1995 and was advised (verbally) that she was not qualified for payments.

In August 1995 she 'came across' a complex assessment officer who noted that Mulhallen's real estate was encumbered by a debt of $479,000. This officer allegedly concluded that there was 'a huge mistake' in the handling of her claim for payments.

On 7 September Mulhallen asked for back payment of payments. This was rejected by the Department. This decision was affirmed by the Social Security Appeals Tribunal on the basis that s.1225(4) would have the effect that even if Mulhallen succeeded on the merits, any decision could only take effect from 14 January 1998 (the date of appeal to the SSAT). The Administrative Appeals Tribunal (AAT) also affirmed the decision. In June 2000 the Federal Court set aside the decision of the AAT and remitted the matter back to the Tribunal.

The issue

The main issue was whether Mulhallen was entitled to arrears of JSA prior to September 1995. Her claim was that she was entitled to JSA for two periods:

- between 1 October 1991 and 27 July 1992; and
- between 5 April 1995 and 6 September 1995.

To decide this it was necessary to address two issues:

1. Was Mulhallen given notice of a decision of an ARO made on 22 June 1992?
2. Could JSA be paid before Mulhallen lodged a claim form on 6 September 1995.

The law

The relevant law was 1255(4) of the Act, which provided:

1255(4) If:

(a) a person is given written notice of a decision (including a decision of the Secretary or an authorised review officer made under section 1243) under this Act; and

(b) the person applies to the SSAT more than 3 months after the notice was given, for review of the decision; and

(c) the SSAT varies the decision or sets the decision aside and substitutes a new decision; and

(d) the effect of the SSAT's decision is:

(i) to grant the person's claim for a pension, benefit or allowance; or

(ii) to direct the making of a payment of pension, benefit or allowance to the person; or

(iii) to increase the rate of the person's pension, benefit or allowance;

subsection (3) applies as if references in that subsection to the day on which the decision under review had effect were references to the day on which the application was made to the SSAT for review of the decision under review.

Note: meaning of 'given' — sections 28a and 29 of the *Acts Interpretation Act 1901* provide that a notice is given:

(a) to a natural person if the notice is:

- delivered personally; or
- left at the last known address of the person; or
- sent by prepaid post to the last known address of the person; and

(b) to a body corporate if the notice is left at, or sent by prepaid post to, the head office or a registered office or a principal office of the body corporate.

The submissions

It was submitted on behalf of Mulhallen that there was insufficient evidence to show that she had received the ARO's decision in May/June 1992. Consequently she should have her entitlement to JSA reconsidered in accordance with the law as it stood at 1991; alternatively the hardship provisions in effect in April 1992 should apply. Various cases concerning cancellation and suspension of family allowance were referred to.

On behalf of the Department it was submitted that the notice of the decision was 'given' to Mulhallen, but if this did not occur then the matter should be remitted to the SSAT to consider the issue on the merits.

Findings

The AAT concluded that, on balance, Mulhallen first claimed JSA in October 1991. This claim was rejected as was apparent from a letter sent to her in February 1992, which she acknowledged receiving. A computer record indicated that Mulhallen asked for a further review in May 1992 and that the decision was affirmed by an ARO on 22 June 1992. Consequently, under ss.28A and 29 of the *Acts Interpretation Act 1901*, she was 'given' notice of the ARO's decision.

It was clear that Mulhallen did not ask for a review of this decision until 7 September 1995.

The AAT found that its jurisdiction arose under s.179 of the *Social Security (Administration) Act 1999* and that it was the ARO's decision which was before the Tribunal. On the merits the Tribunal was satisfied that it should vary the ARO's decision by granting JSA from the date of claim in October 1991 as her assets did not preclude payment.

However as Mulhallen applied to the SSAT more than three months after she was given notice of the ARO's decision under s.1255(4)(c) the effect of this decision was from 14 January 1998 (the date she applied to the SSAT). The Tribunal commented that 'the Secretary may consider whether compensation should be paid to the applicant for detriment caused by defective administration' (Reasons, para 30).

In relation to the second period, the Tribunal found that Mulhallen was 'probably not registered with the CES' and even if the Tribunal granted her claim she would be precluded from payments for similar reasons to the first period.

Formal decision

The AAT varied the decision with effect that:

- job search allowance was payable to Mulhallen from the date she lodged her claim for JSA in 1991;
- the day on which this decision has effect however is the day on which the application was made to the SSAT — 14 January 1998.

The AAT further decided that the applicant was not entitled to be paid JSA between 5 April 1995 and 6 September 1995.

[R.P.]

Newstart allowance: voluntary cessation of employment

PAANANEN and SECRETARY TO THE DFaCS (No. 2000/1022)

Decided: 22 November 2000 by D.J. Campbell.

After more than two years as a service technician with the BankTech Group earning more than $43,500 a year, Paananen resigned from his job on 10 September 1999. He claimed newstart allowance on 5 October 1999. An 18% rate reduction period of 26 weeks from 11 September 1999 to 10 March 2000 was imposed because he had voluntarily left his employment.

Legislation

Section 628 of the *Social Security Act 1991* (the Act) provided:

> **628.** If:
>
> (a) a person's unemployment is due, either directly or indirectly, to a voluntary act of the person **(the voluntary act)**; and
>
> (b) the Secretary is not satisfied that the person's voluntary act was reasonable;
>
> then:
>
> (c) if the voluntary act is the person's first or second activity test breach in the 2 years immediately before the day after the voluntary act ...an activity test breach rate reduction period applies to the person; or
>
> (d) if the voluntary act is the person's third or subsequent activity test breach in the 2 years immediately before the day after the voluntary act ... an activity test non-payment period applies to the person.

Paananen said that, before he resigned, he was having great trouble managing his financial affairs for the following reasons:

- $241 a week, or 32% of his gross earnings, was being garnisheed to pay child support to his former wife for their three children — an increase of $100 a week over the last three months;
- his rent had increased from $85 to $155 a week;
- he needed a car for work, and his car finance repayments of $76 a week were much in arrears;
- he had to repay $50 a week on a debt of $1300 to American Express;
- he had to repay $50 a week on an advance from his former employer;
- he also had to pay car running costs and personal expenses.

Paananen said he had considered driving taxis to alleviate his financial quandary, and he had been refused legal aid. An accountant advised him to cease work and use accrued leave payments to meet accrued debt. He did so, as he could see no other alternative, and he then went to live rent free with his father in Queensland.

Reasons

In considering whether Paananen's decision to leave work voluntarily was reasonable, the Tribunal's focus was his reasons for the decision. It understood the word 'reasonable' to imply an objective assessment.

The Tribunal noted that Paananen viewed the weekly child support payments as the major cause of his inability to deal with his worsening financial circumstances (although in the Tribunal's opinion the cause was more multifaceted). He thought that by leaving work his child support payments would be much less, some money would be available to meet pressing creditors, and he could return to the family haven with the certainty of food and accommodation.

The Tribunal said Paananen still had obligations to his children. Also, his financial difficulties:

> while massaged in the short term, remained as evidenced by his continuing level of debt, his limited ability to find work in his new environment, and his current level of income which had a limited ability to meet car and living expenses let alone debt servicing. In short, the Tribunal is of the view that his decision to leave work provided a temporary respite only, and as such could not be considered to be a reasonable action.

(Reasons, para. 15)

It concluded that an Activity Test breach rate reduction applied to Paananen pursuant to s.628 of the Act. Further, s.644AA provided that if an Activity Test breach rate reduction period applied to a person, the applicable period was 26 weeks, the commencement date was 11 September 1999 pursuant to s.644AC(1), and s.644AE(2) reduced the rate by 18% for a first Activity Test breach.

Formal decision

The AAT affirmed the decision to impose an 18% rate reduction period of 26 weeks from 11 September 1999.

[K.deH.]

Newstart allowance: requirement to notify; incorrect advice

SRQQ and SECRETARY TO THE DFaCS
No. 2000/643

Decided: 2 August 2000 by S.M. Bullock.

Background

SRQQ experienced poor health in late 1997 and, in early 1998, her father died. She obtained employment in the first school term of 1998. In the context of her traumas and poor health, she decided to take a holiday overseas in Hong Kong. Prior to travelling overseas, SRQQ was in receipt of a newstart allowance (NA) and exempt from the Activity Test because of medical certificates. The Department raised a debt of $166.15 for the period she was overseas.

Issue

The issues in this matter were: whether SRQQ was overpaid NA in the amount of $166.15; if so, whether this overpayment was a debt due to the Commonwealth; and if so, whether the debt should be recovered in part or as a whole.

Legislation

Qualification for NA is determined under s.593 of the Act. It is a general requirement for the payment of NA that a person must be resident in Australia (s.593(1)(g)(iii)). In certain circumstances, NA may be payable to a person who is temporarily absent from Australia in order to seek medical treatment (s.593(1A)).

Section 657 of the Act deals with notices to recipients of NA that require them to inform the Department if a specified event occurs or is likely to occur.

Section 1223 of the Act deals with debts arising from payments to a person not qualified or where the amount was not payable. Section 1224 of the Act also deals with debts and specifically those arising out of a recipient's contravention of the Act in making a false statement or failing to comply with a provision of the Act

Section 1236 provides that the Secretary may write-off a debt in certain circumstances. Section 1237A deals with the waiver of a debt attributed to sole administrative error. Section 1237AAD provides for waiver of a debt in special circumstances when the debtor did not knowingly make a false statement or fail to comply with Act.

Conflict between advice and notices

In May 1998, SRQQ was sent a departmental letter, which advised her that she had been exempt from the Activity Test (22 May 1998 to 22 July 1998). This letter also advised that this was a recipient notification under s.657 of the *Social Security Act 1991* and she must tell the Department within seven days (amongst other things) if she left or decided to leave Australia (including holidays). SRQQ left Australia on 26 June and returned on 4 July. She lodged an application for payment on 6 July. In answer to a question on this application, SRQQ ticked the 'No' box indicating that she had not intended to go overseas or had not been overseas.

SRQQ explained to the Tribunal that in May 1998, she had attended a Centrelink office. She spoke to an