

SICKNESS BENEFIT

Late claim: ignorance of entitlement.

The claimant, who was normally self-employed, was incapable of work by reason of myocardial infarction for about 2½ years before he claimed benefit. Until his doctor suggested that he might be able to claim he thought that, as a self-employed person, he was not entitled to sickness benefit. The claimant argued that the Department of Health and Social Security had not taken adequate steps to inform the self-employed of their entitlements

Held that:—

1. Ignorance of rights—or of a time limit—is not just cause or excuse, unless it appears that the claimant or his advisers could not reasonably have been expected to have been aware of them (Court of Appeal, *Wall's Meat Co Ltd v Khan* [1979] I.C.R. 52 quoted in paragraph 9).
2. Any failure of the Department to give appropriate publicity to the rights of self-employed contributors to claim sickness benefit cannot by itself constitute good cause for delay in claiming (paragraph 9).
3. When a self-employed person *does* fall sick he can reasonably be expected to make, or institute, an enquiry as to his rights at the local social security office. If he fails to do so and there are no special circumstances justifying that failure (e.g., he was too ill) it cannot be held that the claimant could not reasonably have been expected to be aware of his rights (paragraph 11).

1. My decision is as follows:

- (1) Sickness benefit is not payable from 14 November 1976 to 14 June 1978 (both dates included) because the claim was made on 15 June 1979 and there is an absolute statutory bar to the payment of sickness benefit in respect of any period more than 12 months before the date on which the claim is made.
- (2) The claimant is disqualified for receiving sickness benefit (or invalidity benefit as appropriate) from 15 June 1978 to 7 June 1979 (both dates included) because his claim for that period made on 15 June 1979 was not made within the time limit set out in the regulations and he has not proved that there was continuous good cause for the delay in making the claim.
- (3) The claim for 8 and 9 June 1979 was made within the said time limit and accordingly the claimant does not fall to be disqualified for those days on the ground of delay in claiming.

2. The claimant claimed sickness benefit for the period 14 November 1976 to 15 June 1979 on form Med 3 which he signed and dated 15 June 1979. The claim was received in a local office of the Department of Health and Social Security on 20 June 1979. I am prepared in this case to accept that the claim was posted on 15 June 1979. This is accordingly the date of claim: see section 79(6) of the Social Security Act 1975.

3. It is not in dispute that the claimant was incapable of work by reason of myocardial infarction throughout the period 14 November 1976 to 15 June 1979. The period before me is 14 November 1976 to 9 June 1979, in respect of which the claimant was disqualified by the local tribunal.

4. Sickness benefit cannot be paid to the claimant from 14 November 1976 to 14 June 1978 because section 82(2)(c) of the Social Security Act 1975 imposes an absolute statutory bar on such payment. The statutory authorities (who include the Commissioner) have no power to disregard that bar and to pay an award for that period. My decision on this is set out in paragraph 1(1).

5. As regards the period from 15 June 1978 to 7 June 1979, in respect of which there is no statutory bar to the claim, the question at issue is whether the claimant falls to be disqualified on the ground of the delay in claiming. The prescribed time for claiming, not being an original claim as the claimant had claimed and received sickness benefit on a previous occasion, was the period of 6 days from the earliest day in respect of which the claim is made. The time is prescribed by statutory regulations, which have been laid before Parliament before becoming law. If the claim is made outside the time limit, the claimant is disqualified for receiving sickness benefit for any day more than 6 days before the date on which the claim was made, unless he shows continuous good cause for the delay throughout a period immediately preceding the date of claim. The question at issue as regards the period 15 June 1978 to 7 June 1979 is whether such continuous good cause has been shown, and the onus of doing so rests on the claimant: see the Social Security (Claims and Payments) Regulations 1975, regulation 13 and Schedule 1, since replaced by the Social Security (Claims and Payments) Regulations 1979, regulation 14 and Schedule 1, which came into operation on 9 July 1979 and are in identical terms in this respect.

6. The initial reason given by the claimant for the delayed claim was that "As I had been self employed I did not think that I would be entitled to any sick pay". Later, the claimant stated: "If I had known that I was entitled to benefit obviously I would have claimed in the first instance". In his grounds of appeal to the local tribunal, the claimant set out his case in full:

"I retired from business for health reasons on 31 October 1976. On the 14th November 1976 I suffered a coronary thrombosis. Since then I have been under continuous medical care. Due to my state of health it is not advisable for me to appear before the tribunal in person.

In June this year my doctor, by chance, asked if I was receiving sickness benefit. I replied that having been self-employed I was not entitled to claim benefit. The doctor pointed out that as a self-employed person he could obtain sick benefit and so should I. Up to then I believed that my contributions only covered pension and medical attention. It is therefore my opinion that the Department of Health and Social Security have not taken any adequate steps to inform the self employed of their entitlements. In my opinion it is not sufficient to print a leaflet (I have yet to see such leaflet) if it is not brought to the notice of the people concerned either by direct communication or through the press etc. Contributions are payable by law and in return surely it is reasonable to expect that adequate steps are taken to inform contributors of their position on benefits.

I therefore appeal against the decision of the Insurance Officer on the grounds that his Department has kept me (and many more) in ignorance by failing to bring to my notice the entitlements applicable to a self employed person".

The local tribunal disallowed the appeal and the claimant now appeals to the Commissioner on grounds which are, essentially, those set out above. Special reliance is placed on Commissioner's Decision No CS 11/79, which is discussed in paragraph 7 below.

7. In Decision No CS 11/79, which is dated 8 October 1979, the Commissioner disallowed with reluctance an appeal by a self-employed claimant against disqualification for receiving sickness benefit on account of the lateness of his claim. In doing so, the Commissioner wrote, in paragraphs 9 and 11:

"9. I find this case a little disquieting, in that it would appear that there is a large body of self-employed persons who do not appreciate

the full extent of their entitlement, and are suffering in consequence. No positive attempt, however, is apparently being made in official quarters to disabuse them of their ignorance.....

11. Too many self-employed persons, it would appear, believe that their contribution is merely for the provision of a pension and the support of the National Health Service. Unless official attempts are made to communicate to self-employed persons the full extent of their rights, the time may well come when it would be inappropriate to disallow benefit for lateness. However, I do not think that that point has yet been reached. I consider that it was incumbent on the claimant to have made appropriate enquiry before reaching his mistaken conclusion that he was not entitled to sickness benefit.”

8. Decision CS 11/79 cannot, in my judgment, be relied upon in this case. In an unreported decision, the reference to which on Commissioner's file is CS 330/1979, and which is dated 15 October 1980, the same Commissioner, after quoting the passages from his previous decision which I have set out above, concluded that he had no option but to disallow a similar appeal because, as he wrote in paragraph 8:

“I think that what I said in the earlier case applies equally to the facts of the present appeal. The date of my earlier decision was 8 October 1979, whereas the events which are the subject matter of the present appeal occurred in late 1978, so that at that time the authorities had had no opportunity of giving appropriate publicity to the entitlement of self-employed persons in the way suggested in my earlier decision”.

Since, in the present case also, the claimant became aware of his entitlement to, and claimed benefit, before Decision CS 11/79 was given, that decision does not assist the claimant.

9. I do not myself accept that any failure of the authorities to give appropriate publicity to the rights of self-employed contributors to claim sickness benefit can by itself constitute good cause for delay in claiming. The principles on which a person's ignorance of rights can constitute good cause for delay in claiming are similar to those applicable to delayed complaints of unfair dismissal. These were clearly stated by the Court of Appeal in *Wall's Meat Co Ltd v Khan* [1979] I.C.R. 52. In that case the Court 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 advisers could not reasonably be expected to have been aware of them”. In the same case Brandon L J pointed out that there could be good cause for delay if the delay was due to a mistaken belief reasonably held. That principle has frequently been applied by the Commissioner in cases where a claimant has been unaware that he is entitled to an increase of benefit on account of his wife, due to the raising of the earnings limit to a higher figure: see, for example, Commissioner's Decision R(P) 1/79. It has also many times been applied in cases where a woman has retired from employment when expecting a child and having ceased to contribute has failed to claim maternity allowance in time, being unaware that her previous contributions made while employed had conferred on her residual rights. In both these types of case, the claimant could not reasonably have been expected to have been aware of his or her entitlement to benefit or an increase of benefit there being nothing about which they could reasonably have been expected to make enquiry. In contrast, there is a long series of Commissioners' decisions in which a self-employed claimant's failure to claim benefit in time owing to pure ignorance of the fact that sickness benefit is available to

self-employed contributors has been held to disqualify the claimant on the ground of late claim: see Decision R(S) 1/73. In such cases, a claimant could reasonably have been expected to make enquiry of the Department of Health and Social Security.

10. The position as regards the self-employed contributor who claims sickness benefit late owing to ignorance was clearly explained in Decision No CS 16/79 in the following passages:

“5. since the social security scheme was first introduced in 1948, self-employed persons have always been entitled to claim sickness benefit. There are leaflets available at social security offices dealing with every type of benefit and leaflet NI 41 gives guidance to the self-employed and lists 7 benefits to which they have title, including sickness benefit and invalidity benefit. Ignorance of entitlement, of itself, has never been held to constitute good cause for a late claim, and indeed could not be. It is not so much ignorance as the cause of ignorance, namely failure to enquire about entitlement, at any local office of the Department which does not constitute good cause for a delayed claim.”

6. Persons are expected to look after their own interests and to make enquiries. It may not be reasonable to expect persons to enquire about their entitlement to benefits in the abstract when they have no present reason for making a claim; but it is reasonable to expect that a person who is incapable of work owing to sickness should make a simple enquiry at any local social security office, by telephone or by any of the other normal means of communication. If a person is too ill to make enquiry that may constitute good cause for delay in claiming, depending upon the nature of the illness, the claimant’s domestic circumstances and the length of the period of the delay. If a person is an in-patient in hospital, he is deemed to satisfy the provision as to good cause for delay in claiming for 13 weeks. Persons paying national insurance contributions might also be expected to have the curiosity to find out the benefits for which they are contributing.

7. While I sympathise with the claimant, her reason for the delay in claiming is solely her ignorance of her entitlement based on a mistaken and unverified impression that as a self-employed person she was not entitled to this benefit. I do not find that she has proved there was good cause.”

11. In considering whether a person whom it is accepted was ignorant of his rights—or ignorant of a time limit for claiming benefit—could not reasonably have been expected to be aware of them, so as to constitute good cause for the delay in claiming, the first question that should be asked is whether the claimant made any enquiries as to the position of the local, or any other, office of the Department of Health and Social Security and, if he has not done so, whether he could reasonably have been expected to make such enquiries. I am prepared to assume, as probable, for the purposes of this decision that there is a large number of self-employed persons who are totally unaware of the fact that they are entitled to claim sickness benefit, should they fall sick. When such a person *does* fall sick, he can reasonably be expected to make, or institute, an enquiry as to his rights at the local, or other convenient, social security office. If he fails to do so, and there are no special circumstances justifying that failure (e.g. that the claimant was too ill to make, or institute, any enquiry) it cannot be held that the claimant could not reasonably have been expected to be aware of his rights.

12. In the present case, the claimant, from the time when he first suffered a coronary thrombosis on 14 November 1976 until his doctor told him in

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June 1979 that he might be entitled to sickness benefit, never made any enquiry of the social security authorities. There is no suggestion that he was too ill to do so. His reason for the delay in claiming was simply his mistaken and unverified belief that as a self-employed person he was not entitled to the benefit. Since he made no enquiry, I cannot hold that his belief was reasonably held. Good cause for the delay in claiming for the period 15 June 1978 to 7 June 1979 has accordingly not been shown. My decision on this point is set out in paragraph 1(2).

13. As regards the period 8 and 9 June 1979, the claim was timeous and the claim does not fall to be disqualified on this ground. My decision on this is set out in paragraph 1(3).

(Signed) V. G. H. Hallett
Commissioner
