



Commissioner's File: CIS/359/1990

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the social security appeal tribunal given on 27 February 1990 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 the tribunal chairman, against the decision of the social security appeal tribunal of 27 February 1990.
3. The question for determination by the tribunal was whether the award of income support should be reviewed from 11 October 1988, because there had been a relevant change of circumstances since such award was made, and, if so, whether overpayment of benefit was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986 by reason of the claimant's misrepresentation. In the event, the tribunal, upholding the decision of the adjudication officer, decided these matters adversely to the claimant. However, at the invitation of the adjudication officer they reduced the original sum overpaid and recoverable from £2,265.19 to £2,244.57. A schedule was presented by the adjudication officer indicating how this figure was arrived at.
4. Whilst the claimant was in receipt of supplementary benefit, unemployment benefit was also awarded to him. The tribunal accepted the adjudication officer's view that "by signing for his [supplementary] benefit and signing to say that his circumstances had not changed the claimant was misrepresenting the fact that his circumstances had in fact changed i.e. that unemployment benefit had been awarded to him". The claimant in fact received both income support and unemployment benefit for the inclusive period from 20 December 1988 to 2 October 1989. The claimant's representative challenges the decision of the tribunal on the

basis that, pursuant to Commissioner's unreported Decision CSB/790/88, "the order book certificates were a representation of what the claimant believed and the tribunal were wrong to treat this as a misrepresentation of a material fact".

5. The adjudication officer supports the appeal and contends as follows:-

" 3. It is my submission that the tribunal's decision is erroneous in point of law because they reached their decision by reference to the mischief of misrepresentation by the claimant.

4. It seems to me common ground that there was no misrepresentation involved regarding the form BI completed by the claimant on 5.12.88. He declared on that form that he had claimed unemployment benefit but had not at that time received any payment (UB being payable from 8.12.88 and first paid to him on 13.12.88). The misrepresentation upon which the tribunal's decision is based is that in signing each of the orders in his order book the claimant misrepresented that he had reported all relevant changes in his circumstances and was entitled to the sum shown on the order.

5. I would support the claimant's representative in his contention that, by reference to CSB/790/88, the signing of each paid order is only a certificate of what the claimant believed to be his obligations and entitlement and is not, of itself, a misrepresentation of a material fact."

6. The relevant passage from CSB/790/88 occurs in paragraph 10, and reads as follows:-

".... However, the decision of the tribunal was based on misrepresentation. The members found that by signing the certificate on her supplementary benefit order book the claimant in effect stated that there was no change in her financial circumstances, and that this was misrepresentation. The declaration on the order book (described by the tribunal as a certificate) is as follows:

'I declare that I have read and understand all the instructions in this order book, that I have correctly reported any fact which could affect the amount of my payment and that I am entitled to the above sum.' (my emphasis)

What was the representation made in that declaration? It seems to me that it was no more than that the claimant had reported any fact that she understood should be reported, as a result of reading the instructions, and imports the claimant's belief as to whether or not she had already informed "the Issuing Office" of her child benefit. It was a representation as to what she believed, and it would appear from the evidence that she honestly believed at that

time that she had already made disclosure to the Issuing Office and was not obliged to make further disclosure. The point turns on what was actually represented and not whether the representation was actually innocent or otherwise. The declaration guards against claimants failing to disclose material facts, but in my judgment it is of no assistance to the adjudication officer on the question of misrepresentation in the circumstances of the present case. In CSB/1006/1985 it was held that there was no misrepresentation where the declaration was 'as far as I know the information on this form is true and complete' and where the claimant honestly believed that a resource was not available to him. Likewise in the present case the declaration is qualified and limited to what a claimant believed she has to disclose on the basis of the instructions given to her. It represents no more."

7. I regret that I have to disagree with that restricted interpretation. I do not see how it could be said that the declaration was qualified and limited to what the claimant believed she had to disclose. Such a construction, it seems to me, is wholly artificial and at variance with the plain words of the declaration. A claimant who signs such a declaration specifically avers that he has "correctly reported any fact which could affect the amount of my payment". In other words, he specifically warrants that the factual position is as he has reported it. There is no qualification such as "as far as I am aware". In fact, the claimant goes even further and declares "I am entitled to the above sum".

8. Now, it could be said that the requirement that a claimant sign a declaration as all embracing as that asserting entitlement to the relevant sum, without which he will not be paid, is wholly unfair, particularly having regard to the technical issues sometimes involved; but so long as this requirement is imposed, and as long as the claimant in each case signs the undertaking, he is, in my judgment, caught. Unless and until the Secretary of State removes this all embracing provision, each claimant will in practice be representing, not only that all material facts have been correctly reported, a not unreasonable requirement, but that he is entitled to the sum shown on the order, and if he is not, he will be guilty of a misrepresentation.

9. I assume that, in the present case, the claimant gave the same undertaking as that set out in paragraph 10 of CSB/790/88. It is not in dispute that he did not disclose his receipt of unemployment benefit timeously, and that the matter did not come to light until 10 October 1989. Accordingly, on each occasion when he made his declaration he was guilty of a misrepresentation, and this resulted in an overpayment. It follows that the claimant is caught by section 53, and that the tribunal did not err in point of law.

10. Accordingly I dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 2 January 1992