CAO CIR

JGM/BC

Commissioner's File: CU/032/1986

C A O File: AO 4232/UB/86

Region: London South

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

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DEPARTMENT

1. My decision is that the claimant is disqualified for receiving unemployment benefit for the inclusive period from 11 to 17 April 1985 on the ground that he voluntarily left his employment without having in terms of section 20(1)(a) of the Social Security Act 1975 just cause for so doing.

2. The claimant is a man, aged 25 at the time of the events in question, who gave up his employment as an established civil servant (clerical officer) in the Office of Fair Trading in order to take up social work. He is now fully employed full-time in such work, but at the time he left his employment in the Office of Fair Trading in February 1985 he had no work fixed and he was unemployed but doing voluntary work for 4½ months before obtaining part-time employment and later full-time employment in social work.

3. The claimant claimed unemployment benefit in March 1985 having left his employment on 28 February. Subject to waiting days benefit was awarded from the date of claim; but it was later suspended from 11 April 1985 after enquiries had been made as to the circumstances in which the claimant left the employment. In due course the adjudication officer decided that the claimant was disqualified for receiving unemployment benefit for the inclusive period from 11 April to 22 May 1985 on the ground mentioned in paragraph 1 above. I understand that the claimant applied for a supplementary allowance when unemployment benefit was refused, but this was presumably restricted in amount pursuant to regulation 8 of the Supplementary Benefit (Requirements) Regulations 1983. But adjustment will have to be made to any benefit becoming payable as the result of this decision by reference to any such supplementary allowance (see Supplementary Benefits Act 1976, section 12).

4. The claimant appealed to the social security appeal tribunal against the disqualification imposed, but his appeal was unsuccessful inasmuch as they upheld the conclusion that the claimant had not just cause for voluntarily leaving the employment, and they confirmed the disqualification without appearing to notice that they had a discretion as to the period of disqualification imposed. The claimant now appeals to the Commissioner. He presented his own case at the oral hearing before me.

5. In the course of his evidence the claimant gave some account of his education and employment history. He has A levels and a degree in social sciences. After leaving school he had gone to America where he paid for his stay by working part of the time in a petrol station. When he returned to this country he was unemployed for some time before obtaining employment as a security guard, work in which he said there was a speedy turnover of staff because of the unattractive conditions. He was offered and took up part-time work in India as a youth leader; and he there formed the view that his real vocation was in social work. He returned to this country after that and, having been unemployed again for a short time, he obtained part-time employment in the Inland Revenue before becoming an established civil servant in the grade of clerical officer in the Office of Fair Trading. His qualifications were such that he might have had a chance of acceptance in a higher grade but he was anxious to avoid being unemployed again; and he thus accepted work for which he was over-qualified. He was there for about 15 months before leaving at the end of February 1985. Not only did he find the work unsatisfying, but he got across an assistant principal in the office who declared him unfit for promotion. In any case since his visit to India his heart had been in social work. He tried, while working in the Office of Fair Trading, to obtain employment in social work, but realised that it was unlikely that he would obtain employment without first doing some voluntary work in that field. He might possibly have done some voluntary work in the evenings while working during the day time in the job that he already had, but in fact he left the job and started doing voluntary work which led in the end to his present full-time job with the mentally handicapped. It was obvious to me that he is very much happier now in his social work than he was in the Office of Fair Trading.

6. The claimant does not dispute that he left his employment voluntarily. He contends however that he had just cause for so leaving. Not only was the previous employment unsatisfactory but he contends that he served the public interest by going. There are, he said plenty of people seeking to be clerical officers in the civil service so that he was easily replaced. But people prepared to work with the mentally handicapped are few and far between and he was filling a real social need by taking up such work. This he argued fully justified his leaving voluntarily.

7. Commissioners' decisions on just cause for leaving voluntarily have emphasised the point about what we now call social security but was previously called national insurance (in the case of unemployment insurance) that it has always to be remembered that unemployment benefit is the product of insurance against becoming unemployed against one's will; and that a person who brings on himself the very misfortune that he has insured against cannot ordinarily expect to be paid in full. In normal insurance he is not paid at all. With unemployment benefit the loss is not permanent. But the analogy with insurance has to be recognised. Thus in Decision R(U) 20/64 a Tribunal of Commissioners stated the matter as follows (at paragraph 8):

> "8. The basic purpose of unemployment benefit is to provide against the misfortune of unemployment happening against a person's will. Section 13(2) however clearly recognises that it may be payable in certain cases where the claimant leaves voluntarily, if he does not do so without just cause. It is not sufficient for him to prove that he acted reasonably, in the sense of acting reasonably in his own interests. The interests of the National Insurance Fund and other contributors have to be taken into account as well. "The notion of 'just cause' involves a compromise between the rights of the individual and the interests of the rest of the community. So long as he does not break his contract with his

employer, the individual is free to leave his employment when he likes. But if he wishes to claim unemployment benefit he must not leave his employment without due regard to the interests of the rest of the community ....."

8. In the period immediately following this decision the notion began to gain credence that one might have just cause for leaving employment, in the sense in which that term is used in section 20(1)(a) of the Social Security Act 1975, if it was in the public interest that one should give up the employment. Thus in Decision CU/17/72 (not reported) a decision mostly concerned with an entirely different point, persons aged over 60 who had volunteered for redundancy when the employers were calling for volunteers had been disqualified for leaving voluntarily by the insurance officer whose decision had been reversed by the local tribunal on appeal. Appeals on a different point came before the Commissioner but the insurance officer did not appeal against this reversal of the decision on just cause. The Commissioner expressed the view that he had been right not to do so though he reserved the question what his opinion would have been the same in the case of a younger claimant. But any possibility that volunteering for redundancy where the employer was looking for candidates for it should of itself be treated as just cause for voluntarily leaving was abruptly dispelled by the decision of the Court of Appeal in Crewe v Anderson [1982] 1 WLR 1209. In that case the claimant had volunteered for redundancy when an education authority was looking for candidates for redundancy among its teachers. He was at the time aged 63 and as Donaldson LJ observed at page 1214 had no intention to seek further employment. That being so, one wonders why the insurance officer ever troubled himself with disqualification under section 20 instead of refusing benefit on the ground of non-availability. But the disqualification was taken to the Court of Appeal where the relevance of the analogy with insurance was treated as paramount and the idea that general public interest could constitute just cause for leaving voluntarily was firmly rejected. It has to be emphasised that the Court of Appeal did not consider the question whether public interest might be relevant in determining the period of disqualification. As the claimant in that case had no wish to work again it is hardly surprising that the then maximum period of disqualification was imposed. But subject to that the analogy with insurance seems now to be the paramount criterion of just cause.

9. An examination of the decisions on the topic leads me to think that in general it is only where circumstances are such that a person has virtually no alternative to leaving voluntarily that he will be found to have had just cause for doing so, rather as a person who throws his baggage overboard to make room in the lifeboat can claim on his baggage insurance. Instances are (1) cases where the employer's conduct is or comes close to being repudiatory (see the cases cited in R(U) 20/64 at paragraph 11) (cases where the employer seeks unilaterally to alter the terms of employment are not cases of leaving voluntarily and are better considered under some other paragraph of section 20 (see Decision R(U) 5/71 and R(U) 7/74)) (2) cases of non-availability of suitable accommodation (see decision R(U) 31/59 and contract R(U) 6/53); (3) cases of failing health making the work unsuitable as in R(U) 13/52; and (4) cases of the obligation of a married woman to join her husband R(U) 19/52, a point to which official recognition has been given in regulation 8 of the Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974 [SI 1974 No 2010]; (it may be that in the light of Council Directive 79/7 (EEC) on equal treatment a similar concession must now be made in favour of husbands joining their wives; (cf decision R(U) 14/52).

10. The claimant's case does not fall within any category of this sort. He left partly because he had set his heart on social work and partly because of his trouble with the assistant principal. Not having heard this person's version of the matter I do not intend to pronounce upon it except to say that even assuming that the entire fault lay with him it is possible in the civil service to secure a transfer and a claimant who left without having made any attempt to secure a transfer will not be regarded as having established that he had no alternative to leaving. The claimant urged that his leaving had in the long run actually benefitted the national insurance fund, in that he had made available a vacancy for someone who would otherwise have continued unemployed, and that he was now earning more so that he was paying higher contributions. These long term considerations (which incidentally have nothing to do with the question of being forced to leave) are somewhat remote and it is difficult to be sure that all implications have been taken into account when assessing them. And I note that their relevance was negatived by the Commissioner in Crewe v Anderson (see decision R(U) 3/81 at paragraph 10), and his decision was in fact confirmed by the Court of Appeal.

11. I hold therefore that the claimant did not have just cause for leaving voluntarily in terms of section 20(1)(a) and that he falls under that section to be disqualified for receiving unemployment benefit for such period not exceeding six weeks as may be determined. The decision in Crewe v Anderson gives no guidance on this question. In view of the fact that the Social Security Act 1986 has made important changes bearing on the matter I think that I should say something about it. It was held by a Commissioner in decision R(U) 17/54, applying the insurance principle, that normally the maximum period of six weeks' disqualification should be imposed and that a heavy burden lay on a person to establish that a lesser period was appropriate. Consequently it became almost automatic for insurance officers to impose a maximum period of disqualification. In R(U) 8/74 a Tribunal of Commissioners decided that this was an incorrect approach and that each case should be regarded as one in which a "sensible discretion" fell to be exercised. If cases that have come before the Commissioner since then are any guide I should infer from what I have seen of them that this latter decision has had practically no effect on the practice of insurance (now adjudication) officers imposing disqualification. They seem still to impose the maximum period in practically every case. When there is an appeal they draw the attention of the appeal tribunal in their submission to what was said in R(U) 8/74, but quite frequently (as in this case) the tribunal, if they uphold the decision on just cause or whatever else is the substantive point, affirm the period of disqualification without its appearing that they have given any consideration to that aspect of the case. It was on that ground that I granted leave to appeal in this case. I am emphasising the point now because of particular changes made by the Social Security Act 1986, one of which is not yet in force. First (and this is in force) the maximum period of disqualification has been increased to thirteen weeks by section 43(2) of the Act. And this was presumably done by Parliament in the knowledge of what had been decided in R(U) 8/74. It is thus essential that adjudication officers should abandon their old habit of virtually automatically imposing the maximum. Secondly under section 52 and paragraph 7 of Schedule 5 to the Act appeal to the Commissioner will lie only on a point of law and it will not be open to the Commissioner to fix a different period of disqualification where there is no error of law. It is likely that tribunals will be held to have erred in law if they do not indicate in their decisions (a) that they have consciously exercised a discretion in imposing disqualification; and (b) stated the facts that they have taken into account in exercising it.

12. These latter provisions are not yet in force and it is open to me to reconsider the period of disqualification. I was in fact impressed with the claimant's point that there is a shortage of people ready and willing to work with the mentally handicapped and a public need exists for such workers. At the same time I take note of the fact that there is likely to be some cost in a person's switching from a job that he dislikes to one which (however beneficial to the community) he feels attracted to, and that a person cannot expect that this entire cost shall be met out of unemployment benefit. In the circumstances I think that a period of one week's disqualification is appropriate. To that extent the claimant's appeal succeeds.

(Signed) J G Monroe
Commissioner

Date: 21 January 1987