

SICKNESS BENEFIT

Late claim—reasonable belief that wages would be paid in full during sickness

Claimant understood that on being appointed to the staff he would no longer have his wages reduced during sickness. At the end of a spell of sickness he discovered that a reduction had been made in his wages and he promptly claimed sickness benefit for the whole of the spell.

Held, that in the absence of special circumstances there was good cause for delay in claiming sickness benefit :

- (a) during any period throughout which the claimant did not claim because he had reasonable grounds for believing and believed that he was being or would be paid his salary or wages in full during sickness and he believed that it was not permissible for him to claim sickness benefit while being so paid ; and
- (b) during such further brief period thereafter as was reasonably necessary to enable him to claim promptly.

1. Our decision is that the claimant is not disqualified for receiving sickness benefit from the 16th to the 28th February 1962, both days included

2. This is one of five appeals heard by us orally in succession, each of which raises a similar question as to the proof of good cause for delay in claiming sickness benefit, where the claimant did not claim because he erroneously believed that he would be paid his wages in full during sickness and that it was not permissible for him to claim sickness benefit whilst receiving full wages. In their written submissions the insurance officers now concerned did not support any of the appeals. At the oral hearing, however, their representative did not oppose any of them and supported some of them. We will state our reasons and conclusions in this decision and deal with the other four cases by reference to it. They are dealt with on Commissioner's files C.S. 163/62, C.S.143/62, C.S.177/62 and C.S.139/62.

3. The claimant is a chargehand on the staff of his employers, and his wages are paid on Friday for the week ending on the previous Friday. From Friday the 16th February to Saturday the 3rd March 1962 he was incapable of work by reason of influenza.

4. The claimant had previously claimed sickness benefit, his last claim being in 1959. At that time he knew that National Insurance benefit would be deducted from his wages paid during sickness, and he claimed benefit in time accordingly. In 1961 he was appointed to the staff, and one of the inducements offered to him, as a result of which he agreed to accept slightly reduced wages, was that he would be entitled to wages during sickness. Nothing was said about any deduction for National Insurance benefits, and, in view of what his position had been before, it was in our opinion reasonable that he should understand what was said as meaning that wages would in future be paid in full during sickness. He believed down to a date at least as late as the 5th March 1962 that he was not entitled to claim sickness benefit whilst drawing full wages ; he thought that it would be "false pretences". This is a common mistake.

5. During his illness his wages were paid in full on Friday the 23rd February. But on Friday the 2nd March they were paid less the amount of National Insurance sickness benefit which he could have claimed. This was the first time that he knew or had any reason to suppose that as a member of the staff he would suffer such a deduction. On the next day, Saturday the 3rd March, he obtained from his doctor a supplementary medical certificate covering the whole of his illness, and on Monday the 5th March he handed

this in to the local office of the Ministry of Pensions and National Insurance and claimed benefit on the appropriate form (B.F.7).

6. The local insurance officer and on appeal the local tribunal held that the claimant must be disqualified for receiving benefit for the period stated at the head of this decision. This was correct and in accordance with precedent, and in particular with the Commissioner's decisions which will be referred to in paragraph 12 below. The claimant appealed to the Commissioner. At the oral hearing he gave evidence before us very frankly, and he was assisted on some points by the personnel manager of his employers, who was good enough to accompany him.

7. The conditions of entitlement to sickness benefit are laid down by section 11 of the National Insurance Act, 1946 and the regulations made under it. Under that section sickness benefit and unemployment benefit are closely linked for certain purposes. Regulations prevent a person from receiving sickness benefit whilst working (subject to certain exceptions) (see regulation 6(1)(g) of the National Insurance (Unemployment and Sickness Benefit) Regulations, 1948 [S.I. 1948 No. 1277] as amended). A person cannot receive unemployment benefit if he is working (subject to certain exceptions) (see regulation 6(1)(h) of the same regulations), nor even if he is receiving wages (regulation 6(1)(d)). A person can receive sickness benefit and full wages at the same time, but this is not because the Act or any regulation says that he can, but because they give him an entitlement to the benefit in certain circumstances and they do not say that he cannot.

8. Regulations made under section 28(2) of the Act prescribe the periods within which sickness benefit (of the kind in question in this case) must be claimed. The periods are within either 21 or 10 or 3 days from the day claimed for, according to the circumstances. Since the claimant had made a previous claim for sickness benefit since the 5th July 1948, and since the days in respect of which the claim was made were earlier than 3 days before the date of notice of incapacity, the period applicable to this case was that of "3 days from the day in respect of which the claim is made" (see the National Insurance (Claims and Payments) Regulations, 1948 [S.I. 1948 No. 1041], regulation 11 and Schedule II, Part I, paragraph 2, as amended by the National Insurance (Claims and Payments) Amendment Regulations, 1952 [S.I. 1952 No. 1207] regulation 3 and Schedule A). This is subject to the important exception in the next paragraph hereof. Subject to that, the result of not claiming in time is that the person is disqualified for receiving the benefit claimed. Each day has to be reckoned separately (disregarding Sundays). This explains a matter which frequently puzzles claimants, namely why part of their claim is allowed but the rest is not. Since the claimant claimed on Monday the 5th March, his claim was in time in respect of the three preceding days, which, if Sunday is disregarded, are the 1st to the 3rd March inclusive; that is why the disqualification covered the 16th to the 28th February inclusive and no more.

9. The important exception is contained in paragraph 1 of Part II of the said Schedule II. Its effect is this. If the claimant proves good cause for the delay during *the whole* period, he can escape disqualification altogether. If he proves good cause for the delay during *the latter part* of the period, he can escape disqualification for that part. If however he proves good cause for only the *earlier part* of the delay, he cannot escape disqualification, since there is no provision covering the earlier part as paragraph 1(2) of Part II of that Schedule covers the later part.

10. The result of the regulations is that, even though a person has paid the necessary contributions, and even though the conditions for the receipt of sickness benefit are satisfied, nevertheless he may be disqualified for receiving benefit to which he is entitled, unless he claims within the prescribed time, subject to extension where good cause is shown for the delay. (There is an overriding and absolute time limit of 6 months for claiming, but that is not in question in any of these 5 appeals.)

11. "Good cause" in these regulations has the same meaning as "reasonable cause" in the corresponding regulations made for the purposes of claims for industrial injury benefits (Decision C.S.I. 10/50 (reported)). There have been a very large number of decisions on the meaning of the words under the two sets of regulations. In Decision C.S. 371/49 (reported) the Commissioner said "'Good cause' means, in my opinion, some fact which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did." This description of good cause has been quoted in countless cases. It has stood the test of time. In our judgment it is correct. The word "fact" of course includes a combination of events happening either simultaneously or in succession.

12. In that decision and others including Decisions C.S. 554/49 (reported) and R(S) 19/52 the Commissioner applied this principle to cases such as the present claimant's but held that good cause was not established. Since the question whether any given facts constitute good cause for delay in claiming is a question of law (cf. *Shotts Iron Co. Ltd. v. Fordyce* [1930] A.C. 503), these decisions have of course resulted in the statutory authorities deciding similar cases in the same way ever since.

13. Ignorance of one's rights is not of itself good cause for delay in claiming. It is in general the duty of the claimant to find out what they are, and how and when they should be asserted. But an examination of numerous Commissioner's decisions shows that over the years there has been a gradual but appreciable relaxation of the strictness with which problems of good and reasonable cause have been approached. The Commissioner has long recognized a wide variety of circumstances, in which it would not be expected that a reasonable person would make inquiries or think that there was anything to inquire about: see e.g. Decisions R(S) 18/52, where a schoolmaster in perfect health was prevented from working because he had been in contact with infectious disease and did not know that in those circumstances he was entitled to receive sickness benefit; R(P) 5/58, where a widow who had emigrated to America in 1946 did not learn of her right to a retirement pension until 15 months after she attained pensionable age in 1955; R(S) 10/59, where a woman who contributed as a non-employed person knew that, as such, she was not entitled to sickness benefit but did not know she had certain residual rights derived from former employment which entitled her to sickness benefit; see also Decisions R(S) 11/59 and R(I) 25/61. In all these cases a claimant has been held to have had good cause for delay in claiming because the right to benefit was unlikely and not such as to provoke inquiry into its existence.

14. We think too that claims for sickness benefit have special features. A person approaching the age of retirement can reasonably be expected to inquire about his right to retirement pension. A person becoming unemployed

can reasonably be expected to go to the employment exchange and find out about unemployment benefit. Sickness, however, may come on anyone suddenly, and its nature may be such as to present great practical difficulties about making inquiries ; and we think that it is putting the test too high to expect a reasonable person, as opposed to an abnormally pessimistic one, to study literature about sickness benefit claims whilst he is still in good health (cf. Decisions C.S. 42/50 (reported) and R(P) 5/61, paragraph 12). Whilst however the law has been developing in other directions, it has been impossible in view of the decisions referred to in paragraph 12 for it to develop in a way to affect the present case. The reason for the hearing of these five appeals by the Tribunal was to consider whether any modification of the existing law would be justified.

15. Since the decisions referred to in paragraph 12 above were given between 1949 and 1952 a very large number of appeals have come before the Commissioner where the circumstances were similar to those of the present case. We have been greatly concerned to note that it is the most scrupulous claimants who have had to be disqualified by virtue of those decisions. We are satisfied from the evidence of the claimant in this case, and that of the four other claimants concerned, and that of claimants in numerous other cases, that there is a very widespread belief that it is either illegal or wrong to claim sickness benefit when one is receiving full wages. This is in accordance with general notions of insurance, in many branches of which it would be regarded as dishonest to claim where one has not suffered a loss. We think too that it may be contributed to by the other rules relating to sickness benefit and unemployment benefit already referred to in paragraph 7 above. The prescribed forms of medical certificate do not in any way indicate that a person may claim benefit whilst receiving wages. The form Med. 1 contains a clear warning against false statements and an indication that certain other forms of benefit cannot be received with sickness benefit.

16. Having fully considered the matter and taken into consideration the fact that the rules hitherto applied are of long standing, we feel justified in holding that cases of the present type may be regarded as special cases. We do not doubt that the earlier decisions were justified when they were given, but we think that experience over later years justifies modification of them. We think that in considering how a reasonable person should have behaved, it is permissible and right to pay regard to the way in which numerous apparently reasonable persons have behaved, as has been shown by the evidence in many appeals before the Commissioner. The insurance officer's representative did not in any way oppose some modification, and we are indebted to her for her help, though we have not felt able to accept an alteration precisely as she formulated it. We should perhaps record that no separate argument was addressed to us on good cause for delay in giving notice of incapacity.

17. In the present case the claimant was under two misapprehensions. He had been led by the events when he was promoted to the staff to believe that he would be paid his wages in full. The payment in full on the 23rd February may well have confirmed that belief ; it certainly would not have corrected it. That was a mistake of fact. He also believed that he was not entitled to claim sickness benefit whilst receiving his wages in full. That was mistake of law.

18. In our judgment, in the absence of special circumstances, there should be held to be good cause for delay in claiming sickness benefit :

(a) during any period throughout which the claimant did not claim because he had reasonable grounds for believing and believed that he was being or would be paid his salary or wages in full during sickness and he believed that it was not permissible for him to claim sickness benefit whilst being so paid ; and

(b) during such further brief period thereafter as was reasonably necessary to enable him to claim promptly.

In future the Commissioner's decisions referred to in paragraph 12 above and any decisions to the same effect must be read subject to this decision.

19. The insurance officer further submitted that good cause could be found in the circumstances stated in the last paragraph but with the omission of the words "and he believed that it was not permissible for him to claim sickness benefit whilst being so paid". This would involve treating a person as having good cause where, knowing that he was entitled to claim, for some reason he decided not to do so, but later he changed his mind. This appears to us to involve very different considerations, and we are not prepared to endorse this submission, which in fact does not arise in any of the five cases before us.

20. It cannot be too strongly emphasized that claimants should see that the period referred to in paragraph 18(b) is *brief*. Owing to the way in which Schedule II, Part II, paragraph 1 of the regulations is worded, a comparatively short delay immediately preceding the claim can result in disqualification not merely for that period, but also for the whole of any earlier period of sickness, even though there was good cause for the delay throughout that earlier period (see paragraph 9 above). This is one of the commonest pitfalls in the whole of National Insurance law.

21. Applying the test in paragraph 18 to the facts of the present case, in our judgment the claimant clearly satisfies the condition in paragraph 18(a) and he acted sufficiently promptly after his discovery of the position to satisfy that in paragraph 18 (b). The disqualification can therefore be set aside.

22. The claimant's appeal, which at the oral hearing before us was supported by the insurance officer's representative, is allowed.
