

applying for a job approximately once a month. He had also sold dried flowers, which he had purchased in 1980, spending about half an hour a week packing and posting them, and again did not consider the activity income-producing, although in some months he did make a profit. Between December 1982 and October 1983, Mr Hunt had answered 'no' to questions as to whether he had done any casual or part-time work, or received any income or payments.

The AAT considered whether, during the relevant period, Mr Hunt was unemployed, capable and willing to undertake suitable work and had taken reasonable steps to obtain such work.

In relation to the dried flowers, the Tribunal found that up until the end of 1982, his packing and selling of the previously purchased dried flowers was not a business and did not detract from him being unemployed in 1982. In January 1983 Hunt bought more flowers and the AAT concluded that at that point Hunt had decided to establish a business. Further, most of the sales were made at the door, requiring him to be present.

The development of the sale of solar dryers indicated a similar conclusion so that the Tribunal decided Hunt was no longer unemployed by January 1983.

Although there was little evidence, the AAT concluded Hunt was willing to undertake work during 1982, and that it was reasonable for him not to look for unskilled work. By January 1983, the Tribunal thought he should have broadened his job searches and was not taking reasonable steps to obtain work, thus not qualified for unemployment benefit.

The AAT also found that given that Hunt commenced to carry on a business he had failed to comply with the notification provisions in the then s.103A. He had also failed to notify the Department of his income during the period when he was unemployed, and had thus been overpaid unemployment benefit. Both amounts paid were debts due to the Commonwealth (under s.181) and should not be written off under s.186.

[J.M.]

Sickness benefit

RYAN and SECRETARY TO DSS
(No. V87/223)

Decided: 17 March 1988 by H.E. Hallowes.

The AAT affirmed a DSS decision to reject a claim for sickness benefit from a man who was injured on 22 May 1984. He was charged with various offences on 23 May 1984 while in hospital where he remained until 12 June 1984. He was then transferred to Pentridge Hospital and was formally remanded in custody on 22 June 1984 until his conviction on 3 September 1984. Thereafter he remained in prison under sentence throughout the period in issue. Ryan had been in receipt of unemployment benefit on 22 May 1984 when he received a number of injuries, including gunshot wounds, which, according to the AAT, rendered him incapacitated for work. The issue was his eligibility for sickness benefit, both in the period before his conviction and, subsequently, during his term of imprisonment.

The legislation

In order to qualify for payment of sickness benefit under s.108 [now s.117], it was necessary for the claimant to establish either that he was:

- s.108(1)(c)(i) : incapacitated for work by reason of sickness or accident (being an incapacity of a temporary nature) and that he has thereby suffered a loss of salary, wages or other income; or
- s.108(1)(c)(ii) : incapacitated for work by reason of sickness or accident ... and that he would, but for the incapacity, be qualified to receive an unemployment benefit in respect of the relevant period.

The period prior to conviction

The AAT decided that although Ryan was incapacitated for work by reason of his accident, he did not suffer a loss of wages thereby. The AAT then considered his eligibility under s.108(1)(c)(ii), by reference to the statutory criteria for eligibility for unemployment benefit, s.107 [now s.116], and determined that throughout the relevant period Ryan was not capable of undertaking paid work and, because of his incarceration in Pentridge Prison, he was unable to take steps to obtain work.

The period after conviction

Although there was evidence that Ryan had written to the DSS on 3 September 1984 seeking advice as to his entitlement to income support, he did not formally lodge a claim for sickness benefit until 20 June 1986. He had been advised by the DSS that 'persons in custody are not eligible to claim a benefit but only to continue to receive an

existing sickness benefit, in some circumstances, and generally, only for a limited period'. The DSS rejected his June 1986 claim as he was not considered 'to have suffered either an actual or potential loss of income'. In addition, it was considered that he was not eligible pursuant to s.135THA [now s.167] which at the relevant time provided:

'(4) Where -

(a) a person would, but for this sub-section, be entitled to be paid a benefit under Part VII [now part XIII]; and

(b) the person is imprisoned in connection with his or her conviction for an offence, that benefit is not payable to that person in respect of the period during which the person is imprisoned.'

The AAT said it was clear that, prior to the conviction, this section, as it then provided, did not apply to Ryan. [Note however, that it has now been amended: s.167(7) extends the definition of 'a period of imprisonment' to a period spent held in custody pending trial or sentence.]

The AAT went on to decide that, as Ryan was not qualified for sickness benefit, it was necessary to consider the date from which benefit was payable under s.119(2) and (3) [now replaced by s.125(3) and (4)]. Nor was it necessary to consider s.122(1) [now s.128(1)] which provides that cessation of unemployment benefit for a person on unemployment benefit who becomes qualified to receive sickness benefit shall be regarded as a loss of income for these purposes. This was because, although Ryan had been in receipt of unemployment benefit, he had not become qualified to receive a sickness benefit.

[R.G.]

Family allowance: husband's fraud

HARTMAN and SECRETARY TO DSS

(No. T87/109)

Decided: 8 April 1988 by R.C. Jennings.

Constance Hartmann who was unable to read or speak English, was deceived by her husband into signing forms relevant to an application for, and mode of payment of, family allowance. In a subsequent application for payment of the allowance for a second child, the husband had fraudulently signed her name in order to receive the allowance. She claimed that the allowance had