SICKNESS BENEFIT

Late claim—whether a claimant proves good cause for delay in claiming is to be determined by reference to principles laid down in Commissioner's decisions.

A self-employed travel agent claimed sickness benefit on 27th March 1972 for a spell of incapacity from 31st January 1972 to 9th March 1972. His explanation of the delay in making his claim was that he had not known that, as a self-employed person, he could claim sickness benefit. The insurance officer decided that good cause for delay in claiming had not been proved and that benefit was not payable for any part of the period of the claim. On appeal the local tribunal upheld the insurance officer's decision but advised the claimant to appeal to the Commissioner since the *dictum* of MacKenna in *Eley v Bedford* (1971) 3 WLR 563 was in direct conflict with the numerous Commissioner's decisions to which the tribunal had been referred. MacKenna J. said: "A plaintiff who does not know that he has a right does not act unreasonably in failing to exercise it."

Held that the *dictum* is in the nature of a generalisation and is not apposite in determining whether a person has good cause for delay in claiming national insurance benefit.

The Commissioner remarks that there must be many circumstances in which it is unreasonable for a person to act (or fail to act) on the basis of ignorance or doubt which could readily be dispelled by simple inquiry (paragraph 8).

1. My decision is that the claimant is disqualified for receiving sickness benefit from 31st January 1972 to 9th March 1972 (both dates included), on the ground that he failed, without good cause, to claim within the time prescribed by regulations.

2. The claimant, a self-employed travel agent, on 27th March 1972 submitted a medical certificate of incapacity from 29th January to 10th March 1972, by reason of "fractured arm", and claimed sickness benefit for that period. He explained—"I was originally unaware of the fact that as a self-employed person I could claim benefits for my recent injury . . ."

3. The claim was manifestly outwith the time prescribed by the National Insurance (Claims and Payments) Regulations 1971 [S.I.1971 No. 707]. It should have been made, in terms of these regulations, within six days. The regulations further provide that if there is failure to claim benefit within the time prescribed, the claimant is disqualified for receiving the benefit in question, unless the claimant "proves that there was good cause for the failure to make the claim before the date on which it was made": in which event the prescribed time may be extended, and disqualification thereby avoided.

4. The local insurance officer decided that good cause for the delay in claiming had not been proved, and held the claimant disqualified for receiving sickness benefit for the whole period 31st January to 9th March 1972. In any event of course, payment of benefit could not have been made for the first three ("waiting") days. The claimant appealed to the local tribunal. The claimant explained to the tribunal that his arm had been operated upon in hospital: he was discharged from hospital five days after the fracture had occurred, that is on Wednesday 2nd February 1972: his arm was in plaster for six weeks. He returned to work on 10th March 1972. He reiterated that he did not know he could claim benefit as a self-employed person. He made his claim as soon as he learned (from a friend) of his possible entitlement.

5. The tribunal disallowed the appeal, following a long line of Commissioner's decisions. But they added—"The dictum of MacKenna J. in Eley v Bedford (1971) is in direct conflict with these decisions and the claimant has been advised to appeal." They also recorded ". . . It would be reasonable to find good cause for his late claim had there not been Commissioners' Decisions that ignorance of an entitlement to benefit does not provide good cause for failing to make a timeous claim."

6. The insurance officer now concerned with the case rightly draws attention to paragraph 2 of Schedule 3 to the regulations already cited. In terms of that paragraph good cause for delay in claiming is *deemed* to exist, in the case of a person who has been discharged from hospital after being an in-patient, for (in this case) three weeks after the date of discharge: that is up to and including 23rd February 1972. But this still leaves a gap, from 24th February until 27th March, when the claim was made. If disqualification is to be avoided, the claimant must prove "good cause" over that period. His failure, at that stage, was plainly due to nothing other than his ignorance of the fact that sickness benefit is one of the national insurance benefits available to self-employed contributors. Unless, therefore, his ignorance can be accepted as constituting "good cause", the disqualification must stand. And, plainly, it would be inconsistent with a long series of Commissioner's decisions, to accept ignorance, in the circumstances of this case, as constituting "good cause".

7. The *dictum* of Mr. Justice MacKenna which is said to be in direct conflict with the Commissioner's decisions occurs in the judgment in *Eley v. Bedford* [1971] 3 W.L.R.563, at p. 565. The learned judge was dealing with an action of damages at common law arising out of a motor accident. It is provided by statute that in assessing damages in such cases, the value of "any rights which have accrued or probably will accrue" to the injured person in respect of certain national insurance or industrial injury benefits, falls to be set off, to a prescribed extent. In *Eley v. Bedford* no such benefits had in fact accrued, or probably would accrue, to the injured plaintiff, because she had unfortunately failed to claim these timeously, and they had become, in effect, time-barred. The learned judge rejected an argument for the defendant that the plaintiff's damages should nevertheless be reduced by the same amount as they would have been if the benefits had been received. The first, and (as I read it) the main, ground of rejection of this argument was that the statutory proviso did not relate to "benefits which have not been, and never can be, received". But the learned judge went on to refer to another ground. He pointed out—". . . the plaintiff's failure to claim the sickness benefits and hardship allowances was due to her ignorance. She did not claim them because she did not know she had any right to them. It is true that a plaintiff must always do what is reasonable to mitigate his loss, but in deciding what was reasonable for him to do one must have regard to his actual knowledge whether of law or of fact. A plaintiff who does not know that he has a right does not act unreasonably in failing to exercise it."

8. The last sentence, taken in isolation, might indeed suggest a conflict with the *ratio decidendi* of a line of Commissioner's decisions. The *dictum* is, with respect, in the nature of a generalisation. It is not, in my view, apposite in determining whether a person has good cause for delay in claiming national insurance benefit. There must be many circumstances in which it is unreasonable for a person to act (or fail to act) on the basis of ignorance or doubt which could readily be dispelled by simple inquiry. In the matter of claims for national insurance benefits it may be more apposite—and not,

I hope, unduly cynical—to recall the *dictum* of the celebrated jurist John Selden—"Ignorance of the Law excuses no man, not that all Men know the Law, but because 'tis an excuse every man will plead, and no man can tell how to confute him."

9. The decision of the local tribunal, to confirm disqualification, was in accordance with principles consistently applied in Commissioner's Decisions; and it was in my judgment, correct.

10. The appeal of the claimant is not allowed.

(Signed) H. A. Shewan,
Commissioner.