knowledged, did not eventuate), to be near members of his family, and to hopefully improve his own and his wife's health, although the business opportunity was the principal reason for the move. The Tribunal concluded that Markovic had sufficient reason for moving to Coober Pedy, within the provisions of s.634(1) of the Act.

The formal decision

The Tribunal affirmed the decision under review.

[P.A.S.]

Newstart allowance: activity test; moving to area of lower employment prospects

WATSON and SECRETARY TO THE DFaCS (No. 2002/822)

Decided: 20 September 2002 by J. Cowdroy.

The issue

The issue in this matter was whether Watson should be precluded from receipt of newstart allowance (NSA) because he had moved to an area of lower employment prospects without sufficient reason.

Background

Watson moved from a Sydney suburb to Woolgoolga (near Coffs Harbour) in July 2001, having previously contacted Centrelink about the move on several occasions from May 2001. He suffered from bilateral carpal tunnel syndrome, which was aggravated by colder weather and limited the work he was able to do, and also arthritis, a bad back, and diabetes mellitus. After telephone advice from the Centrelink Call Centre in May 2001 that it would be 'all right' to move, he later had a personal interview with Centrelink in which he was advised that his NSA could be cancelled. However, as at that stage he had purchased a caravan and placed it on-site at Woolgoolga, he went ahead with the move some two months later. His daughter lived some eight hours drive away from Sydney, but only three hours from Woolgoolga, meaning that he was able to see her more often after the move there, and he indicated that he preferred to move to the coast at Woolgoolga as he expected inland areas to be colder and so less suitable to his health.

Watson agreed that the move to Woolgoolga did reduce his employment prospects, but argued that he had moved to be 'near' a family member (his daughter), and also that the move was necessary because of extreme circumstances, namely his health conditions, the climate, the availability of caravan park accommodation, and his reliance on Centrelink advice. Nevertheless Centrelink determined that he had moved without sufficient reason, a view upheld by the Social Security Appeals Tribunal in October 2001.

The law

The *Social Security Act 1991* (the Act) provides by s.634 that NSA is not payable for a preclusion period, if the recipient reduced his employment prospects by moving to a new area without 'sufficient reason'. Section 634(3) lists the circumstances that are to be regarded as being 'sufficient reason' for moving to a new location, and provides:

> **634.(3)** For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:
>
> (a) moves to live with a family member who has already established his or her residence in that place of residence; or
>
> (b) moves to live near a family member who has already established residence in the same area; or
>
> (c) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or
>
> (d) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).

Thus under s.634(3) to be a 'sufficient reason' for a move to a new location, a person must move in order to live with or near a family member, to treat or alleviate a physical illness or disease, or for some other extreme circumstance. The term 'family member' is defined in s.23(14) of the Act to include a child, hence Mr Watson's daughter fell within that provision.

The key issues in this matter were therefore whether Mr Watson's move to Woolgoolga was to be 'near' his daughter, or otherwise could be characterised as due to 'an extreme circumstance'.

Discussion

The Tribunal noted *McMillan v Barclay Curle & Co Ltd* (1899) 2 F (Ct of Sess) 91 that the 'question of whether one place is near another is entirely a question of circumstances' (quoted in Reasons, para. 36), and determined that a common sense approach was required in this matter. The Tribunal concluded that even though Woolgoolga was nearer in travel time to his daughter's home, than was Sydney, it could not be considered to be 'near' to his daughter when a return journey of six hours was still involved. The Tribunal noted Watson's arguments regarding his health, but considered these were not central to his decision to move, and that the move to Woolgoolga was prompted by a number of reasons. The Tribunal concluded that Watson had not given a great deal of thought to why he chose to live in Woolgoolga, rather than another location. In relation to the issue of 'extreme circumstance', the Tribunal concluded that there was nothing in the applicant's case that could be characterised as 'extreme' and that although the Centrelink advice had been to some extent ambiguous, a clear indication had been given that his NSA payments could be jeopardised before he made his final move to Woolgoolga.

The Tribunal concluded that his move was not one to be 'near' his daughter, not to alleviate his health concerns, nor was there an 'extreme circumstance' sufficient to justify it.

Formal decision

The Tribunal affirmed the decision under review.

[P.A.S.]