

Newstart allowance: activity test; unemployed

SECRETARY TO THE DFaCS and
SAHIN
(No. 2001/732)

Decided: 3 August 2001 by
J. Handley.

Background

The Department decided that Sahin was not entitled to newstart allowance because he was considered to be self-employed and not unemployed. Since he was not unemployed, he was not entitled to newstart allowance.

The SSAT, on review, set aside the decision of the Department and decided that Sahin was 'available for work'.

The issue

To qualify for newstart allowance, a person must satisfy the Department that they are 'unemployed'. The sole issue in this appeal was whether Sahin was 'unemployed' within the meaning of s.593 (1) of the Act.

The evidence

Sahin owned 26 acres of land in Mildura of which 14 acres were used to grow sultanas and 4 acres were used for wine grapes.

Sahin told the Tribunal that it was not his intention to operate the property as a 'serious economic enterprise'. He said that apart from a three to four week period when the grapes were picked, he was available for work. He had worked in the past, pruning for other growers and was registered with Centrelink as unemployed.

He said the business was operating at a loss and that because of the size of his property and competition, it was not possible to earn income sufficient to meet his debts. Also he could not pay for the necessary plant and equipment that would be required to produce more grapes.

In relation to day-to-day management of the property, he said he relied on contractors. Contractors were used for ploughing, spraying, fertilising, cultivating and rotary hoeing. These tasks could be undertaken whether he was on the property or not.

The ongoing maintenance of the property was carried out every morning and night, and other jobs such as pruning were completed on weekends.

Conclusion

The AAT accepted the evidence in relation to Sahin's activities. It concluded that Sahin initially intended to develop the property but that it became obvious that this was not possible. The Tribunal concluded that the property did not oc-

cupy Sahin on a full-time basis and that apart from the three to four week period when he worked on the property full-time, he was available to look for work elsewhere. The Tribunal found that maintenance of the property could be carried out in the morning, evening or weekends.

The Tribunal considered the cases of *Howie and Secretary, Department of Social Security* (1986) 8 ALD N174 and *Director-General of Social Services v Thomson* 1982 38 ALR 624.

The Tribunal discussed the distinction between 'underemployed' and 'unemployed'. It found that Sahin's situation was different to a shopkeeper who was waiting for customers or a person engaged in a business where they were trying to develop their business within the marketplace.

The Tribunal found it 'remarkable' that Sahin could spend so little time on his business; however he had both looked for and obtained work apart from his business. There was nothing about the ownership of his land which prohibited him from being available to work for other people.

Formal decision

The AAT affirmed the decision of the SSAT.

[R.P.]

Federal Court

Compensation: periodic payments or lump sum

REID v SECRETARY TO THE
DFaCS
(Federal Court of Australia)

Decided: 29 June 2001 by Branson,
Lindgren and Mansfield JJ.

Reid appealed a decision of von Doussa J that the compensation payments received by Reid reduced the rate of disability support pension (DSP) paid to him to nil.

The facts

Reid was injured at work. He claimed compensation and was paid weekly payments from November 1990 to March 1995. Under the relevant State legisla-

tion the workers compensation authority determined that Reid's loss of future earning capacity could be capitalised and interim lump sum payments made. Four interim payments covering particular periods were made to Reid for the total period 30 March 1995 to 24 March 1999. On 30 January 1998 Reid applied for the DSP.

Centrelink treated the four lump sum payments made to Reid as periodic payments and as a result the rate of DSP payable to Reid was reduced to nil. Reid argued that the compensation provisions of the *Social Security Act 1991* (the Act) did not apply to him.

The law

Section 1163A of the the Act provided in 1998:

1163A.(1) If:

- (a) a person is entitled to periodic payments under a law of a State or Territory; and
 - (b) the person's entitlement to the periodic payments is converted under the law of the State or Territory into an entitlement to a lump sum; and
 - (c) the lump sum is calculated by reference to a period;
- this Part applies to the person as if:
- (e) the person had not received:
 - (i) the lump sum; or
 - (ii) if the lump sum is to be paid in instalments—any of the instalments; and
 - (f) the person had received in each fortnight during the period a periodic compensation payment equal to:

lump sum amount

number of fortnights in the period

where: