

Conditions of entitlement — age ^{maybe} analogous to
disablement under reg 6.
Failure to give adequate reasons & make adequate findings.

JBM/SH/22

Commissioner's File: CSSB/398/1987

Region: Scotland

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Robert Mackie

Social Security Appeal Tribunal: Glasgow North

Case No: 94/13

1. My decision is that the decision of the Glasgow South social security appeal tribunal dated 26 March 1987 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 29 January 1987 set out in box 1 of Form AT2.

3. The facts and history of the case are dealt with partly by reference in paragraphs 1 to 4 inclusive of the submission dated 7 September 1987 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are referred to and the provisions of section 5(1) of the Supplementary Benefits Act 1976 and regulation 6 of the Conditions of Entitlement Regulations are set out in paragraphs 5 and 6 respectively of the submission dated 7 September 1987 of the adjudication officer now concerned. Nothing is to be gained by my setting out those references or provisions afresh here.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law for the reasons given in this paragraph. The claimant in his appeal at paragraph (1) states that the tribunal made incomplete findings of fact as they did not mention that numerous manufacturing industries had been closed because of the economic recession. To satisfy paragraph (e) of regulation 6 either directly or indirectly by analogy it is incumbent upon a tribunal to consider whether the claimant has at the material time no further prospect of employment, and if so whether that was by reason of a physical or mental disablement or by reason of conditions analogous to physical or mental disablement, particularly in the instant case, the claimant's age. To satisfy paragraph (b) directly the fact that manufacturing industries had closed could not assist the claimant, as the reason for the claimant having no further prospect of employment must be due to a physical or mental disablement. In considering age as an analogous condition for the purposes of paragraph 6(e) I draw attention to the decision of a Tribunal of Commissioners in CSSB/189/1985 at paragraph 23(d) and to paragraph 14. From their reasons for decision it appears that the tribunal felt that finding that the claimant had been a salesman in a variety of fields meant that the analogy condition could not be satisfied. However facts relating to the closure of some manufacturing industries with which the claimant was connected as a sales representative

were relevant to the consideration of analogous circumstances in the instant case. The appeal tribunal were in breach of regulation 19(2) of the 1984 Adjudication Regulations as their facts were insufficient for the purposes of the questions at issue. The claimant makes reference to CSSB/6/86 at paragraph (ii) of his appeal, particularly with regard to the fact that in that decision the claimant was found to be in "good health", as was the claimant in the instant case. The claimant's contention is that while this factor is of relevance "it is not a major consideration" when the claim is being considered under paragraphs (e) and (u) of regulation 6, in particular when it is contended that age had an effect on his further prospects of employment. Age or advancing years can (either alone or taken in conjunction with other matters) have attributes relative to the question of prospects of further employment similar to the attributes of disablement. As age may affect the claimant's ability to perform work, possibly because the person may be unable to learn new skills or because an employer would not be willing to retrain him, the fact that he was in "good health" would not alter the situation. The decision of the appeal tribunal is erroneous in point of law in that they confine their considerations only to the question of an analogy with regulations (e) and (f). The Commissioner in CSB/614/1985 held that a tribunal can "properly reject a claim based on regulation 6 if it disposes of all paragraphs which the parties put forward and without considering the possibility of founding a claim upon other paragraphs, unless the facts presented to them are such as ought to suggest the possibility that some of the paragraphs should be considered". The adjudication officer in the instant case referred to paragraphs (a) to (u) in his submission to the appeal tribunal and accordingly that tribunal should have mentioned all those paragraphs in their reasons for decision. The only paragraphs which might have relevance to the circumstances of the case were (e), (f) and (u) in accordance with the adjudication officer's submission at the hearing before the appeal tribunal.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above. Further they shall consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

Date: 27 May 1988