She had worked as a co-ordinator of a women's group, a teacher, a journalist and a photographer in Germany. In Australia, she had undertaken clerical work, managerial work and as a welfare worker.

Prince had become unemployed and had spent some 4 months looking for work in Sydney. She had moved to Byron Bay on the advice of friends after becoming somewhat despondent in Sydney.

Detailed evidence was given by an officer from the local DEET office. He testified that the greatest area of employment in the Byron Bay area was in the sales and tourist areas. His evidence was summarised by the AAT:

> 'Mr Mulholland advised that he thought all the statistical information indicated that Mrs Prince had diminished her employment prospects by moving to the Byron Bay area. However, he conceded that statistics suffer from the defect that they tend to place prospective workers into broad categories. Mrs Prince's qualification and skills have a wide-ranging quality and the witness conceded that the respondent's skills would surpass the majority of job seekers in the Byron Bay area and under normal circumstances he would expect her to obtain employment reasonably quickly.'

(Reasons, para. 33)

The AAT concluded that Prince had not reduced her employment prospects by moving to Byron Bay.

Formal decision

The Tribunal affirmed the decision of the SSAT.

[J.M.]

Special benefit: commitment to voluntary work

SECRETARY TO DSS and CONDON
(No. W90/68)

Decided: 2 November 1990 by B.H. Burns

On 19 December a DSS delegate rejected Helen Condon's claim for special benefit on the ground that she was voluntarily committed to unpaid employment.

The SSAT set aside that decision, finding that Condon was unemployable and therefore ineligible for unemployment benefit; that, given her preoccupation with spiritual matters, she was unable to earn a sufficient livelihood; and that it was appropriate to exercise the discretion to pay special benefit.

The DSS applied to the AAT for review of this decision.

The legislation

Section 129 of the *Social Security Act* provides that a special benefit may be granted to a person if s/he is not a person to whom unemployment or sickness benefit is payable and s/he is, because of age, physical or mental disability or domestic circumstances, or for any other reason, unable to earn a sufficient livelihood.

The basic requirements for unemployment benefit are described in *Kearns*, noted in this issue of the *Reporter*.

Were unemployment benefits payable?

Condon had been in continuous receipt of unemployment benefit since January 1980 to the date of the hearing. Given that special benefit could not be paid to a person to whom unemployment benefit was payable, the AAT had to determine whether Condon did or did not fulfil the requirements of the work test in s.116(1)(c) of the *Social Security Act*.

Condon had made a number of unsuccessful applications for special benefit prior to the one in dispute and on two occasions a DSS social worker had recommended that special benefit was the more appropriate benefit.

Condon in an earlier application (in April 1989) had stated that because of her age (then 41), her lack of qualifications and the length of time she had been unemployed, she would be unable to find full-time work. She also stated that she worked on a voluntary basis for the Universal Brotherhood and the Hare Krishna movement.

In relation to her application in September 1989, the SSAT had decided that Condon's

> '"overriding preoccupation with spiritual matters" was not a rational decision to live an alternative life-style, but rather an integral part of her personality and identity, and that even if she were to secure paid employment, her spiritual pre-occupation would result in any position being terminated.'

Condon relied on the SSAT's reasons for decision and the recommendations of the DSS social worker in making her arguments before the AAT. She explained to the AAT that she had made 3 commitments: one to the Universal Brotherhood, one to the Hare Krishnas and one to the farmers from whom she rented her home, 'where she tried to develop a "temple" atmosphere of peace and spirituality'.

Condon's last paid full-time work was as a comptometrist at Coles in 1969. She had held various part-time positions until 1986 and since then had not applied for paid full-time or part-time work.

The DSS described the voluntary work done for the Universal Brotherhood and the Hare Krishnas as domestic and cleaning work which Condon explained 'helps to make a pleasant atmosphere, conducive to spiritual development in those who share it'. She spent four to five 8-hour days every 2 to 3 months at each of these organisations. She also maintained the house and garden at the farming property where she lived, in an attempt to give something back to the farmers 'who contribute so much to society'.

Condon agreed that there was no paid work in the general community that she wanted to do. She said that even if she got work, she would leave it as she would not identify with it and 'it would be a strain to work while trying to keep up the temple atmosphere and her spiritual work'.

Condon agreed 'that there were choices available to her and she did not feel compelled or driven by some irresistible force to live as she does'.

In relation to eligibility for unemployment benefit the AAT concluded:

> 'The Tribunal finds the respondent to be genuinely committed to a belief that society can be improved by a heightening of spiritual values, and that in her own small way she is contributing to such an improvement. However, it is not the Tribunal's view that such a commitment makes her unemployable and by her demeanour at the hearing she impressed the Tribunal as being quite capable of looking after herself. She agreed readily that she could find work, but that it would be her choice to leave it and that it was by her choice that she lives as she does. She is not lacking in employable skills and she is able to work 8 hours a day when she wants to. The amount of time she spends in voluntary work . . . is not so large as to prevent her from working in at least part-time paid employment. The Tribunal is not satisfied that the respondent has, in recent times, genuinely sought paid work or been willing to undertake paid work, and finds that she is not eligible to be paid unemployment benefit.'

(Reasons, para.12)

The AAT went on to consider the discretionary payment of special benefit. It concluded, following *Te Velde* (1981) 3 *SSR* 23, that the degree of control a person exercises over their circumstances was a relevant consideration in eligibility for special benefit and concluded that Condon was not '"unable to earn a sufficient livelihood" but rather, she chooses not to': Reasons, para.13. It concluded:

> 'The purpose of s.129 of the Act is to provide support from the public purse to people who are unable to support themselves and who are not eligible for any other Social Security

pension or benefit. It should not be the responsibility of the taxpayer to support those who choose to commit themselves to voluntary work, however commendable that may be.'

Formal decision

The Tribunal set aside the decision under review and substituted for it a decision that the discretion in s.129 of the Act should not be exercised in Condon's favour.

[J.M.]

Compensation award: discretion to disregard

GREEN and SECRETARY TO DSS (No. 6033)

Decided: 13 July 1990 by T.E. Barnett.

Kimble Green received an award of $73 500, in settlement of his workers' compensation claim, in October 1989. The DSS decided that Green was precluded from receiving a pension for 70 weeks.

On review, the SSAT affirmed that decision. Green asked the AAT to review that decision, on the basis that the circumstances of his case justified an exercise of the discretion in s.156 of the *Social Security Act*.

The legislation

Section 156 allows the Secretary to treat all or part of a compensation award 'as not having been made . . . if the Secretary considers it appropriate to do so in the special circumstances of the case'.

Green was married and had 3 young children. At the time of his industrial injury, he owned his house, subject to a mortgage of $28 000. He was repaying various debts at the rate of about $1280 a month; and working considerable overtime in order to hold his precarious financial position together.

Following his industrial injury, Green was paid periodic compensation at a rate well below his pre-injury earnings. With the assistance of family allowance supplement, G was just able to meet his financial commitments.

However, an amendment to the family allowance supplement income test, which took effect from 1 December 1988, rendered Green ineligible for family allowance supplement. The consequential drop in his income forced him to sell his house, and to rent accommodation at a price which left the family without funds for its necessary expenditure.

Because of these financial pressures and of the emotional strain of being placed under surveillance by his employer's insurers, Green felt considerable pressure to settle his workers' compensation claim.

Following that settlement, Green's application to the WA housing authority for subsidised housing was rejected because of his receipt of the settlement funds. Faced with the prospect of a minimal income until February 1991, high rental payments and a shrinking capital fund, G then purchased a block of land and commenced to construct a new house for himself and his family.

By the time of the hearing of this application for review in April 1990, Green's compensation payment had been reduced to about $10 000, his house was unfinished and his only income came from family allowance supplement payments of $250.70 a fortnight.

The decision

The AAT decided that there were sufficient 'special circumstances' in the present case to justify an exercise of the s.156 discretion.

The Tribunal took into account that Green had $10 000 for the support of himself and his family. If this was expended at the same rate at which invalid pension would have been payable to Green, it would last for about 30 weeks – that is, until 8 November 1990.

It was, the AAT said, appropriate to treat so much of the award of compensation as not having been made as would have the effect of ending the preclusion period on 8 November 1990.

Formal decision

The AAT set aside the decision of the SSAT and substituted a decision that $5606.28 should be treated as not having been made, and payment of invalid pension precluded until 9 November 1990.

[P.H.]

Invalid pension: incapacity for work

SECRETARY TO DSS and VXK (No. 6458)

Decided: 30 November 1990 by H.E. Hallowes.

VXK claimed an invalid pension in April 1989. The DSS rejected the claim. On appeal, the SSAT set aside that decision and decided that VXK was qualified for an invalid pension. The DSS asked the AAT to review that decision.

The facts

VXK was born in 1953 and was last employed in August 1985 when he injured his back and was advised not to do any heavy lifting or bending. His work experience had been solely in industries requiring heavy lifting, bending and driving.

In May 1989 VXK's treating doctor advised that VXK was fit only for light duties due to facet joint pathology. On 23 May 1989 a CMO reported the affected area was the thoracic and lumbar spine with a loss of more than half the range of movement, limiting him to light duties and that prolonged standing or sitting would aggravate his pain. In May 1988 an orthopaedic surgeon reported that VXK had evidence of lumbar disc degeneration and significant functional overlay with a permanent disability amounting to approximately 25% reduction in his working capacity.

VXK gave evidence that he attended school to age 14 and worked in the meat trade. In June 1985 he hurt his back delivering pig carcasses and had 6 weeks off work. He returned to light duties but left work in late 1988 because he was asked to do heavy lifting. In late 1988 he attempted a return to work peeling potatoes but lasted for only half an hour. A rehabilitation report noted that he was willing to try anything. In June 1990 he was an active member of a bowling club. Medical evidence indicated VXK was overweight.

The DSS submitted that the Tribunal should accept the medical evidence of a surgeon, who appeared before the Tribunal, and find that VXK was a malingerer. The Tribunal found some support for this from VXK's doctor, who was by then responsible for his ongoing management. However, VXK's treating orthopaedic specialist gave a different picture.