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**RETIREMENT PENSION**


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**Late claim for increase of retirement pension for a wife—claimant previously not entitled because of his wife's earnings — ignorant of subsequent change of law entitling him to the increase**

The claimant, who retired on 30.4.71, was awarded retirement pension at the personal rate from 6.5.71. At that time he ascertained that he was not entitled to an increase for his wife because of her earnings. Owing to a subsequent relaxation of the earnings rule he would have been entitled to an increase from April 1976 but he did not make a claim until 15.3.77. The delay was due to the fact that the claimant was unaware of the earnings limit change. The insurance officer found that good cause for the delay in claiming was not established and awarded increase of retirement pension from 16.12.76 only.

*Held that:—*

1. in deciding whether there is good cause when ignorance has been put forward as the reason for delay it is necessary to consider whether there are any facts leading to a conclusion that the ignorance was reasonable (paragraph 5);
  2. failure to make enquiries does not of itself defeat a plea of good cause if the claimant can show that he could not reasonably have been expected to have been aware of his rights or that a mistaken belief reasonably held by the claimant was responsible for his failure to assert those rights (paragraph 6);
  3. accordingly increase of retirement pension is payable to the claimant from and including 15.4.76. (paragraph 7).
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1. This appeal succeeds. The claimant is a retired headmaster. He attained the age of 65 in January 1971 and retired on the following 30 April, from which date he was awarded a pension at the personal rate. When he claimed his pension he ascertained that he was not entitled to an increase in respect of his wife because of her earnings. Owing to a relaxation in the earnings rule he became entitled to such increase, subject to making a claim, from April 1976. He did not claim an increase until 15 March 1977, a date which was well outside the statutory time limit. The delay was due to the fact that he was unaware that the earnings rule had been relaxed until the day immediately prior to that on which he made his claim. His wife was then still working.

2. The local tribunal upheld an insurance officer's decision disqualifying the claimant for receiving an increase for any day before 15 December 1976. The ground of the decision was that the claim was out of time and that good cause was not shown for failure to claim before 15 March 1977.

3. The claimant's appeal receives a measure of support—strangely muted as it seems to me—from the insurance officer now concerned in the case. He submits that on the facts it is “for consideration” whether good cause for the late claim is proved. In my judgment good cause is clearly proved, and I can best explain my reasons by referring to the local insurance officer's submission to the local tribunal. After referring to the fact that the claimant's reason for not making an earlier claim was that he was unaware that he was eligible for an increase, the local insurance officer wrote:—

“The Commissioners have consistently held that ignorance of right to benefit or of time limits for claiming cannot of itself provide good cause for delay in claiming, a person is expected to take reasonable

measures to acquaint himself with his rights and duties under the Act and to take reasonable steps to obtain the necessary information, and that in general, the correct course for persons who are ignorant of their rights is to make enquiries at a local Health and Social Security Office ...”.

He went on to point out that the relaxation in the earnings rule was extensively publicised on television and in the press. He did not however submit that as a result of such publicity the claimant became aware of the relaxation, and I am satisfied that he did not.

4. The local insurance officer's submission is indistinguishable from one which I considered and rejected in Decision R(G) 2/74. In that case a woman claimed and was awarded widow's benefit on her husband's death. Under the law in force at the date of the award she was entitled only to 13 weekly instalments of widow's allowance, and these she duly received. As a result of a subsequent change in the law she became entitled, subject to making a claim, to additional widow's benefit in the shape of a pension during widowhood for the residue of her life. I commented that although there might be cases in which the insurance officer's submission was apposite, it seemed to me wholly out of place in the case I was then considering. I pointed out that “whether a person has good cause for a late claim depends on the facts and circumstances of the particular case, and an *a priori* approach to the question — an approach which avoids considering the facts and circumstances but seeks to apply some fixed and automatic principle — can in many cases lead to injustice.”

I added that I was unable to understand how on the facts of the case it could reasonably be suggested that the claimant ought to have made enquiries of the Department as to the new rights conferred on her by the change in the law. And I also said that I was unable to accept that her failure to absorb the information put out by the Department in its publicity campaign was inconsistent with her contention that she had good cause for a late claim. In my judgment that case is indistinguishable in principle from the present one.

5. In their submissions on late claim cases insurance officers conscientiously quote the principle that a person's ignorance of his rights — or of the time limits for claiming — is not of itself good cause for a late claim. But all too often they fail to apply it. They fail to appreciate that the words I have underlined invite a further enquiry, namely whether there are facts leading to a conclusion that the claimant's ignorance was reasonable. In *Wall's Meat Co Ltd v Khan* [1979] I.C.R. 52 the Court of Appeal was concerned with an employee's delayed complaint of unfair dismissal made to an industrial tribunal. Lord Denning MR said (at page 56) “Ignorance of his rights — or ignorance of the time limit — is not just cause or excuse, unless it appears that he or his advisors could not reasonably be expected to have been aware of them.” And in the same case Brandon LJ pointed out that there could be good cause for delay if the delay was due to a mistaken belief reasonably held.

6. It is no good quoting a principle unless you go on to apply it. In the present case the local insurance officer quoted the principle that ignorance is not of itself good cause but seems to have acted on a dif-

ferent and wholly erroneous one, namely that ignorance is of itself fatal to a plea of good cause. And local tribunals sometimes fall for this fallacy. This is just what the tribunal did in the case I am now considering. They explained their decision by saying:-

“Claimant was unaware that the earnings rule was altered and because his wife worked he thought he could not claim. The Commissioners have held that ignorance of your rights is not good cause for failing to claim, everyone is expected to take steps to find out about their rights.”

It will be seen that this closely echoes the local insurance officer's submission quoted in paragraph 3 above. That submission is a frequently used formula. The trouble with it is that it impliedly suggests that even if a claimant could not reasonably have been expected to have been aware of his rights, or even if his failure to assert them was due to a mistaken belief reasonably held, his failure to make enquiries of itself defeats a plea of good cause for delay. That suggestion is wrong in law.

7. My decision is that the claimant is entitled to an increase in the rate of his retirement pension in respect of his wife from and including 15 April 1976 that being the first pension pay-day affected by the alteration to the earnings rule effected by section 45(4) of the Social Security Act 1975 and by SI 1975 No. 2126.

(Signed) Hilary Magnus  
Commissioner

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