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 sufficient 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 though 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

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.

Section 119(1B) also provides that the benefit is payable where a person becomes registered as unemployed and claims benefit within 14 days.

Should Braund have been registered on 20 September?

As he failed the work test contained in Section 107, the AAT held that it was not reasonable for the CES to refuse to register him on 20 September.

I have no doubt that [the applicant] went to the Unley CES office and said that he wished to register as unemployed and made it known that he wanted an interview [after which registration takes place] that afternoon because he was due to go to the Yorke Peninsula to visit his parents the following day. I have no doubt also that the CES officer who attended him at the counter formed the impression that he was going to the Yorke Peninsula for a holiday and was not going to be available for employment during his absence, and that as a result she told him that either he must come the following day and attend the registration interview or she would not give him the registration form to complete. The applicant has said nothing at any time to indicate that there was any pressing need for him to go to his parents' home on 21 September instead of waiting to have his registration completed and to apply for an unemployment benefit before going . . .

(Reasons, para. 12)

The AAT also considered the effect of applying for registration on 20 September.

. . . even if the oral requests made by the applicant on 20 September for an application card and a registration interview should be regarded as an application for registration, by departing in the circumstances in which he did before completing such a card or having such an interview the applicant abandoned that application. His registration was the result of the application which he made on 1 October. It cannot be regarded as having taken place before that date.

(Reasons, para. 13)

Formal decision

The AAT affirmed the decision under review.

Special benefit: method of calculation

ALBRECHT and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. S83/7)

Decided: 10 November 1983 by J.O. Ballard.

The applicant's wife was in receipt of invalid pension. Albrecht gave up his work to look after her and was in receipt of special benefit.

The applicant's complaint was in relation to the calculation of the rate of his special benefit. His wife's income included an amount that was interest from certain joint investments with the applicant. As that amount was below the amount specified in s.28(2) it did not operate to reduce the rate of her invalid pension. It was effectively disregarded.

In assessing the rate of the applicant's special benefit, however, the income of his wife was taken into account. This operated to reduce his benefit. This amounted, argued Albrecht, to an effective deduction of his wife's invalid pension as their income was in effect joint. Why should s.114(3) override s.28(2)?

The AAT could not assist Albrecht:

As I read the legislation, the [DSS] had no option but to calculate the applicant's special benefit, having regard to the wife's income both from her invalid pension and from such meagre private sources as she had. The fact that it has, in the applicant's eyes, the effective result of bringing into the calculation of the amount of his benefit income which would not be relevant for calculating his wife's pension is not in point for the purpose of the calculation of the benefit.

(Reasons, para. 10)

Formal decision

The Tribunal affirmed the decision under review.

Family allowance: late application

GEIDANS and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. W82/72)

Decided: 29 August 1983 by G.D. Clarkson.

The applicant and his wife separated in June 1979. Three children of the applicant lived with him in the family home, however, the mother (who had one child living with her) continued to receive family allowance in respect of all four children.

In November 1981 the applicant applied for family allowance and claimed back payment to the date of separation. This back payment was rejected by the DSS and the applicant applied to the AAT for review of that decision.

The legislation

Section 102(1) of the *Social Security Act* provides:

. . . a family allowance granted to a person – . . . shall be payable –
(a) if a claim is lodged within six months after the date on which the claimant became eligible to claim the family allowance, or, in special circumstances, within such period as the Director-Genral allows – from the commencement of the next family allowance period after that date; or
(b) in any other case from the commencement of the next family allowance period after the date on which the claim for family allowance is lodged.

Need for 'special circumstances'

What constitutes special circumstances for the purposes of this section has been well canvassed by the AAT (see *Messina* (1983) 14 *SSR* 137, *Q*, *Cassoudakis*, *Manzini* (1983) 14 *SSR* 138, *De Graaf* (1981) 3 *SSR* 26 and *Faa* (1981) 4 *SSR* 41).

Geidans claimed that he had not been aware of his entitlement and that he had been misinformed by his wife that family allowance could only be paid to the wife.

These were not 'special circumstances', said the AAT. It was clear that lack of knowledge of an entitlement does not constitute 'special circumstances' within the section.

Formal decision

The AAT affirmed the decision under review.

COIN and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. N82/547)

Decided: 16 September by P.K. Todd.

Susan Coin gave birth to her second child on 31 August 1979. At that time an application for family allowance was posted to, but not received by, the DSS. The non-payment of allowance was not discovered by the applicant until 3 March 1982. A claim was made at this time and allowance was paid from 15 March 1982. A claim for back payment from the date of birth to 15 March was rejected by the DSS. The applicant applied to the AAT for review of that decision.

Had an application been lodged?

Section 98 of the *Social Security Act* provides:

A claim for family allowance –
(a) shall be made in writing in accordance with a form approved by the Director-General;
(b) shall be supported by such declaration as is approved by the Director-General; and
(c) shall be lodged with a Director.

Coin submitted that by posting the application she had 'lodged' it in accordance with the Act. The Act did not require the Director-General to 'receive' the application.

This was not accepted by the AAT. The Tribunal regarded s.98 as requiring that the application arrive at the office of the DSS. To 'lodge' documents meant they must be filed or left with the appropriate official.

The Tribunal referred to *Messina* (1983) 14 *SSR* 137 which held that the posting of a claim does not satisfy the requirement in s.98 that the claim be lodged with a Director.