

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.]

