

CSU 36/1980

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SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision No. C.S.U.1/81

1. My decision is that unemployment benefit is not payable to the claimant from 4 June 1979 to 6 June 1979, from 13 June 1979 to 10 July 1979 and from 12 July 1979 to 6 November 1979 (all dates included) upon the ground that regulation 7(1)(h) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 precludes the treatment of the relative days in those periods as days of unemployment.
2. This is an appeal by the claimant against the disallowance of unemployment benefit under the provisions of the regulation specified in paragraph 1. It was heard at an oral hearing before me attended by the claimant who conducted his own appeal and Mr. Hodgkinson who appeared on behalf of the insurance officer. The decision of the local insurance officer which was affirmed on appeal by the local tribunal disallowed benefit from 4 June to 17 July 1979 and added a forward disallowance of claims for benefit in the period 18 July 1979 to 17 July 1980 under the provisions of regulation 12(4) of the Social Security (Claims and Payments) Regulations 1975 (now regulation 12(5) of the 1979 Regulations). The alterations effected by my decision in paragraph 1 above arise because (1) it has transpired that benefit was in fact awarded and paid from 7 June to 12 June 1979, rendering the subsequent disallowance for those days inept; (2) no claim was made by the claimant for benefit for 11 July 1979 and that day should not have been included in the disallowance; and (3) it is now agreed that the claimant continued to claim unemployment benefit after 17 July 1979 until 6 November 1979 when he ceased to claim on taking up other employment. In light of the facts now known a substantive decision covering the period up to 6 November 1979 is therefore appropriate.
3. The claimant who is now aged 63 was employed in the Civil Service from 1934 to 1979. He was latterly a Principal Finance Officer at the Scottish Office. He retired from full-time employment in March 1978 but was re-engaged on a part-time basis to continue work in connection with the financial aspects of devolution. It was at the time anticipated that he would continue part-time (or possibly full-time) until he reached the age of 65. With the abandonment of plans for devolution after the Referendum in the spring of 1979 the claimant's continuing part-time employment terminated on 31 May 1979. Meantime, in 1978, he had agreed to act as consultant to a study project being undertaken by the Department of Town and Regional Planning and the Centre for Urban and Regional

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Research of the University of Glasgow. This project was planned to start in January 1979 and to last until the end of 1981 and the budget included £2,000 (increased to £2,500) for consultancy fees. The details of the claimant's appointment were never formalised, but it was agreed that the claimant would give advice and assistance to the project when asked and when and in so far as he was able to give it. The claimant did not solicit any remuneration but was informed that consultancy fees as mentioned above were available and that he would receive an honorarium which would be paid quarterly. In connection with the project the claimant was appointed to an honorary position as a visiting Senior Research Fellow of the University of Glasgow. The claimant was engaged in an appreciable amount of work in the preliminary stages of the setting up of the project in about February and March 1979 and received some preliminary study papers for comment in April and May 1979. Thereafter apart from one meeting the claimant was not actively involved in the project again until the autumn of 1979. He received a payment of £200 in April 1979 which was said to be a quarterly payment referable to the period from January to March 1979. He received a further payment of £200 in July 1979 referable to the period from April to June 1979. He then intimated that he did not wish any further such payments meantime as he was by that stage in dispute over unemployment benefit which he had claimed from 4 June 1979, but it is to be noted that he did not thereby renounce all right to further remuneration either on the existing or some other basis. As already mentioned, on 6 November 1979 the claimant took up other employment and ceased to claim unemployment benefit. He continued in his capacity as consultant to the study project but at the end of 1979 arranged that for the remaining period of his appointment he would accept a fee of £50 per day for any day of work. The claimant received a total of £400 in respect of consultancy fees in the year 1979. He reported that sum as earned income to the income tax authorities who accepted a claim for £50 in respect of expenses (other than travelling expenses) as a deduction from the gross amount of £400.

4. Unemployment benefit is payable under the provisions of section 14(1) of the Social Security Act 1975 in respect of "any day of unemployment". Regulation 7(1)(h) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 provides as follows:-

"7.-(1) For the purposes of unemployment, sickness and invalidity benefit -

(a) ...

(h) subject to regulation 9, a day shall not be treated as a day of unemployment if on that day a person is engaged in any employment unless the earnings derived from that employment, in respect of that day, do not exceed 75 pence, or, where the earnings are earned in respect of a longer period than a day, the earnings do not, on the daily average exceed that amount, and unless he is available on that day to be employed full-time in some employed earner's

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employment and the employment in which he is engaged is consistent with that full-time employment and, if the employment in which he is engaged is employed earner's employment, it is not in his usual main occupation."

5. Before the local tribunal the claimant accepted that he was "engaged in employment" in the period up to 30 June 1979 but denied that he was so employed thereafter. Before me the claimant departed from that argument (which I propose nevertheless to consider) and in an attractive argument upon a broader front he contended that it was inequitable that he be barred from benefit for the whole period because of the consultancy arrangement. Neither his appointment nor his remuneration was based upon any contract, he said. He had no contractual obligation to do work on any particular day. In the period covered by the appeal he had in fact done virtually no work. He had neither sought to be remunerated nor had the details of the honorarium been agreed with him in advance. The regulation and the authorities quoted as precedents did not cover his case. Regulation 7(1)(h) dealt with the treatment of a day as a day of employment and only came into operation if a person was employed on a particular day. Any disallowance in his case should only apply to a day of actual work. The only such day in the period in question was 11 July 1979 for which he had deliberately made no claim to benefit.

6. For the insurance officer Mr. Hodgkinson maintained that the claimant was, throughout the period, continuously engaged in employment within the meaning of the regulation. His earnings therefrom should, as recognised by the Inland Revenue, be accepted as amounting to £350 in 1979. Reduced to a daily rate that represented approximately 90p a day which exceeded the limit in the regulation. He accepted that the other conditions of the regulation were satisfied. I agree with that last submission.

7. It is clear that the basis upon which the claimant agreed to act as consultant was informal and imprecise. The extent of his obligations was never defined in writing. The precise amount and manner of payment of the honorarium was not agreed in advance. Nevertheless on the evidence of what was discussed and agreed in advance and of the actings of the parties thereafter I consider that the claimant must be held to have accepted an appointment as a consultant (with which went the title of Senior Research Fellow) to the Study Project for the period 1979 to 1981 whereby he would, at his reasonable convenience, and subject to, e.g. the Official Secrets Acts, render advice and assistance when asked, and in return would receive quarterly payments of £200. The question is how regulation 7(1)(h) is applied to such an appointment, if it is applicable at all.

8. The provision that "a day shall not be treated as a day of unemployment if on that day a person is engaged in any employment" seems at first sight to support the claimant's argument that you must first find the person to be engaged in work on the day or days in question. "Employment" is not however synonymous with "work". In Schedule 20 to the Social Security Act 1975 "employment" is defined as including "any trade, business, profession, office or vocation". The emphasis of the definition is accordingly on the position rather than the activity. The term "earnings" must also be given the same meaning as in the Social Security Act 1975. In terms of section 3(1) of

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that Act "earnings" includes "any remuneration or profit derived from an employment". Decisions R(P) 1/65 and R(U) 7/70 show that unsolicited payments, even if described as "honoraria", can represent "earnings". Furthermore it was held in Decision R(P) 1/70 paragraph 6 that a person "earns" what he is entitled to receive in return for his services whether he is paid at the time or not. That decision is of considerable importance in view of my conclusion expressed above that despite the informality of the arrangements, the claimant was in 1979 entitled to receive quarterly payments of £200.

9. In light of the foregoing considerations I am unable to accept either that the claimant was engaged in employment for the purposes of the regulation only upon days of actual work or the proposition that he was engaged in employment only in the period up to 30 June 1979. I have come to the conclusion that by virtue of his appointment as consultant to this project with provision for quarterly remuneration the claimant must be regarded as having been "engaged in employment" within the meaning of regulation 7(1)(h) throughout the period under appeal notwithstanding that there was little if any call upon his services during that period. Compare Decision R(G) 1/60. That being so, and since the other conditions of the regulation are agreed to be fulfilled by the circumstances of the claimant's appointment, it is necessary to consider whether his earnings come within the scope of that regulation. It is I think clear that the provision in the regulation for ascertaining a daily average of those earnings must be applied. It was submitted by Mr. Hodkinson that the claimant's remuneration in 1979 should be accepted as £400 as found by the local tribunal but under deduction of £50 of expenses as recognised by the Inland Revenue. In light of Decision R(P) 1/70 and my conclusions as to the claimant's entitlement to remuneration however it appears to me that the claimant's earnings in 1979 from which a daily rate falls to be ascertained should be regarded as 4 x £200 i.e. £800, from which it would be reasonable to deduct £100 as expenses, pro rata to the amount accepted by the Inland Revenue. That remuneration brings out a daily rate well in excess of 75p per day, the limit in the regulation. However even upon the more favourable basis proposed by Mr. Hodkinson it is clear that the claimant would be outwith the scope of the exception in the regulation. For the foregoing reasons I must hold that regulation 7(1)(h) applies to exclude payment of unemployment benefit to the claimant.

7. The appeal of the claimant is refused.

(signed)

J. G. Mitchell

Commissioner

Date: 10 February 1981

Commissioner's File: C.S.U.36/80

C.I.O. File: I.O.3018/U/80

Scottish H.Q. File: Unregistered Papers