

DN/JK

CG/15/73

✓ Good cause - ignorance of law
as a result of new benefits
or changes in the law

NATIONAL INSURANCE ACTS 1965 TO 1972

CLAIM FOR WIDOW'S BENEFIT

DECISION OF THE COMMISSIONER

1. My decision is that the claimant was not disqualified for receiving widow's pension from 5th April to 21st December 1971. I hold that widow's pension is payable to her from and including 6th April 1971 to and including the following 21st December.

2. This is an appeal by the claimant from the decision of the local tribunal upholding the insurance officer's decision that the claimant was disqualified for receiving widow's pension for the period stated in the preceding paragraph. A preliminary point arises on which I think it right briefly to comment. The claimant did not attend the hearing of her appeal before the local tribunal. She complains that she was unaware of the date of the hearing because she was absent from home on holiday. It was not until she returned from her holiday that she found the notification of the time and place of the hearing before the local tribunal.

3. It is provided by regulation 8(1) of the National Insurance (Determination of Claims and questions) (No.2) Regulations 1967 that reasonable notice of the time and place of any hearing before the local tribunal shall be given to the claimant and that, except with the consent of the claimant, the local tribunal shall not proceed with the hearing of any case unless such notice has been given. Under regulation 1(4) of the regulations any notice required to be given or sent under the provisions of the regulations shall be deemed to be given or sent if it was sent by post to the person concerned at his ordinary or last address.

4. In the present case there was no want of compliance with regulation 8(1). It is, however, further provided by paragraph (2) of regulation 8 of the regulations that if a claimant to whom notice of hearing has been duly given fails to appear at the hearing, the tribunal may proceed to determine the case notwithstanding his absence unless he has given a reasonable explanation for his non-attendance. The present claimant did not, and in the circumstances plainly could not, give a reasonable explanation for her failure to attend before the local tribunal. There was no want of compliance with regulation 8(2). The tribunal accordingly had jurisdiction to consider and determine the appeal.

The claimant's claim for the widow's pension to which she became entitled on the coming into force of the National Insurance Act 1970 was not made within the prescribed period of three months and the question, therefore arises whether she had good cause for making a late claim.

9. The expression "good cause" has been defined as meaning some fact, or combination of facts, which, having regard to all the circumstances (including the claimant's state of health and the information he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did. See Decision C.S. 371/49 (K.L.) approved by a Tribunal of Commissioners in Decision R(S) 2/63.

10. The claimant's case is that when widow's allowance ceased to be payable to her 13 weeks after the death of her husband she was informed, as I have no doubt she was, that no further widow's benefit was payable to her which was, of course, as the law then stood, perfectly correct and the claimant accepted it. She was, she says, wholly unaware that there was a change in the law governing entitlement to widow's pension until, in March 1972, it came to her notice, quite by chance, that as a result of the 1970 Act of Parliament having come into force a year previously the pension to which she had not formerly been entitled by reason of her being under 50 years of age at the death of her husband had become payable to her. She therefore at once made enquiries and lost no time in making a claim. She had not, she says, not unreasonably as I think, made any previous enquiry (save an abortive enquiry at a Post Office) for the simple reason that it never occurred to her that there was anything about which to enquire.

11. On the other hand, it is said that extensive publicity was given in the press and by the B.B.C. to the relaxing provisions of the National Insurance Act 1970 before it came into force and that the claimant should, therefore, have at least been put on enquiry as to her entitlement to a widow's pension at a much earlier stage. And in that connection reference is made to an early decision, C.G. 125/50 (reported) relating to a late claim for a death grant which was then a new form of benefit. The claimant whose case gave rise to that decision did not know the grant was available and failed to make a claim for it within the prescribed time. At paragraph 5 of the decision the learned Commissioner said that death grant was a novel type of benefit and that it was therefore held that in the case of deaths occurring within a short period after 5th July 1949 (when the grant first became payable) ignorance of the existence of it might be regarded as good cause for failure to claim in time, but he added: "In this case, however, the death occurred more than six months after death grant had become available and more than 18 months after the appointed day on which the National Insurance Act 1946 came into operation which was nearly two years after the Act was passed.

I am not persuaded that simply because the publicity given to the coming in force of the National Insurance Act 1970 escaped her notice she must be held not to have had good cause for her failure to assert her newly given right to a widow's pension before she did. I hold that there was good cause for making a late claim in this case and I give the decision stated in paragraph 1 above.

16. The claimant's appeal is allowed.

(Signed) Desmond Neligan
Commissioner

Dated: 19th April 1973

Commissioner's File: C.G./15/1973
C.I.O. File: I.O. 1622/W/72
Regional File: N.W. (Mer.) (Unregistered papers)