

RETIREMENT PENSION

Prescribed time limit for claiming an increase of retirement pension (including graduated retirement benefit)

The claimant, a married woman, attained pensionable age on 1.9.70 and retired from regular employment on 25.9.71. She had no title to a basic retirement pension because she had elected not to pay National Insurance Contributions. She was nevertheless entitled to graduated retirement benefit under section 36(7) of the National Insurance Act 1965 (hereinafter referred to as "graduated pension") subject to giving the statutory notice of retirement and making any necessary claim. It was accepted that she had given timely notice of retirement a few days after her retirement. An application for determination of provisional entitlement to a retirement pension on her husband's insurance, which she made on 7.2.73, was treated as a claim for graduated pension on her own insurance. No time limit for claiming such benefit is expressly laid down in the National Insurance Act and regulations, but the insurance officer applied the statutory provisions relating to basic retirement pension.

Held that

(1) an increase of retirement pension by way of graduated pension is "any benefit" within the meaning of sections 48(1) and 49(3) of the National Insurance Act 1965 and the right to it and the receipt of it are conditional on the making of a claim within the prescribed time (para. 5).

(2) the prescribed time for claiming an increase of retirement pension for a child or adult dependant has always been taken to be that prescribed for the claiming of the basic pension and it has never been doubted that that is also the prescribed time for claiming an increase of retirement pension by way of graduated pension; that must also be the prescribed time-limit for claiming a graduated pension where it is payable under sub-section (7) of section 36 by way of an increase of retirement pension, which a person is treated as receiving at a nominal rate (para. 6).

(3) No claim for a notional retirement pension under section 36(7) is required to be made. (para. 5).

1. This is an appeal by the claimant from the decision of the local tribunal that a graduated retirement pension was not payable to her for any period before 7th January 1973. In my judgment, the appeal succeeds to the extent shown in paragraph 11 below.

2. The claimant, a married woman who had elected not to pay National Insurance contributions, attained pensionable age (i.e. the age of 60) on 1st September 1970. She did not, however, retire from regular employment until a little over a year later on 25th September 1971. On the following 27th September, she returned her insurance card for the year from 7th June 1971 to 4th June 1972 to the local office of the Department and a photocopy of the card is included in the case papers before me. It shows that the card was stamped by the claimant's employers each week up to but not including the week beginning 27th September 1971 and endorsed on it in a space marked for official use are the words "ceased work". I am told that such correspondence as may have passed between the claimant and the local office at that time has since been destroyed but it is clear from the endorsement on the claimant's insurance card that she must have informed the local office of her retirement and the insurance officer now concerned with the case submits that it may be accepted that she then gave notice of retirement as required by section 30(3) of the National Insurance Act 1965.

3. I accept that the claimant gave notice of retirement on 27th September 1971 and that she may, accordingly, be treated under section 30(3)(a) of the Act and paragraph 5(3) of Schedule 3 to the National Insurance (Claims and Payments) Regulations 1971 as having retired from regular employment on 25th September 1971. It is, however, further provided by regulation 11 of those regulations that if a person fails to make a claim for any benefit

within the prescribed time he shall be disqualified for the receipt of it unless he proves that throughout the period of delay there was good cause for making a late claim. The claimant, having elected not to pay National Insurance contributions, had, of course, no title to a basic retirement pension, entitlement to which depends upon satisfaction of the relevant contribution conditions, but she was nevertheless, entitled under section 36 of the Act to graduated retirement benefit for the claiming of which no time limit is expressly prescribed.

4. Graduated retirement benefit (to which I will refer as "graduated pension") is payable under section 36(1), subject to the provisions of the Act, to any person who is over pensionable age and has retired from regular employment "and shall be an increase in the weekly rate of retirement pension . . ." (my underlining). Further, under subsection (7) of the section a person, such as the claimant, who is not entitled to a retirement pension "shall be treated for the purposes of the [section] as receiving a retirement pension at a nominal weekly rate." It is, however, further provided by proviso (a) to subsection (7) that the subsection does not confer any right to graduated pension on a person who would be entitled to a retirement pension but for some provision of the Act or regulations disqualifying him for the receipt of it.

5. In a recent unnumbered decision on Commissioner's file C.P. 100/73 the Commissioner said *obiter* that he did not think that any claim for a notional pension under section 36(7) is required to be made and no doubt that is right but it does not follow that a claim for the increase under the subsection is not required to be made. The provisions of section 36 are expressed to be "subject to the provisions of this Act" one of which is section 48(1) under which it is a condition of any person's right to any benefit that he makes a claim therefore in the prescribed manner; and a further provision of the Act (to which section 36 is also subject) is section 49(3) under which regulations may provide for disqualifying a person for the receipt of any benefit if he fails to make his claim therefore within the prescribed time. An increase of retirement pension by way of graduated pension is clearly "any benefit" within the meaning of those provisions and it follows, therefore, that the right to it and the receipt of it is conditional on the making of a claim within the prescribed time.

6. The relevant regulations are those referred to in paragraph 3 above under regulation 1(5) of which an increase of benefit for a child or adult dependant is to be treated for the purposes of the provisions of the regulations relating to the making of a claim as a separate benefit and in Schedule 2 to the regulations time limits are prescribed for claiming such an increase in the case of maternity benefit, unemployment benefit, sickness benefit and invalidity pension. There is, however, no time limit expressly prescribed for claiming an increase of retirement pension for a child or adult dependant but the prescribed time for the claiming of such an increase has always been taken to be that prescribed for the claiming of the basic pension which, by regulation 11(1)(a) of, and paragraph 4 of Schedule 2 to, the regulations is the period of three months from the date on which the claimant becomes entitled to a retirement pension. It has never been doubted that that is also the prescribed time for claiming an increase of retirement pension by way of graduated pension in respect of which, as I have already said, no separate time limit is laid down. And it is, I think, clear that that must equally be the time limit for claiming a graduated pension where it is payable under subsection (7) of section 36 by way of an increase of retirement pension which a person is treated as receiving at a nominal rate.

If it were otherwise such a person would be in a more favourable position than a person who had title to a basic retirement pension since, in the case of a late claim, the latter would be liable to disqualification whereas the former would not.

7. In my judgment, therefore, the prescribed time for the making of a claim for a graduated pension under section 36(7) of the Act is the period of three months from the date on which the claimant becomes entitled thereto and it follows that, in the absence of proof of good cause for making a late claim, a person who fails to make a claim within that time limit must be disqualified for receiving benefit in respect of any period more than three months before the date on which the claim is made.

8. In the present case the claimant did not make a claim within three months of the date of giving notice of retirement when she became entitled to a graduated pension under section 36(7) of the Act. She says, she says, firmly convinced that she would not be entitled to any form of pension until her husband reached pensionable age. Accordingly, it was not until 7th February 1973 that she applied for the determination of her provisional entitlement to a retirement pension on her husband's insurance in anticipation of his attaining pensionable age on the following 23rd May. As I understand it, that application was treated as both notice of retirement and as a claim for the graduated pension payable to the claimant but, since no question now arises as to the claimant having given late notice of retirement, the sole question is whether she had good cause for not making a claim for her graduated pension throughout the period from 25th September 1971 to 7th February 1973.

9. I assume that, having elected not to pay contributions, she knew that she would not be entitled to a retirement pension on her own insurance for otherwise she would not, presumably, have sought to make a claim on her husband's insurance. She says, moreover, and I see no reason for not accepting it, that she was given no details of her contribution record for a graduated pension and it seems to me readily understandable that she was unaware that she would be entitled to any form of pension other than on her husband's insurance. It is true that she made no enquiries as to her possible entitlement to a pension but it is, I think, clear that it never occurred to her that there was anything about which to enquire and in many respects the circumstances in this case seem to me to be in no way dissimilar from those which gave rise to the Decision C.P. 3/70 (not reported) and to the decision on Commissioner's file C.P. 100/73 (supra) by both of which decisions the claimant was held to have had good cause for making a late claim for a graduated pension.

10. In my judgment, the present claimant may also be held to have had good cause for not making what was accepted as having been a claim for a graduated pension until 7th February 1973. Accordingly I hold that she was not disqualified for receiving a graduated pension under section 36(7) of the Act but it cannot be payable to her in respect of any period more than twelve months before that date by force of section 49(4)(c) of the Act under which no sum shall be paid to any person in respect of any period more than twelve months before the date on which the claim was made.

11. In the result my formal decision is that a graduated pension is payable to the claimant from and including 7th February 1972 and to that extent the claimant's appeal is allowed.

(Signed) Desmond Neligan,
Commissioner.