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.