

a year later after he returned from working in Queensland.

There was inconsistent evidence between the earnings stated by the applicant's husband and the amounts disclosed by his relevant employer during 1981. There was also evidence that he continued to claim his wife as a tax dependant up until 1981.

Although the applicant submitted that no economic, social or emotional support came from her husband the AAT regarded her claim with suspicion, based on a lack of corroboration.

Although the Tribunal is not bound by the strict rules of evidence and cannot insist on corroborative evidence in support of an applicant's case, nevertheless where as in this case material arises which gives reason for suspicion then there is a practical onus which is upon the applicant to dispel . . . In this case, no attempt was made to dispel the matters of suspicion by the calling of witnesses. In my view, the applicant showed an unwillingness to identify or call witnesses who may have assisted her case. In particular the birth of a child two and a half years after the alleged separation weighed against the likelihood of the parties being separated.

#### Formal decision

The Tribunal affirmed the decision under review.

[Comment: The approach here should be contrasted with that in *Shearing* (1983) 13 SSR 132. In that case suspicion alone was insufficient to find as a fact that Shearing was living with a man as his wife. Although in *Jukic* the applicant was married to the man with whom it was claimed she was living, the Tribunal appears to be putting an onus of proof on the applicant which was not suggested in *Shearing*. B.S.]

## Income test

### SHAFER and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V81/139)

Decided: 19 August by R. Balmford.

The applicant lodged a claim for age pension on 22 August 1979 when she was 67 years of age. This claim was rejected on the basis that her income exceeded the amount (at that time \$6,572.80 per annum) which precluded her from being entitled to the pension. She applied to the AAT for review of that decision.

Shafer's income was derived from two sources. The first was from property letting. This income was not in issue. The second source was interest on loans made by her to a building society and a private individual. What was in issue before the AAT was whether the income from this source could be reduced by deducting

expenses relating to the loans on the basis that she was carrying on the business of lending money. If this was the case her income would be reduced from \$7,559 to \$4,273 and so entitle her to an age pension.

#### Carrying on a business

The Tribunal referred to various cases which examined the question of whether or not a person is engaged in a business where the transactions are in some way irregular or on a small scale and concluded:

. . . I am of the view that she was not, in fact carrying on such a business at the relevant time. She was a private investor who chose to invest by the making of advances rather than by the purchase of capital assets. Many private investors on a relatively small scale choose to spread their investments between advances and the purchase of capital acquisition for a variety of suffi-

cient reasons. Many limit themselves to the acquisition of capital assets in one form or another; or to advances in one form or another. None of these investors can necessarily be said to be carrying on a business of a particular kind. They rather are engaging in a series of separate investments.

(Reasons, para. 18)

#### What deductions should be made?

Only those expenses which related to those isolated transactions could be deducted to arrive at the applicant's income for the relevant year. The Tribunal was satisfied on the balance of probabilities that the costs directly attributable to the two loans would not be such as to reduce her income to the level which would entitle her to an age pension.

#### Formal decision

The AAT affirmed the decision under review.

## Unemployment benefit: work test

### WAGNER and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q82/85)

Decided: 4 October 1983 by J.B.K. Williams.

Wagner applied for unemployment benefit on 26 October 1981 in Atherton, North Queensland. This application was rejected on the basis that he was not willing to undertake paid work suitable to be undertaken by him. (see s.107). Wagner applied to the AAT for review.

#### The facts

The applicant lived in a remote locality about 100 miles from Cairns. He had acquired a property there in 1979 and was in the process of building a house and planting a garden and fruit trees in it.

On the day he applied for unemployment benefit he was offered an unskilled labouring job with a Shire Council which was about 150 miles away from his home. This was a temporary job. Wagner was single and had no dependants. He had a qualification in engineering. There was no work available in his own area.

Wagner was reluctant to leave his property because he wanted to burn fire breaks to protect it and thought that to leave it would involve risk to his property.

#### The conclusion

The AAT thought that Wagner did fail the work test.

It appears to me that he is really seeking the best of two worlds in that he wishes to develop his property without independent resources to do this and at the same time receive what is in effect a government subsidy by way of unemployment benefit at times when he is unable to secure casual employment in his own locality.

(Reasons, p. 6)

#### Formal decision

The AAT affirmed the decision under review.

### BRAUND and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. S82/116)

Decided: 28 October 1983 by I.R. Thompson.

On 15 September 1982, Darryl Braund commenced a week's leave from an oil rig where he had been working. On 16 or 17 September he was retrenched. He went to a CES office on 20 September to register as unemployed. However, as he indicated that he was going away for a week's holiday (to see his parents) he was not registered on that day but on 1 October 1982 when he returned to the

CES office. Braund sought to have his unemployment benefit backdated to 15 September 1982 but the DSS decided to grant the benefit from 1 October 1982. He appealed to the SSAT which recommended that his appeal be disallowed and a delegate of the Director-General affirmed the original decision. Braund applied to the AAT for review of that decision.

#### Was there an entitlement to registration?

Braund argued that the CES office should have permitted him to register as unemployed on 20 September 1982 thereby entitling him to unemployment benefit from 15 September 1982. The CES had formed the view that he would not be available for work in the following week and therefore would not be entitled to be registered.

Section 197 of the *Social Security Act* is relevant. It reads (so far as is relevant):

(1) Subject to this Part, a person (not being a person in receipt of a pension under Part III or IV or a service pension under the *Repatriation Act* 1920) is qualified to receive an unemployment benefit in respect of a period (in this section referred to as the 'relevant period'), if, and only if

(c) the person satisfies the Director-General that -

(i) throughout the relevant period he was