

SUPPLEMENTARY BENEFIT

Application for leave to appeal on a point of law.

Before the hearing of his appeal to a Supplementary Benefit Appeal Tribunal, the claimant had asked that a visiting officer be present at the appeal for cross examination. The visiting officer did not attend and the Tribunal Chairman refused a request by the claimant for an adjournment. The claimant applied for leave to appeal to a Social Security Commissioner on the ground that the Tribunal's refusal was a breach of natural justice and erroneous in point of law.

Held that:—

1. to be erroneous in point of law a decision must have contained or been arrived at by means of a mistake of law. A breach of the rules of natural justice is a mistake of law, but a mere assertion of a mistake of law is not. There must be some indication that the person seeking leave can present a sensible argument,
2. a claimant has no right to demand the presence of an official whose report has been unfavourable to him

The Commissioner refused the application for leave to appeal

1. This application by the claimant for leave to appeal to a Commissioner from the decision of the Supplementary Benefit Appeal Tribunal dated 26 November 1980 is refused. I also refuse his application for an oral hearing.

2. The claimant may only appeal to a Commissioner from a decision of an Appeal Tribunal if the decision is "erroneous in point of law": section 15A of the Supplementary Benefits Act 1976 and rule 9 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [SI 1980 No 1605]. The phrase which I have quoted means that the decision in question must have contained or been arrived at by means of a mistake of law.

3. Only one mistake of law is alleged by the claimant. He alleges that the Tribunal's proceedings were in breach of the rules of natural justice. The allegation is based on a request which he had made for the attendance at the hearing of his appeal of the visiting officer concerned with his case. When he attended for the hearing, the visiting officer was not present and his request for an adjournment was refused by the chairman.

4. A breach of the rules of natural justice is certainly a mistake of law and therefore could found an appeal to a Commissioner. However, a mere assertion of a mistake of law is not enough to justify the grant of leave to appeal. There must be some material in the case indicating that the person seeking leave can present a sensible argument that there was a mistake of law.

5. The present application is founded on a misunderstanding. The claimant has referred to the form LT 204, in which it is stated that a claimant is entitled to bring to the hearing of his appeal to the Tribunal "witnesses to support your case". But the present claimant did not wish the visiting officer to attend the Tribunal's proceedings so that she might support his case. He wished to have her there to cross-examine her. His own description of his reasons for requiring her presence is: "I asked for the right to show the incompetence and stupidity of the visiting officer by having her present at that tribunal ...".

6. A claimant does not have the right to demand the presence of an official whose report or other activity has been unfavourable to him. There may be cases in which such presence may be necessary or desirable, but it is

for the chairman of the tribunal to determine whether or not that is so and whether or not to adjourn a hearing to enable a person to attend.

7. In the present case, no good purpose could be served by summoning the visiting officer to the tribunal's hearing and, in my view, there is no possibility of the claimant presenting a sensible argument that the tribunal's proceedings were in breach of the rules of natural justice.

8. I have given at some length my reasons for refusing leave to appeal in this case, because the present claimant's misunderstanding of his rights is not uncommon, and I think it right to make the position clear at an early opportunity.

9. As already stated the application is not allowed.

(Signed) R. S. Lazarus
Commissioner
