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SOCIAL SECURITY

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Administrative Appeals Tribunal decisions

Unemployment benefit: work test

PERSHOUSE and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q41/81)

Decided: 11 October 1982 by J. B. K. Williams.

In this application, Colleen Pershouse sought review of a DSS decision to terminate the payment of unemployment benefit..

Pershouse had been granted unemployment benefit in July 1979, shortly after she reached the age of 16 years. (She had spent the past 18 months on special benefit, being unemployed but below the qualifying age of 16.)

In February 1981, the Gladstone office of the CES referred her to a job at Tannum Sands, 20 km from her home in Gladstone. She was interviewed for and given the job but she did not take up the job. On 10 March 1981 the DSS terminated her unemployment benefit on the ground that she had not satisfied the Director-General that she was willing to work.

The 'work test'

Section 107(1) of the *Social Security Act* provides that a person is qualified for unemployment benefit if the person passes the age and residence requirements, and if

> (c) the person satisfies the Director-General that—
> (i) Throughout the relevant period he was unemployed and was capable of undertaking, and was willing to undertake, paid work that, in the opinion of the Director-General, was suitable to be undertaken by the person; and
> (ii) he had taken, during the relevant period, reasonable steps to obtain such work.

The AAT's assessment

Pershouse told the AAT that she had not reported for work because she had fallen from her motor cycle injuring her knee and damaging the cycle; and because she had no transport for the journey of 20 km between her home and the job.

The AAT found that Pershouse's accident 'if it did occur, resulted only in some minor injury to her, and no serious damage to her motor cycle'.

The Tribunal also heard evidence that Pershouse had left a job after working for two days in July 1980 'because [according to Pershouse] of transport problems'. That job had been five km from her home. The AAT said that it could not accept that transport difficulties caused her to leave that earlier job; and it reached 'the same conclusion regarding the job at Tannum Sands'.

The Tribunal observed that Pershouse had not made a serious effort to find transport between Gladstone and Tannum Sands nor to find accommodation in Tannum Sands.

Upon the evidence, the Tribunal said, it was not satisfied that Pershouse was willing to undertake the employment at Tannum Sands:

> The applicant may well have found some inconvenience in taking up that employment. Any inconvenience she may have occasioned, was not in my view, a valid reason for failing to engage in that employment.

(Reasons for decision, p.7)

Formal decision

The Tribunal affirmed the decision under review.

In this issue:

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PERRY and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V81/527)

Decided: 19 October 1982 by E. Smith.

Richard Perry was granted unemployment benefit in April 1980, shortly after leaving school at the age of 18 years. In August 1980, the Cobram office of the CES referred him to a lemon-picking job, which Perry refused because he regarded it as unsuitable.

On 3 September 1980, the DSS terminated his unemployment benefit 'as you declined an offer of suitable employment made to you . . .' Perry applied to the AAT for review of this determination.

'Willing to undertake work'?

This application involved the qualifications for unemployment benefit set out in s.107(1)(c) of the *Social Security Act* (see *Pershouse* in this issue of the *Reporter*). In particular, was the AAT, standing in the Director-General's shoes, satisfied that Perry was willing to undertake work which, in the AAT's opinion, was suitable for him? In the Tribunal's words:

> The crux of the matter is whether the applicant had a satisfactory reason for refusing the referral of August 1980. If he did not, then he would not satisfy the requirement that he 'was willing to undertake' paid work within the meaning of s.107(1)(c)(i) that was, in the opinion of the Director-General, suitable to be undertaken by him.

(Reasons for Decision, para. 17)

The AAT's assessment

When he refused the job referral, Perry had said that lemon-picking was too tiring and would interfere with his music lessons. However, immediately after the termination of unemployment benefits he offered two other reasons for refusing the work: that he had 'done it before in school holidays and was put off for being too slow'; and that he had recently aggravated a shoulder injury and could not do the work.

The Tribunal was not prepared to accept Perry's account of the aggravation of his injury because 'it was not raised by him initially nor did he seek medical assistance at the time of the claimed aggravation . . . It

appears to me to be something that he built into his case after the original refusal': Reasons for Decision, para. 22.

And the claim that he had tried the work before and not been successful at it was not an adequate reason for refusing it: '[H]e should have attempted the work. If he had in truth been too slow, or otherwise could not measure up to its demands, it would have been demonstrable that the work was not suitable for him': Reasons for Decision, para. 21.

Formal decision

The AAT affirmed the decision under review.

KELLY and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q82/15)

Decided: 8 October 1982 by J. O. Ballard.

In February 1981, David Kelly had enrolled in a full-time geology course in Toowoomba. (He had previously lived in Canberra.) In September 1981, Kelly registered for employment with the CES and lodged a claim for unemployment benefit. The claim was rejected on the ground that a full-time student could not be considered capable of undertaking, and willing to accept, employment. Kelly applied to the AAT for review of this rejection. (Before the hearing of the appeal, the applicant returned to Canberra and obtained temporary employment as a clerk.)

The legislation

Section 107(1)(c) of the *Social Security Act* provides that a person is qualified to receive unemployment benefits only if the person satisfies the Director-General that he was unemployed, that he was capable of undertaking and willing to undertake suitable work, and that he had taken reasonable steps to obtain such work. (See *Pershouse* in this issue of the *Reporter* for the text of s.107(1)(c).)

'Willing and able to work'? A question of motives

Kelly told the AAT that he had moved to Toowoomba to find employment in the mining industry and had enrolled in the geology course to 'keep in touch' with the subject. He had been prepared to drop the course at any time.

The AAT decided that the applicant was normally resident in the ACT and that he had moved to Toowoomba, not to seek employment, but to undertake a course of study at the local college of advanced education. The Tribunal received evidence from the Toowoomba CES, and concluded from this that Kelly's hope of getting mining employment was far-fetched. The Tribunal pointed out that Kelly did not register for employment until seven months after moving to Toowoomba.

The Tribunal rejected the argument put by the DSS that Kelly's status as a full-time student automatically excluded him for eligibility for unemployment benefits. However, the Tribunal stated that, given all the circumstances, he could not be considered as willing and able to undertake full-time work. It concluded:

> [I]t is not open to an applicant for unemployment benefit to change his habitat from a place of reasonable employment prospects for him to a place where his employment prospects are significantly reduced. That the applicant did this, on these facts, would, in my view, itself be sufficient to defeat a claim for unemployment benefit. Furthermore, the fact that the applicant moved from an area where there were employment prospects for clerks to a fairly isolated area with low employment for clerks indicates again that his primary intention in making the move was to further his studies and not to seek employment.

(Reasons for Decision, para. 14)

Formal Decision

The AAT affirmed the decision under review.

Income test: bank interest

SZERSZEWICZ and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V407/81)

Decided: 20 October 1982 by G. D. Clarkson.

This appeal raised the question whether interest on a savings bank account and term deposits was to be considered as 'income' for the calculation of the rate of unemployment benefit. The interest was paid six monthly on the term deposit and annually on the savings bank account.

The Tribunal first dismissed an argument that, because the interest moneys were being saved to buy a dwelling, they were capital rather than income.

The applicant's second argument was that there was no entitlement to interest until it was payable and therefore no need to declare it as income. The Tribunal declared that such an argument might be sustainable in some circumstances, but not in this case.

With regard to the savings bank deposits, the proportionate amount of interest could be obtained at any time by closing the account, though credited annually.

The applicant had already received interest payments on the term deposits when he lodged his benefit claim and had received other interest payments by the date of the appeal hearing; the bank's practice was to pay interest if money was withdrawn before the end of the fixed term provided the depositor did not reinvest the funds at a higher rate of interest, and provided three months had elapsed from the commencement of the term. Both of the applicant's deposits had been in existence for more than three months and at the date of hearing one had matured and the other was due to mature. His interest payments were thus subject to s.106(2) of the Act:

> Where a person is entitled to receive income by way of periodical payments made at intervals longer than one week, that person shall be deemed to receive in each week an amount proportionate to the number of weeks in each period in respect of which he is entitled to receive payment.

Formal decision

The Tribunal affirmed the decision under review.