

file



THE SOCIAL SECURITY COMMISSIONERS

File No: CIB/4791/2001

SOCIAL SECURITY ACT 1998
SOCIAL SECURITY COMMISSIONERS (PROCEDURE) REGULATIONS 1999

**DETERMINATION OF PRELIMINARY ISSUE ARISING IN APPLICATION
FOR LEAVE TO APPEAL**

Name: Miss Carmen Hinson
Tribunal: Nottingham
Register No: U/42/038/2000/00748
Tribunal hearing date: 14 July 2000

1. This is my determination of a preliminary issue which arises on this application by the Claimant for leave to appeal against a decision of the Nottingham Appeal Tribunal made on 14 July 2000. The issue is whether, before I can consider the application, I need to be satisfied that there are "special reasons" for accepting it within Reg. 9(3) of the Social Security Commissioners (Procedure) Regulations 1999 ("the Commissioners Procedure Regulations"). My decision is that I do not.
2. The facts are simple:
 - (1) On 31 January 2000 a decision maker decided that the Claimant was not entitled to incapacity credits from 27 January 2000 because she was not incapable of work.
 - (2) On 14 July 2000 the Claimant's appeal was dismissed by the Tribunal.
 - (3) On 22 September 2000 a statement of the reasons for the Tribunal's decision was sent to the Claimant.
 - (4) By letter dated 18 October 2001 the Claimant wrote to the Appeals Service asking for leave to appeal against the Tribunal's decision. That letter was received on 22 October 2001.
 - (5) On 15 November 2001 the chairman decided to accept the late application, but refused leave to appeal.
 - (6) On 22 November 2001 the Claimant applied to a Commissioner for leave to appeal.
3. The first question is whether the application to the chairman was made before the expiry of the period within which it was required to be made if the chairman was to have power to accept the late application for consideration. The application arrived exactly 13 months after the date on which the statement of reasons had been sent to the Claimant.
4. Reg. 58 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 ("the Decisions and Appeals Regulations") provides (so far as material):
 - "(1) An application for leave to appeal to a Commissioner from a decision of an appeal tribunal under section 12 or 13 shall –
 - (a) be made within the period of one month commencing on the date the applicant is sent a written statement of the reasons for the decision against which leave to appeal is sought; and

- (5) Where there has been a failure to apply for leave to appeal within the period of time specified in paragraph (1)(a) but an application is made within one year of the last date for making an application within that period, a legally qualified panel member may, if for special reasons he thinks fit, accept and proceed to consider and determine the application.”
5. The first step is to determine, in accordance with Reg. 58(1)(a), the last date for making the application for leave to appeal. The statement of reasons was sent on 22 September 2000, so it had to be made “within the period of one month commencing on” that date. In my judgment the last date for making the application was 21 October 2000.
 6. In CIB 3937 2000 Mr. Commissioner Williams held that in Reg. 53(4) of the Decisions and Appeals Regulations, requiring an application for a statement of reasons to be made “within one month of the sending or giving of the decision notice”, the one month period starts on the day after the date on which the decision notice is sent. I respectfully agree with that decision. It states the general position which applies where an act is required to be done within a specified period “from”, “after” or “of” a specified date or event: that date itself is excluded in computing the period.
 7. But in Reg. 58(1)(a) the language is different: the application is to be made, not within the period of one month “from” or “of” the sending of the statement of reasons, but “within the period of one month commencing on” the sending of the statement. In my judgment it is clear, on that wording, that the day on which the statement is sent has to be included in computing the one month period.
 8. I derive support for that conclusion from Trow v. Ind Coope [1967] 2 QB 899 and Hare v. Gocher [1962] 2 QB 641. In the former the majority of the Court of Appeal held that the provision in the Rules of the Supreme Court that a writ was valid for “12 months beginning with the date of its issue” required the date of issue to be included in the 12 month period. In the latter the Divisional Court held that, in computing a period of one month “beginning with the date on which [the relevant Act] is passed” the date on which the Act was passed had to be included, and that in computing a period of two months “beginning with the commencement of this Act” the date on which it commenced had to be included.
 9. It is course unsatisfactory that the same set of Regulations (let alone, as here, the same Regulation) should contain time limits some of which do and some of which do not include the date specified as the start of the period. That is liable to lead to confusion and to present a trap for appellants. However, the wording of Reg. 58(1)(a) is in my judgment so clear that I see no escape from the conclusion which I have reached.
 10. The effect of my conclusion in this case is, as I have said, that the last date for making the application to the chairman for leave to appeal was 21 October 2000. However.

Reg. 58(5) entitles a legally qualified panel member to accept the application for special reasons if made “within one year of the last date for making the application.” Unlike Reg. 58(1)(a), the effect of that language is that the starting date (i.e. the last date for making the application) is excluded in computing the period of a year. So the year here began on 22 October 2000 and ended on 21 October 2001. It follows that, if the Claimant’s application for leave to appeal was made on the date when it arrived (i.e. 22 October 2001), rather than on the date when it was posted, it was made too late for the chairman to accept it, even for special reasons, and the chairman’s purported acceptance was invalid.

11. Curiously, however, it would not be too late for me to accept it for special reasons. That is because Reg. 9(4) of the Commissioners Procedure Regulations defines the “final date” (i.e. the date by which the application to the chairman for leave to appeal must have been made if a Commissioner is to have jurisdiction to accept the application to him for special reasons) as

“the end of a period of 13 months from the date on which the statement of reasons was sent to the applicant by the appeal tribunal.”

That, again, uses language under which the date on which the statement of reasons was sent is excluded in computing the period of 13 months. The effect, bizarrely it may be thought, is that the ultimate date by which the application to the chairman for leave to appeal must have been made if there is to be jurisdiction to admit the application for special reasons is one day later in the case of the Commissioner’s jurisdiction than in the of the legally qualified panel member’s jurisdiction.

12. However, in my judgment the chairman in this case did have jurisdiction to admit the application for special reasons, because in my judgment the application for leave to appeal was made when it was posted (which must have been on 21 October 2001 at the latest). I respectfully adopt and apply to Reg. 58(1) of the Decisions and Appeals Regulations the reasoning of Mr. Commissioner Williams in CIB 3937 2000 in relation to Reg. 53(4). Reg. 2(a), which provides that a notice or document shall be treated as having been given or sent on the day that it is received, applies only to notices or other documents “required to be given or sent to the clerk of the appeal tribunal or to an officer authorised by the Secretary of State”. Reg. 58 does not in terms say to whom an application for leave to appeal is to be made. However, the application is decided by the chairman of the tribunal, or another legally qualified panel member. On the face of it the application is made to the chairman. Reg. 58(2) does, however, say that where an application for leave to appeal is made the clerk to the tribunal shall send a copy to every other party to the proceedings. Nevertheless, as with Reg. 53(4), the application is in my judgment not required to be made to the clerk to the tribunal or to an officer authorised by the Secretary of State. (Contrast, for example, Reg. 51(1), which expressly requires a request for a postponement to be made to the clerk). Under Reg. 2(b) applications for leave to appeal are therefore made when posted, if properly addressed.

13. The final question is whether, the chairman having admitted the late application for special reasons (and having in my judgment had power to do so), I also need to be satisfied that there are special reasons for accepting it. That arises because it is arguable that, under Reg. 9(3) of the Commissioners Procedure Regulations, a Commissioner can only accept and deal with an application where “the applicant failed to seek leave from the chairman within the specified time” if there are special reasons. However, it is in my judgment implicit in Reg. 9(3) that a late application to the chairman which has been accepted (but refused) by the chairman does not need acceptance by a Commissioner in order to make it a valid application to the Commissioner, provided that the chairman had power to accept the application. The need for acceptance by the Commissioner in my judgment only arises where the application has been rejected by the chairman, or has been purportedly accepted but without jurisdiction to do so.
14. I should record that I gave the parties the opportunity to make submissions on this determination in draft, in view of the possible general application of some of my conclusions. The Secretary of State has made a submission not expressing disagreement with my conclusions.

Charles Turnbull
(Commissioner)

15 March 2002