attained the age of 60 and is in receipt of an occupational pension which in the aggregate exceeds the prescribed amount of £35.00 per week by a sum at least equal to the amount of such benefit.

2. On 27 April 1980 the claimant, who was born on 1 February 1921, voluntarily accepted premature retirement. He claimed unemployment benefit on 1 January 1981 and subject to the "three waiting days" was awarded benefit, initially at the rate of £33.40 per week and from 15 January 1981, when earnings related supplement was added, at the total rate of £51.07 per week. However, on 6 April 1981 section 5 of the Social Security (No 2) Act 1980 and the Social Security (Unemployment Benefit) (Abatement for Occupational Pension Payments) Regulations 1981 came into effect. On 13 July 1981 the insurance officer decided that unemployment benefit was not payable for the inclusive period from 6 April 1981 to 2 June 1981 on the ground that the claimant had attained the age of 60 and was in receipt of an occupational pension, which in the aggregate exceeded the prescribed amount of £35.00 per week by at least £51.07.

3. The claimant appealed against that decision to the local tribunal, who unanimously held that the claimant was not in receipt of an occupational pension, and as a result allowed the appeal. Thereupon the insurance officer lodged an appeal to the Commissioner, the necessary leave having been granted by the tribunal chairman. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant was represented by Mr R Allfrey of Counsel, instructed by Mr R Poole of Messrs Gastons, Solicitors, 44 Bedford Row, London WC1, and the insurance officer by Mr D James of the Solicitor's Office of the Department of Health and Social Security. I am indebted to both gentlemen for their assistance.

4. Section 5 of the Social Security (No 2) Act 1980, in so far as it is relevant for this appeal, provides as follows:-

"(1) If payments by way of occupational pension which in the aggregate exceed the maximum sum are made for any week to a person who has attained the age of 60, the rate of any unemployment benefit under the principal Act [i.e. the Social Security Act 1975] to which apart from this section he is entitled for that week shall be reduced by 10 pence for each 10 pence of the excess; and in this subsection "the maximum sum" means such sum not less than £35.00 as is prescribed.

(2) Regulations may provide

(a) for such sums as are specified in or determined under the regulations to be disregarded for the purposes of this section".

In the present case, at the time the above provision came into effect the claimant had attained the age of 60 and was in receipt of payments, which, if they were by way of occupational pension, exceeded the prescribed figure of £35.00 by such an amount as to extinguish entitlement to benefit. It should be observed in passing that, although section 5(1) refers to "such sum not less than £35.00 as is prescribed", Regulation 2 of the Social Security (Unemployment Benefit) (Abatement for Occupational Pension Payments) Regulations 1981 stipulates that the sum of £35.00 is the maximum sum.

5. Section 5(3) of the Social Security (No 2) Act 1980, in so far as it is relevant, provides as follows:-

"(3) In this section

"payments by way of occupational pension" means, in relation to a person, periodical payments which, in connection with the coming to an end of an employment of his, fall to be made to him and to be so made out of money provided wholly or partly by the employer or under arrangements made by the employer or out of money provided under an enactment or instrument having the force of law in any part of the United Kingdom or elsewhere and such other payments as are prescribed".

In the present case on the claimant's premature retirement he received a sum described as a "continuing annual payment of £4,551.58" paid in 12 equal monthly instalments of £379.30, and this annual payment was to continue until the claimant's 65th birthday when he would become entitled to "a pension of £4,519.79 a year". It is not in dispute that the money which funded the payment until the claimant attained the age of 65 was to be provided by the claimant's former employer. Manifestly then, the payments received by the claimant during the relevant period were "payments by way of occupational pension" within the meaning of section 5(3).

6. Regulation 3(1) and (2) of the Social Security (Unemployment Benefit) (Abatement for Occupational Pension Payments) Regulations 1981 provides as follows:-

"(1) For the purposes of section 5 of the Act there shall be disregarded such pension payments for any week to any person who has attained the age of 60 as are sums paid to him -

(a) solely by way of compensation for an employment of his coming to an end by reason of redundancy, and

(b) otherwise than under the rules of an occupational pension scheme of which he is or was a member.

(2) In this regulation "occupational pension scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has effect in relation to one or more descriptions or categories of employments so as to provide benefits, in form of pensions or otherwise, payable on termination of service to earners with qualifying service in an employment of any such description or category, where those benefits include benefits payable by reason of retirement which is at the normal age for retirement under the rules of such scheme or arrangement".

7. Now, although the claimant is caught by section 5, it is possible for him to escape its effects if he can successfully invoke the benefit of Regulation 3.

8. It is important to note that, in order to come within Regulation 3, a claimant has to satisfy both conditions 1(a) and 1(b). It is not enough to satisfy one only; he must comply with both.

9. There are many persons who are retired prematurely who cannot satisfy even the first condition. For example, a bank may decide to retire prematurely some of its managers, not because the particular branches to which those managers belong are going to be shut down, but because the bank is anxious to accelerate the promotion of its younger personnel. In this event, the bank managers are immediately to be replaced by younger men, and there is no question of redundancy. In those circumstances, those retiring and receiving periodic payments within section 5(3) would be unable to take advantage of Regulation 3(1).

10. In the present case it would appear that the Science Research Council invited certain of its employees to volunteer for premature retirement in order to reduce the number of staff. It does not, of course, follow from this that each and every one of those volunteering for early retirement was necessarily redundant. His particular position may well have been taken over by a new occupant. All that the employer was really doing was reducing numbers overall, but it did not necessarily follow that the positions held by those leaving were not being refilled. However, in the present case it is accepted that the claimant was truly redundant, and Mr James did not seek to challenge this. Manifestly, then, the claimant is able

to satisfy the condition that he was redundant within Regulation 3. Moreover, I do not think it is in dispute that the payments in question were "solely by way of compensation" for such redundancy.

11. The real question at issue is whether or not the claimant is also able to satisfy condition 1(b). Can he establish that the periodical payments, which he receives, arise otherwise than under the rules of an occupational pension scheme, of which he is or was a member? What is an "occupational pension scheme" is defined in Regulation 3(2), and it is to be noted that a scheme falls within that definition where it includes benefits payable by reason of retirement at the normal age of retirement, and it is immaterial that the particular benefits being received by the claimant are not benefits payable at the normal age of retirement. If any benefits provided by the scheme are retirement benefits, then the scheme constitutes an occupational pension scheme within Regulation 3(2).

12. Mr Allfrey contended that the arrangement under which the claimant in the present case receives periodical payments until attaining the age of 65 forms no part of the occupational pension scheme from which the claimant will receive retirement pension on attaining the relevant age. He argued, most forcefully, that the employer had wanted to obtain a number of employees who were willing to retire voluntarily, that they included people as young as 40, and that the severance scheme was a scheme specifically set up to deal with a redundancy position and had no connection with the employer's normal pension scheme. Notwithstanding the wholly admirable argument on the part of Mr Allfrey, I am satisfied that any such construction is wholly artificial. The provisions governing premature retirement are set out in section 8 of a scheme described as "Principal Non-Industrial Superannuation Scheme". That scheme, which is contained in a booklet issued by the United Kingdom Atomic Energy Authority, deals, inter alia, with benefits on normal retirement, benefits in the event of ill-health, death or resignation, family benefits, short-term benefits for widows and dependent children of members dying in service with less than 5 years' service before retiring age, pensions for dependent widows, invalidity pensions for permanently incapacitated children of members, and injury benefits. The inclusion of a further section dealing with benefits in the event of premature retirement is, in my judgment, no more than the inclusion in the overall scheme of further benefits to deal with a particular situation.

13. Even the language of section 8 ties in with the terminology used in connection with superannuation entitlements. For example, in section 8.05 it is stated that the compensation payable to those voluntarily retiring will be "met by the member's employer and will not be debited to the Superannuation Account". If the compensation provisions set out in section 8 were truly an independent scheme, then it is surprising to find a reference to the cost not being debited to the superannuation account. If it was necessary to say where the money was to come from, then one would have imagined it would have been expressly so stated, and there would have been no need for any reference to the superannuation fund.

14. Accordingly, I am satisfied that the scheme to compensate those retiring prematurely was only one facet of the overall superannuation scheme, of which the claimant was a member at the time he left his employment. Moreover, he receives his periodic payments in accordance with the rules of the scheme, so that he is unable to satisfy Regulation 3(1)(b). The result is that he cannot call for his payments to be disregarded under Regulation 3(1), and he is caught by the provisions of section 5.

15. Whether the payments being received are to be regarded as an annual payment or a monthly payment, the relevant figure when computed on a weekly basis is exactly the same, and after deducting £35.00 there is a balance each week of £52.53. This exceeds the claimant's unemployment benefit entitlement of £51.07, and the result is that the claimant is not entitled to any unemployment benefit at all.

16. I allow this appeal.

(Signed) D G Rice  
Commissioner

Date: 7 May 1982

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C I O File: I.O. 3362/U/81  
Region: South Eastern