

CPAG

JBM/SH/12

Commissioner's File: CIS/267/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Luton social security appeal tribunal dated 2 May 1989 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in box 5 of the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submission dated 12 June 1990 of the adjudication officer now involved in these appeals the claimant has had the opportunity to comment though the claimant has in fact not commented in spite of a reminder letter dated 16 July 1990 sent by the Office of the Social Security Commissioners. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are referred to in box 2 of the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. Nothing is to be gained by my setting out those references afresh here. I would however add that as indicated in paragraph 2 of the submission of the adjudication officer now involved in these appeals dated 12 June 1990 regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 is also of relevance.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law. On the face of their record they have breached regulation 25(2)(b) of the Adjudication Regulations 1986 in that they have failed to make any independent findings of fact material to the decision. In addition the claimant is left in the dark as to why his appeal failed. As the case has to go back to a differently constituted appeal tribunal in any event I see no useful purpose to be served in my pursuing the claimant's contention that he did not have a fair 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 new 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 of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions 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) 5 March 1992