



CENTRAL ADJUDICATION SERVICES
An independent statutory body for Social Security and Child Support Law

Reported Commissioner's Decision

R(U) 2/96

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**SOCIAL SECURITY ACTS
1975 TO 1992**

Unemployment Benefit - computation of earnings

The claimant was employed in a school as a clerk. The school Easter holiday ran from 15.4.92 to 4.5.92. The claimant was not paid for any day during that period except for three recognised holidays (17.4.92 (Good Friday), 20.4.92 (Easter Monday) and 4.5.92). No other days were days of recognised or customary holiday for the claimant. The claimant claimed unemployment benefit on 16.4.92 and was required to attend the unemployment benefit office to "sign-on" on 27.4.92 and then on alternate Thursdays. The adjudication officer decided that the claimant was not entitled to unemployment benefit from 17.4.92 to 23.4.92 and from 1.5.92 to 4.5.92 because those days fell within periods of seven days ending on a Thursday for which her earnings were at least £54 (see regulation 7(1)(o) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983). It followed that unemployment benefit could not be paid in respect of 16.4.92 because that was an isolated day of unemployment which did not form part of a period of interruption of employment (see s. 17(1)(d) of the Social Security Act 1975) nor in respect of 24.4.92, 25.4.92 and 27.4.92 because those were "waiting days" under s. 14(3) of the 1975 Act. Thus unemployment benefit was only awarded for 28.4.92 to 30.4.92. The claimant appealed against the adjudication officer's decision but a tribunal dismissed her appeal.

Held that:

1. Although regulation 7(1)(o) of the 1983 Regulations could give rise to arbitrary results depending on the claimant's signing-on day this did not have the consequence that it was ultra vires. Administrative convenience was a legitimate consideration for a legislator, even if it gave rise to some inconsistency (paragraph 7).
2. The claimant was not entitled to unemployment benefit for the period 16.4.92 to 23.4.92. Her earnings for the seven days ending on 23.4.92 exceeded £54 and so regulation 7(1)(o) had been correctly applied to the period 17.4.92 to 23.4.92 (paragraph 9).
3. However, the claimant was entitled to unemployment benefit for 1.5.92 and 2.5.92 (although not 3.5.92 as this was a Sunday: s. 17(1)(e) of the 1975 Act) (paragraphs 10-12). The purpose of regulation 3(5) of the Social Security (Computation of Earnings) Regulations 1978 (earnings not to be taken into account for the purposes of regulation 7(1)(o)) was to ensure that generally only earnings received in respect of days within the spell of unemployment were taken into account. Thus the word "day" in the phrase "day in respect of which a claim for unemployment benefit is made" in regulation 3(5) did not include the plural. Regulation 3(5)(b) therefore had the effect that the earnings in respect of 4.5.92 onwards were not to be taken into account when determining entitlement to unemployment benefit for 1.5.92 and 2.5.92, as all the six days before 1.5.92 and 2.5.92 were days of unemployment.

The claimant's appeal was allowed in part and the Commissioner substituted his own decision.

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal in part. The decision of the Rochdale social security appeal tribunal dated 18 January 1993 is erroneous in point of law. I set that decision aside and give the decision which I consider the tribunal should have given:-

The claimant is not entitled to unemployment benefit from 16 April 1992 to 23 April 1992 (both dates included);

the claimant is entitled to unemployment benefit for 1 May 1992 and 2 May 1992;

the claimant is not entitled to unemployment benefit for 3 May 1992 and 4 May 1992.

2. The claimant is a clerk employed in a school. She works during school terms and is paid for 44 weeks of the year which includes four weeks paid holiday in addition to statutory and local holidays. She is entitled to nominate her holiday periods (apart from the statutory and local holidays) and the periods nominated by her are not relevant to this appeal. In 1992 the school Easter holiday ran from 15 April 1992 to 4 May 1992. The claimant claimed unemployment benefit on 16 April 1992 and was required to attend the unemployment benefit office on 27 April 1992 and then on alternate Thursdays. She resumed work on 5 May 1992. 17 April and 20 April were Good Friday and Easter Monday respectively. 4 May was also a bank holiday. The adjudication officer decided that the claimant was not entitled to unemployment benefit from 17 April 1992 to 23 April 1992 and from 1 May 1992 to 4 May 1992 because those days fell within periods of seven days ending on Thursdays for which her earnings were at least £54.

3. Under section 14(1)(a) of the Social Security Act 1975, unemployment benefit was payable only in respect of days of unemployment forming part of a period of interruption of employment. The adjudication officer's decisions were made in reliance on regulation 7(1)(o) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 which provides:-

“... a day shall not be treated as a day of unemployment in relation to any person, if -

- (i) it falls within a period of 7 days (including Sundays) ending on the weekday corresponding to the particular weekday specified in a written notice last given to him by the Secretary of State for the purpose of his claiming unemployment benefit; and
- (ii) his earnings in respect of that period are equal to or exceed the weekly lower earnings limit for the time being specified for Class 1 contributions under the Act (£54 at the relevant time).”

It followed from the adjudication officer's decisions that no unemployment benefit could be paid in respect of 16 April 1992 because that was an isolated day of unemployment which did not form part of a period of interruption of employment (see section 17(1)(d) of the 1975 Act). The claimant appealed against the decisions of the adjudication officer in respect of the periods 16 to 23 April and 1 to 4 May. The tribunal dismissed the claimant's appeal and she now appeals against that decision with the leave of the tribunal chairman.

4. It is, I think, accepted that 17 and 20 April and 4 May would not have been days of unemployment in any event because they were days of recognised holiday (regulation 7(1)(h) of the 1983 Regulations) and that unemployment benefit could not be paid in respect of 26 April (which was a Sunday - see section 17(1)(e) of the 1975 Act) and that it was a consequence of the adjudication officer's decisions that unemployment benefit was not payable in respect of 24, 25 or 27 April because those were “waiting days” under section 14(3) of the 1975 Act. Unemployment benefit was awarded to the claimant only in respect of 28, 29 and 30 April.

5. It is not disputed that Thursdays were specified, in a written notice given to the claimant by the Secretary of State, as the particular weekday for her claiming unemployment benefit. The adjudication officer now concerned with the case has

accurately set out the relevant law on that issue in paragraphs 10 to 12 of his helpful submission dated 2 December 1993 and, in particular, has distinguished R(U) 2/93 on its facts. This claimant was required to attend the unemployment benefit office on alternative Thursdays because her surname began with the letters "Cr".

6. The claimant's representative submits that the Secretary of State was not entitled to allocate "signing on" days by reference to the claimant's surname because that was liable to give rise to discrimination. He submits that it would have been fairer to the claimant to have required her to "sign on" every day. Happily, it is not necessary for me to consider how regulation 7(1)(o) might apply in the case of a person required to attend an unemployment benefit office more than once a week.

7. Regulation 8(1) of the Social Security (Claims and Payments) Regulations 1987 provides that it is for the Secretary of State to give directions as to attendance at an unemployment benefit office. No appeal lies to a tribunal or Commissioner in respect of such directions. Nor do I consider it to be arguable that regulation 7(1)(o) of the 1983 Regulations is ultra vires because it may give rise to arbitrary results between claimants who have different "signing on" days but whose circumstances are in other respects identical. Administrative convenience is a legitimate consideration for a legislator, even if it gives rise to some inconsistency. I therefore reject the claimant's ground of appeal.

8. The adjudication officer submits in paragraph 15 of his submission:-

"15. In their reasons for their decision the tribunal have stated "Social Security Act 1975; Social Security (Unemployment Sickness and Invalidity) Benefit Regs Social Security (Contributions) Regs and Social Security (Computation of Earnings) Regs applied." However I submit that this does not clearly show the claimant which parts of these Regulations and the Act apply to her case nor does it explain why the amount of her earnings affects her entitlement to unemployment benefit or why regulation 3(5) of the Computation of Earnings Regulations could not assist her. Therefore I submit that the tribunal's decision is erroneous in law in that it does not satisfy regulation 25(2)(b) of the Adjudication Regulations."

I do not accept that submission. A tribunal are not required to set out their legal reasoning at length. The basis of the decision in the present case is perfectly clear because, although they did not expressly say so, it is obvious that the tribunal accepted the local adjudication officer's submission to them.

9. I therefore turn to the question whether they were right to accept the local adjudication officer's submission. In respect of the period 17 to 23 April, it seems to me clear that regulation 7(1)(o) was correctly applied. 23 April was the Thursday after Easter and, of the seven days up to that date, it is not disputed that the claimant was paid in respect of Good Friday and Easter Monday and that her earnings in respect of those two days together exceeded £54. No benefit could then be paid in respect of 16 April 1992 because it was a single day of unemployment and did not form part of a period of interruption of employment.

10. However, I have not been persuaded that regulation 7(1)(o) was correctly applied in respect of the period 1 May to 4 May. The adjudication officer's argument was that the relevant Thursday was 7 May and that, as the claimant had received pay for 4, 5, 6 and 7 May, her earnings exceeded £54 in respect of the relevant period.

That argument requires consideration of regulation 3(5) of the Social Security (Computation of Earnings) Regulations 1978 which provides:-

“For the purposes of regulation 7(1)(o) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 (days not to be treated as days of unemployment or incapacity for work), earnings shall not be taken into account where they are paid in respect of a day which falls -

- (a) before the day in respect of which a claim for unemployment benefit is made; and none of the 6 days preceding the first day of the period specified in head (i) of that regulation is a day of unemployment; or
- (b) after the day in respect of which a claim is made; and all the 6 days preceding the day in respect of which the claim is made are days of unemployment.”

The local adjudication officer submitted to the tribunal that regulation 3(5)(b) provided “that earnings are not to be taken into account if [...] they are for a day or days *after* the days for which the claim was made, and *all* the six days (excluding Sunday) before the days for which the claim is made *are* days of unemployment”. The failure to draw the tribunal’s attention to the actual words of the legislation is to be deplored. There is a considerable difference between “the day” and “the days”.

11. The approach of the local adjudication officer has been explained by the adjudication officer now concerned with the case in his further submissions dated 15 and 16 August 1994. He refers to section 6 of the Interpretation Act 1978 which provides:-

“In any Act, unless the contrary intention appears -

- (a);
- (b);
- (c) words in the singular include the plural and words in the plural include the singular.”

Section 23 of that Act has the effect that it applies to subordinate legislation as it applies to Acts of Parliament. It is the adjudication officer’s submission that section 6(c) justifies construing regulation 3(5)(b) of the 1978 Regulations in the way suggested by the local adjudication officer. He therefore submits that the earnings in respect of 4 May 1992 must be taken into account because the claim was made in respect of that day so that it did not “fall after all the days in respect of which a claim is made” and that the earnings in respect of 5, 6 and 7 May must be taken into account because days for which the claim was made when the claimant attended the unemployment benefit office were all the days from 24 April to 4 May and at least two of six days preceding that period (i.e. 17 and 20 April) were not days of unemployment. In fact, none of the six days preceding 24 April was a day of unemployment for the reason explained in paragraph 9 above. On the other hand, all the six days preceding 1 May were days of unemployment.

12. I do not accept the premise upon which the adjudication officer’s decision is based. Section 6(c) of the Interpretation Acts 1978 does not apply where the “contrary intention appears”. Unemployment benefit is a daily benefit and, while claims are usually made at fortnightly intervals, entitlement in respect of each day is

considered separately so that what might otherwise be treated as a claim in respect of a period is treated as a number of claims in respect of individual days. In that context, a literal construction of regulation 3(5)(b) of the 1978 Regulations is justified and it gives a perfectly sensible result. It must be remembered that regulation 7(1)(o) of the 1983 Regulations was introduced to replace the "full extent normal rule" (see regulation 7(1)(e)) for those earning more than the lower earnings limit from part-time work during what was basically a spell of unemployment. It seems to me that regulation 3(5) of the 1978 Regulations is intended to ensure that, generally, only earnings received in respect of days within the spell of unemployment are taken into account and that a person is not disentitled by reference to earnings in respect of days before and after taking up part-time work. Upon the adjudication officer's construction any person who was unemployed for a short period would be liable to be disentitled from benefit as a result of earnings received upon a return to full-time work and the extent of such disqualification would depend upon the arbitrary factor of the claimant's "signing on" day. I cannot believe that the draftsman of regulation 3(5)(b) of the 1978 Regulations intended such a result, which would serve no discernable purpose - not even administrative convenience. A further "contrary intention" is shown by the different form of words used in regulation 3(5)(a) where reference is made to "the first day of the period specified in head (i) of [regulation 7(1)(o) of the 1983 Regulations]". Had the draftsman intended that "the day in respect of which a claim for unemployment benefit is made" should include the plural, surely he would have said "the first day in respect of which the claim for unemployment benefit is made" in regulation 3(5)(a) and similarly "the last day . . ." in regulation 3(5)(b)? I doubt that it was anticipated that regulation 7(1)(o) would apply at all in a case like the present but seems to me to be an unavoidable consequence of the legislation and it can at least be said that those who are paid in respect of holidays are placed in the same position as those paid for part-time work.

13. The consequence of my construction of regulation 3(5)(b) of the 1978 Regulations is that 1 and 2 May 1992 are not caught by regulation 7(1)(o) of the 1983 Regulations because the earnings in respect of the subsequent days within the seven day period are not to be taken into account as the six days before those two days were days of unemployment. The claimant is accordingly entitled to unemployment benefit in respect of 1 and 2 May. She is not entitled to unemployment benefit in respect of 3 May, because it was a Sunday (section 17(1)(e) of the 1975 Act), or 4 May because it was a day of customary holiday (regulation 7(1)(h) of the 1983 Regulations). Accordingly, I give the decision set out in paragraph 1 above.

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(signed) M Rowland
Commissioner

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