

Commissioner's File: CP/54/1989

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR RETIREMENT PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the social security appeal tribunal given on 13 September 1988 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 13 September 1988.

3. The question for determination was whether the claimant's right to payment of retirement pension had been extinguished for not having been made within 12 months of the due date. The tribunal, upholding the decision of the adjudication officer, decided that such was the case, the claimant not having established that, throughout a period, starting within the 12 months and continuing up to the day on which written notice was received by the Secretary of State requesting payment of the outstanding pension, there was good cause for failure to give that notice timeously.

4. The tribunal made the following findings of fact -

"1. In 1979 the appellant who had been resident in Poland since 1949 returned temporarily to Great Britain and made a claim to retirement pension.

2. An award of retirement pension was made with effect from 17 May 1989 and on 14 June 1979 notice of entitlement was sent to the appellant's last United Kingdom address.

3. The notification was returned endorsed 'not known at this address' and no further action was taken.

4. On 15 May 1987 a letter was received from the local office in Bradford dated 7 May 1987 in which the appellant

inquired whether she was eligible for retirement pension.

5. Retirement pension was awarded from 19 February 1986.

The appellant appealed against that decision and requested that payment be made for the period 17 May 1979 to 18 February 1986".

5. The tribunal gave as the reasons for their decisions the following -

"Regulation 22 of the Social Security (Claims and Payments) Regulations provides in effect that where a payment of a sum of benefit is not obtained within 12 months of the date on which the right to [that] sum arose [the] claimant's right to the payment is extinguished unless she can show -

(a) that after the 12 months have expired the Secretary of State received written notice asking for payment of that sum and

(b) throughout the period beginning within a 12 month period and continuing up to the date on which notice was given there was good cause for not giving that notice. The appellant has stated that on returning to Poland she notified the local office of her address in Poland. A search however has not confirmed that any such communication was received by the Department. In any case on the authority of R(SB)5/79 [a clear error for R(S)5/79] even if the Department was at fault it appears to us that at some stage the appellant ought to have realised that she had received no communication from the Department one way or the other informing her of the success or otherwise of her claim. We do not think she can show good cause by merely stating that because she heard nothing she assumed that the claim had failed. A person would reasonably be expect to be informed one way or the other. Our conclusion is that the appellant failed to show good cause for failing to obtain a payment throughout the period May 1979 to February 1986".

I see nothing wrong with the tribunal's decision.

6. I am aware that the claimant complains that she never received the notification, and is at a loss to understand why it was not delivered at the house of her sister. She had made the application from that address. The circumstances in which the letter came to be returned to the Department endorsed "not known at this address" will, of course, never be known. Although it is perhaps, surprising that the letter was not taken in by the claimant's sister, and then sent on to her, this apparently did not happen. However, it has no real bearing on the case. It was up to the claimant to follow-up her inquiry, and to persist until

she got an answer. Similarly, although the claimant states that she sent her address in Poland to the Department, so that they could write to her direct, this in itself was not enough. There appears to be no evidence as to whether the Department were ever informed of the address in Poland, but on the assumption that they were, the claimant should have followed up her inquiry if after a reasonable time she received no response at the address given to the DHSS. It was not good enough to establish good cause merely to assume that the claim had failed. The fact that the Department had invited her to make a claim when she was in this country and age 60 in itself suggested there was a high possibility of receiving a pension of some kind. In my judgment, the tribunal were right to reach the conclusion that the claimant could not establish good cause for her delay. The consequence is that her entitlement to outstanding arrears of retirement pension as set out in the schedule has become extinguished. For completeness, I should say that they entertained doubt as to whether the schedule correctly represents the full extent of the relevant arrears (see in this connection paragraph 7 of the submissions of the adjudication officer now concerned), but nothing turns on the point.

7. As regards the claimant's mistaken belief that she was a person affected by the changes announced by Mr. Nicholas Lyle concerning retirement in respect of married women living abroad, this announcement only applied to women entitled to a retirement pension from December 1984, whereas the claimant herself became entitled to a retirement pension on 14 May 1979 (see paragraph 11 of the adjudication officer's submissions dated 19 October 1989).

8. Finally, as regards the claimant's query as to why her retirement pension has not been increased since 1979, the explanation lies in her continued residence abroad. The matter is explained fully in paragraph 12 of the submissions of the adjudication officer now concerned.

9. Accordingly, I have no option but to dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 3 February 1992