

JGM/5/LS

Commissioner's File: CU/113/1987

C A O File: AO Not known

Region: Wales & South Western

**SOCIAL SECURITY ACTS 1975 TO 1986
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name:

Appeal Tribunal:

Case No:

[ORAL HEARING]

1. My decision is that the claimant is not precluded either on the grounds of non-availability or by regulation 7(1)(a) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 from being awarded unemployment benefit for any part of the period from 28 April to 9 December 1986.

2. The claimant is a married woman who at the time in question had been living in a small village in Devonshire about 16 miles from Exeter, to which there was a bus service on only one day of the week, there being a bus service to an intermediate town about 8 miles from her home on one additional day. The service did not run at a time when suitable for travelling to and from work on a normal working day.

3. She had been employed in the intermediate town down to 1985, after which she had obtained part-time employment in her own village. But this work came to an end in April 1986 and she claimed unemployment benefit from 28 April 1986, she was one day late with her claim but it has been accepted that she had good cause for this. She completed a form UB671 on 15 May 1986 in which she indicated that she wished to work from 9 to 4.30 on five days per week (Monday to Friday (she indicated no hours for Saturday)). She answered "NO" to the question "Are you willing to work anywhere?" and indicated by underlining that she would work "home town only" or "within daily travelling distance". And she repeated the requirement of being within daily travelling distance in another form on 22 May 1986, and again on a form on 11 July 1986 in which she indicated that she would work 8 am to 4.30 pm. On 9 November 1986 she completed another form UB672 in which she answered "YES" to the question "Are you willing to travel anywhere to work?". This was referred to the employment officer who indicated (he could hardly have done otherwise) that employers in the district where the claimant was prepared to work engaged workers within the limits stipulated by the claimant. Strangely this question does not seem to have been previously referred to the employment officer. Unemployment benefit was in fact paid to the claimant for the inclusive period 2 May to 24 June 1986 (28 April at that stage having been treated as a day for which the claimant was late and the following three days being treated as waiting days (rightly or wrongly)). On 29 July the adjudication officer gave a decision that unemployment benefit was not payable to the claimant for the inclusive period from 28 April 1986 to 25 July 1986 both on the ground of non-availability and by reference to regulation 7(1)(a) above mentioned and he made a forward disallowance extending over the period to 25 October 1986. This decision clearly cannot stand in relation to any period covered by the previous award of benefit. On appeal the appeal tribunal held that she was available for work except on Saturdays, but confirmed the decision by reference to

regulation 7(1)(a) and made an indefinite forward disallowance, though regulation 12(4) of the Social Security (Claims and Payments) Regulations 1979 permits a forward disallowance for not more than 12 months from the date of the decision making the disallowance. The claimant now appeals to the Commissioner. She was represented at the oral hearing before me by Mr S. Price of the Exeter Citizens' Advice Bureau, and the adjudication officer was represented by Mr N. J. Storey of the Solicitor's Office of the Department of Health and Social Security.

4. She gave me some account of her previous employment; and that at one time her husband had been able to drive her to work, but he had been moved by his employers and was no longer able to do so. His car was available if someone could be found to drive the claimant to work in it; but she herself did not drive. In fact she did during the summer of 1986 find someone willing to drive her to Exeter or anywhere in between at the start and the end of the normal full working day. She did in fact turn down two offers of employment because of the impracticality of being transported there in one case because the work began too early and in one case because it was part-time work which began too late and ended too early. It has not been suggested that she thereby neglected to avail herself of a reasonable opportunity of suitable employment. Her claim as above mentioned was rejected by reference to regulation 7(1)(a).

5. This regulation provides as follows:

"where in respect of any day a person places restrictions on the nature, hours, rate of remuneration or locality or other conditions of employment which he [or she] is prepared to accept and as a consequence of those restrictions has no reasonable prospects of securing employment, that day shall not be treated as a day of unemployment unless -

- (i) he [or she] is prevented from having reasonable prospects of securing employment consistent with those restrictions only as a result of adverse industrial conditions in the locality or localities concerned which may reasonably be regarded as temporary, and, having regard to all the circumstances, personal and other, the restrictions which he [or she] imposes are reasonable; or
- (ii) the restrictions are nevertheless reasonable in view of his [or her] physical condition; or
- (iii) the restrictions are nevertheless reasonable having regard both to the nature of his [or her] usual occupation and also to the time which has elapsed since he [or she] became unemployed."

6. It will be noted that a person who places restrictions in advance of an offer of employment rather than awaiting an offer and then turning it down is disadvantaged in two ways as compared with a person considered for disqualification under section 20 of the Social Security Act 1975 e.g. on the ground of neglecting to avail himself or herself of a reasonable opportunity of suitable employment. First he or she is deprived of unemployment benefit forthwith regardless of whether any employment offers itself; secondly the reasonableness of the restriction provides an escape only by reference to one or other of the three facts mentioned in regulation 7(1)(a) at (i), (ii) and (iii); whereas a person who refuses an opportunity of employment can put forward an unlimited range of considerations as making the refusal reasonable. There is not always much difference in the language used by a person who positively places restrictions on the type of work that he or she is willing to accept and that used by a person who indicates the type of work he or she hopes to get without imposing any positive restriction. It is always possible by further questioning to ascertain what is intended by a claimant, and the adjudicating authorities should seek clarification in ambiguous cases rather than attempt to construe documents strictly against

a claimant without more.

7. In the present case the appeal tribunal found that the claimant had placed restrictions on the hours of employment and that in consequence of that there was no reasonable prospect of securing employment in terms of regulation 7(1)(a). I have some difficulty in seeing how this conclusion was arrived at. The hours to which she referred in the forms, even if construed as restrictions imposed by her, were perfectly normal Monday to Friday hours and the employment officer has not suggested that there is anything about them which would prevent her from securing employment. At the hearing before me it was the restrictions on locality that were stressed by the adjudication officer's representative. On this we do not have any opinion from an employment officer. I have difficulty however in accepting, in the case of a person who has not deliberately put himself or herself in a remote place in order to avoid being offered suitable employment, that daily travelling distance is a restriction imposed by the claimant at all rather than by nature. I do not think as a matter of law that it is a precondition of title to unemployment benefit that the claimant should be prepared to move to some possibly distant part of the country where employment prospects are better, nor do I find as a matter of fact that this claimant was unreasonably restricting her concept of daily travelling distance. She could not drive and had no adequate system of public transport to rely on; and I am satisfied on the evidence that she was prepared to make every effort that could be expected of her to secure transport to work in Exeter or anywhere between there and her home at the normal times of travelling to and returning from work. In any case I do not think it is established that in restricting herself to that area she would have had no reasonable prospects of securing employment. I hold therefore that she was not adversely affected by regulation 7(1)(a).

8. I should add that the tribunal found that the claimant was not available for employment on Saturdays. This conclusion was based on her indicating that the type of work that she was looking for was on Mondays and Fridays. I do not think that it is right to draw an inference of unwillingness to work on Saturdays from so normal a suggestion. Further investigation is called for. If it emerges for instance that a woman does not want to work on Saturdays because her husband does not work that day and she wishes to be with him, it may well be right to treat her as not available on Saturdays. But I was satisfied by the claimant's evidence that she would have been perfectly willing to work on Saturdays; and that she had referred to Mondays and Fridays as being the days on which available work was likely to be offered.

9. The claimant's appeal is allowed.

(Signed) J G Monroe
Commissioner

Date: 27 November 1987