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SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

[ORAL HEARING]

**IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT**

1. My decision is that the decision of the social security appeal tribunal dated 20 February 1992 is not erroneous in law.

2. This is an appeal by the adjudication officer with leave on a question of law against the above-mentioned tribunal decision. The appeal was dealt with at an oral hearing held before me at which the adjudication officer was represented by Mr P Cackette, acting as the Solicitor in Scotland to the Department of Social Security. The claimant appeared in person.

3. On 23 October 1991 the claimant made a claim for income support. An adjudication officer refused that claim on 30 October 1991 because he held that the claimant was a student attending a full-time course of study. That meant that he would be treated as not available for employment and was thus ineligible for benefit. The claimant appealed to a social security appeal tribunal.

4. The adjudication officer's "summary of facts" as clarified by the claimant's evidence showed that the claimant had commenced a 3 year full-time Ordinary B.Sc degree course at the University of Glasgow in 1988. At the end of the third year of the course in 1991 the claimant had inadequate points to qualify for his degree having failed one subject a number of times. He was permitted to transfer to a part-time course at the University in order to take one subject, "Education Ordinary", for 4 hours per week. A pass in that subject would enable him to qualify for the Ordinary B.Sc degree.

5. The provisions of statute and regulation applicable to this case were set forth in the submission of the adjudication officer to the tribunal. The critical question was whether the claimant still fell to be regarded as a "student" for the purposes of the Income Support (General) Regulations 1987, and as such, a person who fell to be treated as not available for employment and accordingly ineligible for income support. The definition of "student" in regulation 61 of the General Regulations contains the following material provisions:-

"Student" means a person ... who is attending a full-time course of study at an educational establishment; and for the purposes of this definition -

- (a) a person who has started on such a course shall be treated as attending it throughout any period of term or vacation

within it, until the end of the course or such earlier date as he abandons it or is dismissed from it; .."

6. The tribunal adopted the adjudication officer's summary of facts which was broadly to the effect stated in paragraph 4 above. They addressed themselves to the question whether the claimant was to be classed as a "student" in terms of the regulations while studying the single subject part-time. They came to the conclusion from the claimant's evidence and from a letter from the University dated 11 November 1991 from the Office of the Principal Adviser of Studies in Science that the University allowed a B.Sc degree to be studied as a part-time or as a full-time course and that the claimant had transferred from the full-time to the part-time course and was not therefore a student ineligible for income support. They therefore unanimously allowed the claimant's appeal.

7. For the adjudication officer Mr Cackette submitted that there were under the regulation 3 avenues by which a student ceased to be a student, either by finishing the course, abandoning the course or being dismissed from it. The tribunal had failed, he said, to show how they regarded the full-time course as having ended. He conceded that the claimant might succeed if a formal transfer was possible between full-time and part-time B.Sc degree courses so that such transfer from the full-time course in the claimant's case could be treated as abandonment of that course. But he submitted that the preferable view was that the claimant was finishing off a full-time course albeit on a part-time basis. He also questioned if the letter from the University of Glasgow was a sufficient basis for the tribunal's decision on the claimant's transfer. He subsequently submitted that the relevant University Regulations, produced as aftermentioned by the claimant, although showing that such transfers between the courses were possible, did not alter his submission as to the situation in the present case.

8. The claimant explained that the Ordinary B.Sc degree course at the University of Glasgow could be undertaken either as a 3 year full-time course, or a 5 year part-time course, or a combination of both - i.e., the regulations permitted a student to transfer. He had reached the end of his 3 year full-time course but had failed one subject a number of times including the final "resit". He was allowed to transfer to the part-time course in order to take the single subject required. He undertook to produce the relevant regulations of the University of Glasgow applicable to the Faculty of Science and these have duly been produced to me and confirm the claimant's evidence regarding the full-time and part-time B.Sc degree courses and the possibility of combination by transfer in exceptional cases.

9. It was on the basis of that evidence that the tribunal proceeded in holding that the claimant had transferred from the full-time to the part-time course. In my judgment the tribunal were entitled so to proceed on the basis of the evidence before them in the absence of contradictory evidence from the adjudication officer. While the tribunal reasoning might have been more fully expressed with reference to the full wording of the regulation I have come to the conclusion that it is adequate to support their decision.

10. In order to succeed in this appeal Mr Cackette required to show that the only reasonable conclusion which the tribunal could have reached on the evidence was that the claimant was completing a full-time course on a part-time basis. While the latter interpretation was raised by the presenting officer and might have been open to the tribunal having regard to the definition of "period of study" in regulation 2(1) of the General Regulations, the alternative adopted by them was justified by the evidence before them and

in particular the evidence from the University. It may be significant that the further evidence from the University produced to me shows that the situation which arose in this case in relation to the claimant was one which under the University's regulations can only arise in an exceptional case.

11. The appeal of the adjudication officer is refused.

(signed) J G Mitchell
Commissioner
Date: 25 May 1993

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