

COMMISSIONER'S DECISION
RECORD
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SOCIAL SECURITY ACTS 1975 TO 1984

Commissioner's File: C.U. 5/1985
C.A.O. File: AO 3530/UB/84
Region: N.W.

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decisions are that

(a) the decisions of the insurance officer awarding an increase of unemployment benefit to the claimant in respect of his wife from 11 April 1983 to 30 May 1983 (both dates included) may be reviewed

(b) increase of unemployment benefit in respect of his wife is not payable to the claimant from 11 April 1983 to 30 May 1983 (both dates included); and that

(c) as a result an overpayment of benefit amounting to £55.12 occurred which the claimant is required to repay.

2. The claimant, who is aged 23 years, was awarded an increase of unemployment benefit in respect of his wife from 11 April 1983 to 30 May 1983 (both dates included). Following the receipt of information to the effect that she was in receipt of maternity benefit for this period the insurance officer (now the adjudication officer) reviewed the decisions awarding the increase to the claimant. His revised decision was to the effect that the increase was not payable in respect of this period by reason of the regulations relating to overlapping benefits, that as a result an overpayment of benefit amounting to £110.73 had occurred and that repayment of this sum by the claimant was required. The claimant's appeal from this decision to the local tribunal (now the appeal tribunal) which he attended, and at which he was represented, was disallowed on 7 August 1984. The adjudication officer had submitted to the tribunal that £55.61 should be deducted from the £110.73 in respect of the supplementary benefit which he would have received had he received his correct entitlement to unemployment benefit. The tribunal accepted this submission and provided for a repayment of £55.12. The claimant then appealed to the Commissioner from the tribunal's decision having been given leave to do so by the chairman of the tribunal.

3. It would appear to me that the only matter in dispute in this case relates to the tribunal's decision that the claimant was required to repay the sum of £55.12 overpaid to him (that is to say I am satisfied that the insurance officer was entitled to carry out the review undertaken by him and that subject to the determination of the repayment issue his revised decision was well founded). Repayment of this sum by the claimant has to be required unless it is established that in the obtaining and the receipt of this benefit he throughout used due care and diligence to avoid overpayment. On 25 August 1982 the claimant declared on a form that he had received leaflet UBL 18. The advice set out in this leaflet is to the effect that a claimant in receipt of unemployment benefit

must inform his local unemployment benefit office at once "If there are any changes in your family or home circumstances which might affect your benefit (for example, if you have claimed for your wife and she gets a job or claims another benefit)" (my underlining). On each occasion on which he claimed unemployment benefit he declared that he had read and understood this leaflet, that he had reported everything that he was required to report and that on each day since the date on which he last claimed (other than any day for which he had made a separate declaration) the circumstances of his dependants were and had remained as last stated in writing. He was instructed that if there had been any change he should cross out that part of the declaration relating to the absence of a change and "attach a statement of new facts." The claimant completed another form on 25 August 1982 (the claim form) on which he declared that he had received a copy of another leaflet UB 534A and had read and understood the notes contained in it. Those notes were to substantially have the same effect as the advice set out in the leaflet UBL 18 which is referred to above. On the claim form completed by him he indicated that his wife was not in receipt of a maternity allowance. There would appear to me to be no dispute and I am satisfied that the claimant did not follow the advice and instructions outlined above. On the face of things his failure to do so amounted to a failure to exercise the care and diligence required of him to avoid an overpayment and that accordingly repayment of the overpayment should be required. However the claimant has maintained, and it is accepted that on 14 April 1983 he informed the Supplementary Benefit Section of the Department of Health and Social Security that his wife was now in receipt of a maternity allowance. He has asserted that accordingly he should be regarded as having exercised the care and diligence required of him. The adjudication officer has maintained that this is not so as he also had a responsibility to inform the unemployment benefit office from which payment of unemployment benefit was also being made, of the relevant change in circumstances.

4. When first interviewed on an unknown date which appears to have been early in June 1983 his response to this assertion "Our records don't say anything about your wife receiving maternity benefit. I know you told Social Security but the onus is on you to make certain that everybody who needs to know does know" was "I thought it were all one like". On 1 August 1983 he maintained that a member of the staff of the Department of Health and Social Security concerned with supplementary benefit had "admitted there had been a breakdown in communication between the unemployment + S.B. Sections". In his grounds of appeal to the Commissioner dated 20 September 1984 the claimant maintained that "my appeal was based on the contention that by informing the D.H.S.S. about the change in my income, I was led to believe that this would be passed on the the Department of Employment. I was told by the person in the D.H.S.S. that this information would be passed on. As my benefit did go down soon after (and this has not been disputed) I assumed that information had been relayed to the proper section. Had my benefit not changed, it would have been reasonable to expect me to check with the Department of Employment to see if the information had got through. I don't believe the Tribunal have given a clear enough reason as to why this was not 'exercising due care and diligence'." He went on to refer to the following decisions - Decision R(SB) 54/83 and C(SB) 178/83 now reported as R(SB) 36/84. He also observed that "The presenting officer claimed I was reminded about the need to report the change of circumstances by being asked to read and sign Form UB25. I said I was never given the opportunity to read it, but simply told to 'sign here'. This happens all the time at the signing on office because of the pressure of work." I note that he has not disputed that he had been supplied with a copy of the leaflet referred to on this form. I also note that the papers before me do not

give any indication that the claimant had asserted prior to 20 September 1984 that he had been "told by the person in the D.H.S.S. that this information would be passed on". If this was so one would have expected him to have referred to it when first interviewed. I observe that this assertion is also made by the claimant's representative in his letter of 27 February 1985. He repeated a number of the arguments which are referred to above and also maintained that "if it is accepted that the Department of Employment is an agent of the D.H.S.S. and, therefore, information given to the D.O.E. can be said to have been given to the D.H.S.S., cannot the same principle apply in reverse?".

5. Having carefully considered all the evidence and the submissions which have been made I have come to the conclusion that the evidence establishes that the claimant did not exercise the care and diligence required of him to avoid overpayment and that accordingly repayment has to be required. I have no doubt that the claimant failed to do what was required of him. I accept that his failure was attributable to the fact that he genuinely believed that the Department of Employment and the Department of Health and Social Security were "all one like". I do not accept that he was told that the information he gave to the Department of Health and Social Security would be passed on to the Department of Employment and in view of the advice and instructions he had received and which are referred to in paragraph 3 I do not consider that it was reasonable for him to assume that the information would be passed on. I am satisfied that the relevant circumstances in the two cases to which reference has been made are materially different from those which exist in this case.

6. The claimant's appeal is disallowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 12 April 1985