creates difficulties for the applicant in the short term is that he has applied the bulk of the compensation moneys in the purchase of a home to provide long-term benefits to his family and himself. That was a prudent act which has no doubt created short-term difficulties and, hopefully, will confer long-term benefits. But it does not give rise to any "special circumstances" such as would warrant exceptional treatment for the applicant.'

(Reasons, para. 8)

[P.H.]

MOORE and SECRETARY TO DSS (No. 5239)

Decided: 12 July 1989 by W.J.F. Purtell, B.C. Lock, and J.T.B. Linn.

The AAT *affirmed* an SSAT decision, which had in turn affirmed a DSS decision that Francis Moore and his wife were precluded from receiving pension for 233 weeks, following his receipt of a lump sum payment of compensation in July 1987.

Moore argued that the s.156 discretion, to disregard all or part of the compensation payment, should be exercised in his favour in this case. He said that the 'special circumstances' to justify an exercise of the discretion were that he and his wife had visited a DSS office, where they had been told that the compensation payment could not have any effect on his wife's eligibility for unemployment benefit.

Acting on that advice, Moore said, they had left their Housing Trust home and purchased their own home for $70 000, spending other moneys on a holiday and various consumer durables. It appeared that they spent some $140 000 within two months of receiving the compensation payment.

The AAT said that it was satisfied that Moore had made only a general enquiry at the DSS office — that is, an enquiry as to whether having $150 000 in a bank account could affect eligibility for unemployment benefit. The AAT was not satisfied that Moore had been wrongly advised by a DSS officer.

Nor was the AAT satisfied that there was financial hardship in this case. Any hardship which Moore might be suffering was due to the 'dissipation' of the substantial amounts of money which he had received.

[P.H.]

Late application for review

AKSOY and SECRETARY TO DSS (No. V89/242)

Decided: 18 May 1989 by H.E. Hallowes.

Isminaz Aksoy claimed an invalid pension in January 1987. When the DSS rejected that claim, she appealed to the SSAT, which recommended that her appeal be dismissed. In October 1987, the Secretary advised Aksoy that the original decision to reject her invalid pension was affirmed.

In January 1989, Aksoy's legal representative lodged an application with the AAT for review of the Secretary's decision, together with an application for extension of time.

The Secretary then advised that it opposed the granting of any extension of time in the present case.

The legislation

Section 29(2) of the *AAT Act* fixes a time limit of 28 days for lodging an application with the AAT for review of a decision. The 28 days is to run from the date when the person is furnished with a copy of the decision and the supporting reasons.

Section 29(7) of the *AAT Act* allows the Tribunal to extend the time for lodging an application for review.

The decision

Aksoy's representative told the AAT that she had little understanding of the system for reviewing DSS decisions and had not sought legal advice until December 1988. She had come to Australia from Turkey at the age of 13 and was now aged 34. Her English was adequate for communication.

The AAT referred to the Federal Court decision in *Hunter Valley Development Pty Ltd v The Minister for Home Affairs and Environment* (1984) 58 ALR 305 and to the AAT decision in *CSIRO and Barbara* (1987) 6 AAR 300. These two decisions, the AAT said, had established that —

'the extension should not be granted unless the applicant shows an acceptable explanation of the delay and it is fair and equitable in the circumstances to extend time.'

(Reasons, para. 6)

The AAT noted that Aksoy had applied for and received supporting parent's benefit during 1984 and 1985; that she had applied for and obtained workers' compensation; and that she felt capable of communicating without an interpreter. Despite the disadvantages which she had faced in coming to Australia at the age of 13 and her lack of educational opportunities, it was not, the AAT said, unfair to refuse to extend the time in which she could apply to the AAT for review of the decision to refuse an invalid pension:

'It is open to her to apply for an appropriate pension or benefit at any time. I am not satisfied that she has shown an acceptable explanation of the delay. There must be some finality in decision-making with appropriate safeguards for applicants. I am satisfied that it is fair and equitable in the circumstances not to extend the time for this application to be lodged.'

(Reasons, para. 9)

Formal decision

The AAT decided not to extend the time within which the applicant could lodge an application for review of the Secretary's decision of 30 September 1987.

[P.H.]

QUINN and SECRETARY TO DSS (No. W89/70)

Decided: 15 June 1989 by G.L. McDonald.

Raylene Quinn claimed handicapped child's allowance for her son, D, in November 1981. The DSS granted the claim from December 1981.

In June 1984, Quinn claimed back payment of the allowance for the period between 1974 and 1981 but the DSS rejected that claim. In December 1985, the Secretary affirmed that decision, rejecting a recommendation from the SSAT. Quinn was advised of the Secretary's decision in December 1985 and told that she could appeal to the AAT.

In June 1988, Quinn consulted a solicitor and, 10 months later, the solicitor lodged an appeal to the AAT, together with an application for extension of time in which to lodge that appeal. The DSS opposed the application for extension of time.

The legislation

Section 29(2) of the *AAT Act* provides a time limit of 28 days for lodging an appeal to the AAT. The 28 days is to run from the date when the applicant is furnished with a copy of the decision (and the relevant reasons)

which the applicant wants the AAT to review.

Section 29(7) authorises the AAT to extend the time within which an application for review can be lodged.

No 'acceptable explanation for delay'

The AAT referred to the Federal Court decision in *Hunter Valley Developments Pty Ltd v Minister for Home Affairs and Environment* (1984) 58 ALR 305, where Wilcox J had said (at 310) that, before the discretion could be exercised, the applicant must show 'an acceptable explanation for the delay' and that it was 'fair and equitable in the circumstances' to extend the time for lodging the appeal.

Quinn's solicitor put forward three reasons for extending the time.

First, it was said that the Secretary's veto of the SSAT's recommendation in December 1985 had 'disappointed, disenchanted and disheartened' Quinn who 'could not understand the legal ramifications and thought that an appeal to the AAT would be a waste of time'. She also had considerable difficulty obtaining information from the DSS.

The AAT described this reason as 'so general as not to be persuasive in providing an acceptable explanation for the delay in this matter': Reasons, p.4. The AAT pointed out that Quinn had been told of her rights to appeal in December 1985 and she could have contacted the AAT directly.

The second reason put forward on Quinn's behalf was that she had thought that the question of back payment of the allowance would be dealt with in another appeal, which was heard by the SSAT in 1987 (relating to a DSS decision to cancel the allowance).

The AAT could not see how Quinn could have misunderstood the nature of that second appeal and repeated that she had been advised of her appeal rights (to the AAT) at the time of the rejection of her first appeal in December 1985.

Thirdly, Quinn's solicitor said that the 10-month delay between the time when Quinn first consulted the solicitor and the appeal was lodged with the AAT was explained because it had been necessary to apply for legal aid, to obtain counsel's opinion and to apply for an extension of legal aid.

Of this third point, the AAT said that the 10-month period was not, in itself, decisive but it had to be considered in the context of the overall period in which the delay had occurred, because it had led to that period being enlarged.

The AAT concluded that the matters put forward on behalf of Quinn did not amount to an acceptable explanation for the delay, when balanced against the length of the time involved.

Formal decision

The AAT dismissed the application for extension of time.

[P.H.]

Unemployment benefit: overpayment

GOULD AND SECRETARY TO DSS

(No. 5226)

Decided: 19 July 1989 by H.E. Hallowes.

The DSS decided that Richard Gould had been overpaid $16 974 unemployment benefit between March 1981 and August 1985. Gould asked the AAT to review that decision.

The evidence

In late 1980 or early 1981 Gould received a proposal from Smith to develop an oxygen sensor. Gould's understanding was that, if the sensor was successfully developed, he would share in the profits.

Gould found suitable premises and visited them at various times for the next 6 to 9 months to work on the sensor. He told the AAT that he also sought work through the CES, but was unsuccessful because of his age. The CES was aware of his work on the sensor.

Gould said he received no money from Smith for his work but was reimbursed for materials purchased by him.

After about 6 months the equipment was moved to more suitable premises where experiments continued for 2 more years. Gould said he continued to visit the premises and continued looking for work. A third change of premises occurred.

In 1982, Gould travelled to the USA to negotiate a licensing agreement for the manufacture of the oxygen sensor. In 1983 Gould was declared bankrupt. Gould and Smith ended their association in 1985.

Only one 'Continuation of Unemployment Benefit' form for the relevant period was produced by the DSS. In response to the question on this form about other income or payments during the relevant period Gould had responded 'No', and indicated he had not done any full-time, casual or part-time work, nor had he commenced paid employment or carried on a trade or business alone or as a member of a partnership.

The legislation

At the relevant time s.107 of the *Social Security Act* [now s.116] provided that, to qualify for unemployment benefit, a person must satisfy the Secretary he was unemployed, was capable of undertaking, and was willing to undertake suitable paid work, and during the relevant period had taken reasonable steps to obtain such work.

Section 246(1) provides that where, as a consequence of a false statement or representation, or in consequence of a failure or omission to comply with a provision of the Act, an amount was paid to a person which would not otherwise have been paid, there is a debt due to the Commonwealth.

The decision

The AAT decided that Gould was not so seriously engaged in a business to lead to the conclusion that he was not unemployed.

However, the AAT decided that, despite his evidence of seeking work through the CES, Gould had not established that he was willing to undertake suitable paid work nor had he taken reasonable steps to obtain such work during the 4 years in question. He was thus not qualified for unemployment benefit at the relevant time.

The 'Continuation of Unemployment Benefit' form contained a false statement that he did not do any part-time or casual work and received no income. The false statements resulted in unemployment benefit being paid to him which resulted in debt due to the Commonwealth.

Formal decision

The AAT affirmed the decision under review.

[B.W.]