

Unemployment benefit: 'claim'

WYLLIE and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. V82/442)

Decided: 1 July 1983 by I.R. Thompson.

The applicant's unemployment benefit was cancelled on 12 May 1981 after it was discovered that he was in receipt of workers' compensation payments at the same time. On about 7 June 1981 after these payments had ceased Wyllie approached a branch office of the DSS and claimed to have been told by a Field Officer that because of his previous false claim he was not entitled to unemployment benefit (even though his compensation payments had ceased). This 'advice' had flowed from a brief interchange between Wyllie and a field officer in circumstances which made it likely that each misunderstood the other. (As the officer was leaving the office the appli-

cant spoke briefly to him.)

Wyllie then sought to rely on that brief oral inquiry as a claim for unemployment benefits and so obtain benefit from that date. In doing so he relied on s.145 of the Act which gives the Director-General a discretion to back-date payment of the benefit to the date of an informal claim once a formal claim has been lodged, if he considers it reasonable to do so. A formal claim was lodged on 15 March 1982 but the DSS refused to pay any arrears. Wyllie applied to the AAT for review of that determination.

Claim for benefit: ineffective?

The AAT considered that before the discretion in s.145 could be exercised there must be a claim for a benefit which for some reason was ineffective. This was not so in the present case.

. . . the brief inquiry which the applicant

made of Mr Van Dort in the circumstances in which he made it cannot be regarded as constituting a claim for a benefit made to an officer of the Department . . . the applicant had had considerable experience of claiming unemployment benefits. Mr Van Dort gave evidence that claims for such benefits are received by counter staff and not be field staff. When the applicant went to the Department's office, he did not make any inquiry at the counter but asked to see Mr Van Dort. He was unable to see him in his office and have a full discussion with him; there was a very brief encounter as Mr Van Dort left his office, one brief question and one brief answer. It was not reasonable for the applicant to rely on that brief answer and not to make further inquiries in respect of a matter which was of so much importance to him.

(Reasons, para.10)

Formal decision

The Tribunal affirmed the determination under review.

Invalid pension: 'incapacity for work'

BELJAK and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. V82/162)

Decided: 29 June 1983 by R. Balmford.

The AAT *set aside* a DSS refusal to grant invalid pension to a 59-year-old former press operator who suffered from chronic backache, hypertension and breathing problems.

The Tribunal placed some weight on the reports of the applicant's general practitioner - which indicated permanent incapacity over those of medical specialists who did not consider him to be 85% permanently incapacitated for work. The general practitioner was thought to be "in the best situation to assess [the applicant] as a whole man".

While Beljak's perception of himself as a hopeless invalid contributed to his situation it fell within the type of case referred to in *Vranesic* (1982) 10 SSR 95 where the perception itself becomes a psychological condition destroying the person's capacity to work. However, the applicant did also suffer from medical conditions which together with this perception made him permanently incapacitated for work.

GARVIN and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. Q81/170)

Decided: 14 June 1983 by J.B.K. Williams.

The AAT *set aside* a DSS decision cancelling an invalid pension held by a 50-year-old former motor mechanic who suffered from sciatica.

The Tribunal accepted that he would be unable to work in his former occupation without exacerbating his back problem and that his minimal formal

education would make it unlikely that he would obtain work in the clerical field.

The AAT referred to *Howard* (1983) 13 SSR 134 where it was said:

. . . that at a time when unemployment is high it is not a simple matter to determine whether lack of employment can be attributed to medical disabilities or is the result of the general state of the labour market and the applicant's age. (Reasons, p. 8)

As in *Howard* the Tribunal considered 'that the applicant's disabilities made the difference between his working and his not working'.

CHARLES and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. Q82/218)

Decided: 7 June 1983 by A.N. Hall.

The AAT *set aside* a DSS decision to cancel the invalid pension of a 49-year-old former van driver who suffered from advanced osteo-arthritis in the right ankle.

While there was conflicting medical evidence before the Tribunal, it was concluded that the incapacitating pain in the applicant's ankle would make him unable to maintain a consistent work effort for any significant period. Applying the test in *Panke* (1981) 2 SSR 9 the AAT held that Charles was permanently incapacitated for work given that

to rejoin the workforce he would need to find a special employer prepared to give him special employment where he could be allowed time off work, as occasion required, due to the disabling consequences of pain in his right ankle from which he would be likely to suffer if he were to engage in a normal occupation during a normal working week. (Reasons, para. 17)

JONES and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. W82/53)

Decided: 14 June 1983 by

G.D. Clarkson, J.G. Billings and I.A. Wilkins.

The AAT *affirmed* a DSS refusal to grant invalid pension to a 32-year-old woman who suffered from asthma and high blood pressure.

The medical evidence was that the applicant did not adhere strictly to the treatment prescribed for her, and that there were many other treatments that she could undergo. The Tribunal could not view the applicant's incapacity as permanent until the present treatment had failed and then only if the alternative treatment also failed.

There is of course nothing in s.23 or s.24 of the *Social Security Act* which requires a claimant to undergo treatment for an incapacity, but evidence that by proper and reasonable treatment the incapacity could be cured or the impairment lessened would immediately raise the question whether the incapacity was permanent. (Reasons, page 5)

TAYLOR and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. V82/229)

Decided: 1 July 1983 by I.R. Thompson.

The AAT *affirmed* a decision by the DSS to refuse an invalid pension to a 40-year-old woman who suffered from a dermatological condition of the hands and face and anxiety.

While she was presently totally incapacitated for work it was concluded that by