

Cu 82/83

COMMISSIONERS DECISION
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JSW/SH

SOCIAL SECURITY ACTS 1975 TO 1982

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that:-

(a) the claimant is not disqualified for receiving unemployment benefit for the inclusive period 13 February 1982 to 24 March 1982 because he has proved that there was good cause throughout the period for failure to claim before 25 March 1982 as provided by regulation 14 of and Schedule 1 to the Social Security (Claims and Payments) Regulations 1979;

(b) unemployment benefit is not payable to the claimant for the inclusive period 13 February 1982 to 15 March 1982 because he was not available, or deemed to be available, to be employed in employed earner's employment as provided by section 17(1)(a)(i) of the Social Security Act 1975;

(c) subject to section 14(3) of the said Act, which precludes payment of unemployment benefit for the first three days, 16 to 18 March, benefit is payable to the claimant for the inclusive period 19 to 24 March 1982.

2. The claimant appeals with leave granted by the chairman of the local tribunal. At the oral hearing before me, he was represented by Mr M Rathfelder of the Citizens Advice Bureau and the insurance officer was also represented.

3. The claimant, now aged 39, stated that he had been employed for 20 years by a company of travel agents and, at the material time, was operations manager at Exeter Airport. The employers' date shows the length of his employment as 15 years but the point is not material. On 12 February 1982, he gave the employers notice to terminate his employment. He stated that he did so because he had on several previous occasions asked for meetings with management to discuss his problems, which had been ignored, so he gave his notice as a means to achieve a discussion of his problem. His purpose seems to have been to compel the management by the prospect of his leaving into having a meeting to ventilate his problems. In that he appears to have succeeded because, on 15 February 1982, he had a telephone call from the managing director who said he was sure that everything could be put right. On 18 February 1982, he had a meeting with the

managing director, which lasted for some three hours, at which his problems were discussed. Before the local tribunal, the claimant said it was a very heated meeting and, before me, he said that the managing director lost his temper. In the result, the managing director said that he would write to the claimant with some new arrangements and would make sure that the upset would not happen again. The claimant said that he did not receive the expected letter until about the middle of March 1982. He had not expected to wait for so long after the meeting. The letter was not produced in evidence. The claimant said that the managing director wrote that he had discussed the situation with colleagues and was sorry that he could not offer better arrangements because of the overall programme for the whole company, who are travel agents, and the claimant worked for only a small part of it. Enclosed with that letter was a cheque for 12 days pay and also the claimant's P45. The claimant said that, after the meeting on 18 February until he received that letter, he did not regard himself as unemployed but realised he was unemployed when he received the letter. He said that he was aware that persons who were out of work could claim unemployment benefit. He immediately saw a solicitor, who dealt only with house purchase and the like, and was referred to another solicitor. He had to wait a few days to see him and that solicitor advised him to claim unemployment benefit, which he did on 25 March. He said that he immediately took legal advice because the employers owed him a considerable sum of money for commission for the 1981 season which they refused to pay him.

4. The claimant did not receive his salary for February, which ordinarily he would have done early in March, and he did not enquire about the non-receipt of the expected letter. Mr Rathfelder said that the claimant did not want to prejudice what was being discussed by making enquiry. That is understandable but, by early March, he had waited for over two weeks. Since I do not know the full nature of the employers' business or how long it might have taken for the managing director to contact colleagues and arrange meetings, I do not consider that the claimant acted unreasonably in not making enquiries. The managing director had lost his temper at the meeting and the claimant was probably the best judge of whether enquiry by him might aggravate the situation. He said that, as far as he was concerned, the managing director had not accepted his resignation on either 15 or 18 February.

5. The claimant attended the hearing of his appeal by the local tribunal before whom he was not represented. The tribunal enquired into the circumstances very thoroughly as appears from the report of their proceedings. They decided unanimously that he had not shown good cause for the delay in claiming because the delay was due to his own decision not to claim benefit whilst he hoped to be reinstated in his old employment. Mr Rathfelder submitted that there was no evidence before the tribunal that the claimant made a deliberate election not to claim benefit. That, however, is a reasonable inference from the evidence since the tribunal found that by giving notice the claimant was unemployed and refrained from claiming benefit because he was hoping for reinstatement. That, however, was not how the evidence emerged before me. The

claimant thought he was still employed because the managing director had not indicated that his resignation had been accepted.

6. On appeal to the Commissioner, the claimant stated in his grounds that he did not think that enough consideration was given to his mental state, that he was completely confused and was unclear at what action to take in any quarter. The plain answer is that he should have enquired. Evidence has, however been submitted in a report from his doctor, dated 21 April 1982. The doctor wrote that the claimant was under his care for mental stress and had been off work for 2 months on that account. He stated that in the past the pressures and hours at work at his occupation had been very extreme and necessitated treatment. The claimant said that he had consulted his doctor on earlier occasions and had been given pills. He saw his doctor again in the latter part of February 1982 who gave him slightly stronger pills. The claimant said that there was no question of his being unfit for work at the time and he did not obtain a medical certificate.

7. On any normal view of affairs, it would be unusual for an employee to give notice to terminate his employment in expectation that business arrangements would be changed in order to induce him to remain in the employment. Having given notice, the claimant would have been unemployed on the expiry of the notice without the employers being obliged to take any action. He was, in fact, unemployed on 13 February because he ceased work and was not paid after 12 February. I think the claimant's mental or anxiety state probably affected his judgment. Having seen and heard him, I think, in all the circumstances, it was not unreasonable for him to have regarded himself as still employed until he received the letter about mid-March. I agree with his representative that the claimant's mistake was based on the conduct of the employer on which it was reasonable for him to rely. The insurance officer's representative submitted that, even if the claimant proved that there was good cause until mid-March, he had not proved the requisite continuous good cause to the date of claim in that there was a further delay of some 10 days before he claimed. He referred to paragraph 9 of Decision R(S)2/63. I accept the claimant's statement that he was completely confused and I think his mental state, confirmed by his doctor, played a large part in his thinking initially that he was still employed and in the further period after mid-March until he claimed. I find that continuous good cause to the date of claim has been proved.

8. One of the conditions for receipt of unemployment benefit is that the claimant must be available for employment in employed earner's employment. An appeal to the Commissioner is a re-hearing of the whole case and, in the written submission to the Commissioner, the insurance officer raised an issue as to the claimant's availability for employment in terms of section 17(1)(a)(i) of the said Act. The claimant stated, almost at the conclusion of the hearing, that if he had thought he was available for work he would have gone to the Job Centre. Mr Rathfelder sought to distinguish Decision R(U)23/53, paragraph 2, referred to by the insurance officer's representative, in which the claimant was held not to have been available for employment while awaiting the result of

an appeal to his former employers for reinstatement. Each case depends to a large extent upon its own facts and, in my judgment, the claimant was not available for employment for the inclusive period stated. I am in no doubt, having regard to his evidence before me, that he would not have considered taking other employment during that period, he was not available and unemployment benefit is not therefore payable.

9. To the extent stated, the claimant's appeal is allowed.

(Signed) J S Watson
Commissioner

(Date) 22 July 1983

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