

course was more likely to improve his chances of sustained employment.

### Findings

The AAT found that, from a purely technical viewpoint, Parker failed to comply with the terms of the CMAA. However the reason for this non-compliance was not within his control as it was only after he had accepted the job that he learnt that the position was not longer available. The decision to withdraw the job offer was found not to be a matter within Parker's control as it was made by another. The AAT also concluded that the withdrawal of the job offer was not a matter which was reasonably foreseeable by Parker.

### Decision

The SSAT decision was affirmed. Parker remained qualified for NSA.

[H.B.]

## Application for review: reinstatement

**COFFEY and SECRETARY TO THE DSS**  
(No. 12368)

**Decided:** 3 November 1997 by J.A. Kiosoglous.

Coffey lodged an application for review of a DSS decision to raise and seek recovery of an overpayment of \$3502.86 (including penalty interest). This decision was made in August 1992, and had been reviewed by the SSAT and affirmed in June 1994. Coffey also lodged an application for an extension of time to lodge his appeal.

Following the SSAT decision, Coffey had lodged an application for review by the AAT. This application was dismissed by the AAT as frivolous and without merit on 7 November 1994. The AAT described this further application for review as effectively being an application for reinstatement.

### The arguments

The DSS opposed the application on the basis that it would be prejudiced if an extension was granted, and there needed to be a finality to administrative decision making. It was also argued that Coffey's case lacked merit. The AAT observed that the overpayment had been raised because the DSS alleged Coffey had under declared his income from employ-

ment. The debt has now been fully recovered.

Coffey argued that certain business expenses should be taken into account when assessing his income. He based this argument on an AAT decision of *Secretary to the DSS and Danielson* (decided 18 December 1995). The AAT pointed out that the Federal Court had overturned this decision, and the AAT had subsequently made a new decision.

### Jurisdiction

The AAT advised Coffey at the hearing that it could not reinstate an application for review which had been dismissed. If Coffey wished to dispute the earlier AAT decision he must appeal to the Federal Court. Coffey explained that he had delayed returning to the AAT for three years, because he had experienced stress in 1994 due to criminal proceedings associated with the overpayment. Also, he received psychiatric treatment from April 1996. The AAT adjourned to enable Coffey to obtain a medical report and legal advice. At the resumed hearing Coffey argued that he had new information and that he wanted his application for review reinstated.

The AAT found that it had no jurisdiction to deal with an application which had previously been dismissed as frivolous and without merit. It also dismissed the application for an extension of time.

### Formal decision

The AAT decided that it did not have jurisdiction and dismissed the application. It also refused to grant an extension of time to lodge an application for review.

[C.H.]

## Late application for review: resting on rights

**CORNALLY and SECRETARY TO THE DSS**  
(No. 12367)

**Decided:** 4 November 1997 by D. Chappell.

Cornally sought an extension of time to lodge an application for review of an SSAT decision that Cornally owed a debt to the Commonwealth of \$12424.58. The SSAT had made its decision on 14 December 1995, and Cornally had been ad-

vised of the decision by letter dated 29 December 1995.

### The facts

Cornally had received newstart allowance (NSA) between 14 April 1993 and 10 March 1994. The DSS decided that during that period Cornally was self-employed not unemployed, and the SSAT agreed with this conclusion. The SSAT also found that Cornally had made false statements to the DSS, and therefore the debt arose pursuant to s.1224 of the *Social Security Act 1991* (the Act), and should not be waived.

Cornally told the AAT that a series of family tragedies and the severe economic downturn in the late 1980s led to a crisis in the family business. By the end of 1992 Cornally was not earning sufficient from the business to support his family of a wife and 3 young children. He sought alternative employment unsuccessfully. He was advised by the CES that he might be eligible for a social security benefit. Even though he had previously had few dealings with government and had always been self sufficient, he went to the DSS. After he received the application form, he asked for assistance to complete it. He told the DSS that he was the director of a family business, but he had no money or income. He relied on the DSS's advice when completing his forms.

Cornally said that the SSAT had not believed him and had been cynical about his evidence. The members had not accepted his evidence about the advice given by the DSS. This experience had led him to believe that he would not receive a fair hearing before the AAT, and so he did not appeal.

Because Cornally believed that he could not fight the DSS, he contacted the recovery section to negotiate a way to pay back his debt. In April 1996 he wrote to the DSS offering to repay the debt out of moneys he would receive from a consulting contract he had just obtained. He expected to receive his first payment under the contract in June 1996, and he offered to pay 10% of his gross income to the DSS.

In August 1996 Cornally wrote to the Minister for Social Security complaining about the advice he had received from the DSS and the CES, and asking her to investigate. He also complained about the appeal process. He referred to his right to appeal to the AAT, and that he had decided it would be useless to appeal. He also referred to his offer to repay the debt which had been rejected by the DSS as too slow. Cornally was advised by the Minister's office that he should explore his right to further review or complain to