

JGM/BC

Commissioner's File: CU/323/1985

C A O File: AO 4044/UB/86

Region: London South

SOCIAL SECURITY ACTS 1975 TO 1985

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

COMMISSIONERS DECISION
RESPECT IT AS A DECISION
COPIES NOT TO BE REMOVED

1. My decision is:

- (a) that the decisions awarding to the claimant unemployment benefit during the period from 28 February 1981 to 14 April 1982 are to be reviewed as having been given in ignorance of or as the result of a mistake as to, a material fact;
- (b) that on such review the decisions are to be revised so as to provide that such benefit was not payable;
- (c) that as the result of such revision there has been an overpayment of benefit amounting in all to £960.14, repayment of which is not required.

2. The claimant is a woman born in the year 1941 who left school without qualifications at the age of 15 and did an apprenticeship in hairdressing being an employed person for some time before she married in the year 1963. She gave up work on marriage and had two children, whom she brought up. She returned to work as a hairdresser about 6 years after the birth of her second child in 1968. But this was not long before her marriage terminated in divorce, the decree absolute being dated 11 March 1975. She has had one child since the divorce. It appears that in connection with her employment before the divorce she elected to pay only the reduced contributions required of married women.

3. After the divorce she obtained other employment, which (from late 1978 until she became unemployed as hereinafter mentioned) was with her ex-husband, who paid her £15 per week. In February 1981 she had trouble with her ex-husband and the employment came to an end and she became unemployed. She then claimed unemployment benefit on 25 February 1982. She gave the information normally required on the standard claim for unemployment benefit (form UB 461). This does not include any questions relating to satisfaction of the contribution conditions for the benefit. The Department leaves it normally to their experts to ascertain the contribution position. At the

time however there was industrial action at the computer centre and before deciding to make payments to the claimant they invited her to complete a questionnaire on form UB 461E. One of the questions asked was "Have you worked for an employer and paid standard rate National Insurance Contributions as an employed person (not self-employed) for at least 26 weeks in the last 12 months? She answered this question "Yes". This answer, as it now emerges, was incorrect, but, had it been correct, it would not have established that the claimant satisfied the contribution conditions. The most that can be said is that if the claimant had answered "No", further enquiries might have been made which for some reason were regarded as unnecessary in relation to those who answered "Yes".

4. In fact unemployment benefit was paid to the claimant, not in respect of every day, but for a total of 271 days until the period from 28 February 1981 to 14 April 1982. The total amount paid was £960.14. Benefit was then stopped, there being a note on the rating sheet in the following terms: "No more money until conts. record proved [that?] she paid full stamp". It seems to have taken another two years to decide that the claimant had not paid contributions to support her claim to unemployment benefit as it was not until 18 April 1984 that a decision was issued broadly on the lines of that in paragraph 1 above except that the amount overpaid (slightly overcalculated) was required to be repaid. The claimant appealed to the appeal tribunal. In her letter of appeal she referred to an interview that she had had at the unemployment benefit office when she said that an officer had told her that no more money would be paid but that it would be all right. This would seem to be a reference to some interview at or about the time that the money was stopped in April 1982. The appeal tribunal apart from correcting the amount overpaid confirmed the decision of the insurance officer (now the adjudication officer) and the claimant now appeals to the Commissioner. She was represented at the oral hearing before me by Mr J Luba, Welfare Rights Adviser to the Greater London Citizens' Advice Bureau Service.

5. If in fact the claimant did not satisfy the contribution conditions for unemployment benefit at the time in question and she was paid unemployment benefit on the footing that she did, and the insurance officer giving the decision that it was payable to her did not know whether the conditions were satisfied or not (which seems to have been the position) the award was made in ignorance of a material fact, and the decision awarding the benefit can be reviewed on that ground. The knowledge of those responsible for the Department's computer is not in this context to be imputed to the insurance officer who gave the decision. But before it can be revised one has to ascertain whether and to what extent if any of the contribution conditions were satisfied. There have always been two contribution conditions for unemployment benefit. Down to 1975 the first condition was that the person concerned should have actually paid not less than 26 contributions of the appropriate class since his or her entry into insurance (National Insurance Act 1946 Schedule 3 paragraph 1(a); National Insurance Act 1965 Schedule 2 paragraph 1(a)). Since the coming into force of the Social Security Act 1975 the contribution condition has been expressed in a much less simple manner viz that he or she should have in any one year paid contributions of a relevant class such that the "earnings factor" derived from them is not less than 25 times the "lower earnings limit". It is not to be expected that any ordinary person will have the least idea whether he or she satisfies this condition. But it was on the ground that the claimant did not satisfy this condition that the insurance officer gave the decision now under consideration. He had not referred the contribution question to the Secretary of State, treating the point as one on which no question arose. It has to be admitted that there is in the case papers a computer print-out which states that the first contribution condition

was not satisfied. But it contains features that make me suspect its accuracy; and if the appeal depended on whether the first contribution condition was satisfied I should be obliged to have the question referred to the Secretary of State. The print-out in fact, as well as stating positively that the first condition was not satisfied, indicated that in the year 1978/9 the claimant had an earnings factor of £504.62, which was more than 25 times the then lower earnings limit. It is of course possible that a relevant part of the earnings factor was derived from contributions credited and not paid, but I am not confident that it is safe to assume that the apparent inconsistency can be resolved in this way. Moreover I was told by the adjudication officer's representative at the hearing that under transitional provisions the first contribution condition could still be satisfied by the actual payment of 26 contributions of the appropriate class (class I) at any time between entry into insurance and the coming into force of the 1875 Act. And it would seem to be necessary to look at the claimant's contribution situation before she was married before accepting that the first contribution condition was not satisfied. I may add that the print-out gives an entirely erroneous date (admittedly described as not verified) for the claimant's divorce.

6. The insurance officer would have been on much surer ground if he had based his decision on failure to satisfy the second contribution condition which is that the claimant should in "the relevant past year" have paid or been credited with contributions such that the earnings factor derived therefrom was more than 50 times the lower earnings limit. It is not in dispute that the relevant past year in question was the tax year 1979/80 or that during that year the claimant was employed by her ex-husband and no one else. The claimant was under the correct impression that as she was divorced her liability to pay contributions was the same as that of a single woman; and she seems to have been under the impression that her husband was paying these contributions for her. She produced however a note from her ex-husband to the effect that he paid no contributions for her during the period in question because she was earning only £15 per week, which was at all material times below the lower earnings limit. It is to be presumed that the contributions from which the claimant's earnings factor in 1978/9 was derived were paid by a previous employer. It seems clear therefore that in the relevant past year no contributions were paid or credited and no earnings factor was derived therefrom. In other words the second contribution condition was not satisfied; and on that ground the decisions awarding the benefit fall to be reviewed and revised.

7. It remains to consider whether repayment is required of the amount overpaid. Under section 119 of the Social Security Act 1975 I am bound to require repayment unless it has been shown to my satisfaction that in the obtaining and receipt of the benefit the claimant throughout used due care and diligence to avoid the overpayment. There was in this case overpayment because the contribution conditions were not satisfied. In the ordinary course the question whether contribution conditions have been satisfied turns on points so difficult of comprehension by any but the expert that it is not thought even to be necessary to include in the claim form any questions directed to the matter of the contribution conditions. And it was only because of the industrial action in the computer centre that the claimant was asked some questions not precisely relevant to the question whether those conditions were satisfied but intended to point the local office in the right direction. But for the claimant's incorrect answer to one such question there could not in this case be any case for even suggesting any lack of due care and diligence. I am

however concerned with repayment of money overpaid; and there is normally a legal and moral obligation to repay money overpaid even when, as here, there is no question of any lack of good faith. And it is because there is such an obligation that there is a requirement of such a high level of care and diligence before repayment can be remitted. On the other hand the present is a case where, had the claimant not drawn unemployment benefit, she would have been entitled to supplementary benefit and at least the moral obligation is somewhat modified by this consideration. I understand that a protective claim to supplementary benefit has been made, in case repayment is required.

8. The claimant says in her letter of appeal to the Commissioner that she checked with her employer that she was paying a full national insurance contribution. The employer in question was her ex-husband who now says that he was not. It is possible that her husband said something equivocal, as that he was paying anything that he was required by law to pay; but the claimant was unable at that hearing to give any better particulars of what she had been told. I am taking into account that more than 5 years have elapsed since the time in question, and that the Department has made it more difficult for her by waiting two years after they had become aware that there was some question as to the claimant's entitlement to the benefit before taking any action. I also have evidence that at the time the claimant was ill. I have reached the conclusion that the claimant did her best in the circumstances and that repayment need not be required.

9. Her appeal therefore succeeds.

(Signed) J G Monroe
Commissioner

Date: 2 December 1986