

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No. CE/216/2017

Before E A L BANO

Decision: My decision is that:

(1) The decisions of the First-tier Tribunal refusing extensions of time for applying for statements of reasons made on 26 October 2016 in Appeal CE/216/2016 and on 2 November 2016 in Appeal CE/217/2017 involved the making of errors on a point of law. I set those decisions aside.

(2) I exercise my powers under rule 7(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to waive the requirement to apply for permission to appeal against the decision of the tribunal made on 7 September 2016 dismissing the claimant's appeal under reference SC227/16/01219 and the decision of the tribunal made on 8 August 2016 dismissing the claimant's appeal under reference SC227/16/01305. I waive all relevant time limits, give permission to appeal against those decisions, allow the appeals, set aside the decisions and refer the cases to the First-tier Tribunal for rehearing before fresh tribunals.

REASONS FOR DECISION

1. These are appeals against decisions of a tribunal judge refusing to extend the time for applying for a statement of reasons. The appeals are brought by separate claimants, although acting through the same representative, but the reasons given by the judge for refusing to extend time were the same in both cases. Since one of the issues which I propose to consider is whether that in itself amounted to an error of law, I shall, with the consent of the claimants' representative, give one set of reasons for my decision in both appeals.

2. The claimant in appeal CE/216/2017 appealed against a decision made on 29 April 2016 superseding and removing an award of employment and support allowance, following an examination by a Healthcare Professional on 11 April 2016 at which she was assessed as scoring no points in respect of either the physical or mental descriptors of the limited capability for work assessment. Following a hearing on 7 September 2016, the tribunal awarded the claimant 6 points in respect of mobilising descriptor 1(d), but since that score was insufficient to entitle her to an award of employment and support allowance, the tribunal dismissed the appeal. The decision notice recording the outcome of the appeal was issued on the day of the hearing.

3. In a letter received on 20 October 2016, the claimant requested a statement of reasons in the following terms:

"I would like to request a copy of the full written reasons and the record of proceedings for my appeal that was held on 07/09/2016 for my Employment and Support Allowance claim.

I realise that my request for a statement of reasons is late; however, I suffer from osteoarthritis, and associated plantar faciitis in both feet. In addition I have recently been attending hospital for mammograms which have caused me great anxiety and affected my ability to cope and function.

Please find enclosed a copy letter from my doctor a letter of evidence.

I hope that you will give weight to my request. Thank you for your co-operation in this matter. I look forward to your early response."

The accompanying letter from the claimant's GP confirmed the diagnosis of osteoarthritis and plantar fasciitis and described the claimant's difficulties in walking, standing, sitting, climbing stairs and using her hands.

4. The claimant in appeal CE/217/2017 appealed against a decision made on 4 November 2015, but apparently not notified until 16 March 2016, revising and removing an award of employment and support allowance made on 1 August 2012, on the ground that the claimant was living as a married couple with a person who was in remunerative work. The tribunal dismissed the appeal on 8 August 2016 and issued a decision notice to that effect on the same day.

5. By letter dated 7 October 2016, the claimant applied through her present representative for a statement of reasons and a record of proceedings, but without giving any reasons for the lateness of the request. Presumably a letter was then sent requesting the reasons for the lateness, because on 19 October 2016 the claimant's representative wrote again as follows:

"Thank you for your recent letter.

I apologise for not providing further details of reasons for lateness of the request for reasons.

[The claimant] tells us that she suffers from depression and was having a bad period at the time following the decision. She tells us that she was having particular difficulties with her children which was exacerbated by her ongoing physical health conditions.

We also understand that she was not aware of the deadline due to her dyslexia.

Please do not hesitate to ring me [...] if you need to discuss this matter further."

Someone has written the word "vague" next to the third paragraph of the letter.

6. The determination refusing the request for an extension of time for applying for a statement of reasons was in the form of a decision notice and, apart from the name of the claimant and the relevant dates, was identical in both cases. The punctuation and spacing of both documents are the same and it is therefore evident that they were generated by a word processor. So far as relevant, the document reads:

“A Statement of Reasons is not to be provided.

The time limit under Rule 7 The Tribunals Procedure (First-tier Tribunal) (Social entitlement Chamber) Rules 2008 is not waived/extended.

Reasons

[Name of claimant] attended the hearing and was provided with the notes which explain what happens next.

There is no reason why a request for a Statement of Reasons of the tribunal's decision could not have been made in time. A month is a very long time within which to make this simple request.

Evidence has not been provided to corroborate the claim it was not possible to make the request for a statement of reasons in time.

The purpose of the time limit is to ensure that the judge has as good a recollection of the proceedings as possible. Accompanying the decision notice was a document setting out the next stage including time limits. There are no physical or mental health reasons why the request could not have been made in time. Rule 2 The Tribunals Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 applied.”

There is a passage at the bottom of the decision notice informing the parties of their right to apply for permission to appeal to the Upper Tribunal which, while technically correct, is presumably intended for use in cases where permission has been refused to appeal to the Upper Tribunal against a final decision.

7. The claimants each applied through their present representative for permission to appeal to the Upper Tribunal on the grounds that the refusals to extend time were in error of law and that the reasons given for the refusal were inadequate. Judge Levenson gave permission to appeal on 30 January 2017 in CE/217/2017 and on 14 February 2017 in CE/216/2017, but both appeals have been opposed by the Secretary of State. Since a refusal to extend the time for applying for a statement of reasons is not an ‘excluded decision’ under section 11(5) of the Tribunals, Courts and Enforcement Act 2007, there is a right of appeal to the Upper Tribunal against such a decision-see *LS v London Borough of Lambeth (HB)* [2010] UKUT 461(AAC), [2011] AACR 27.

8. A tribunal is under a duty to give reasons both at common law, as a concomitant of the duty of fairness-see, for example, *Stefan v General Medical Council* [1999] 1

WLR 1293; and under the rules of procedure made under the authority of section 22 of the Tribunals, Courts and Enforcement Act 2007. The right to a fair trial conferred by Article 6 of the European Convention on Human Rights also imposes a similar obligation to give reasons for a judicial decision-see, for example, *H.A.L. v Finland* (App. 38267/97).

9. Although rule 33 of the Tribunal Procedure ((First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 empowers a tribunal to issue a decision notice without reasons, a party's right to a reasoned decision is preserved by rules 34(3) and (4) of the Procedure Rules, which provide:

“(3) Unless the tribunal has already provided a written statement of reasons..., a party may make a written application to the Tribunal for such statement following a decision which finally disposes of-

- (a) all issues in the proceedings; or
- (b) a preliminary issue dealt with following a direction under rule 5(3)(e).

(4) An application under paragraph (3) must be received within 1 month of the date on which the Tribunal sent or otherwise provided to the party a decision notice relating to the decision.”

The power to extend the time for applying for a statement of reasons is the general power conferred by rule 5(3)(a) of the Procedure Rules, which gives a tribunal power to:

“extend or shorten the time for complying with any rule, practice direction or direction”

Rule 2(3) of the Procedure Rules requires the power to extend time to be exercised to give effect to the overriding objective of dealing with cases fairly and justly.

10. Since the decisions under appeal in these cases did not finally dispose of all the issues in the proceedings and were not decisions on a preliminary issue, rule 34 of the Procedure Rules did not impose on the tribunal a duty to give reasons. I therefore reject the claimants' submission that the decisions refusing to extend time for applying for a statement of reasons were themselves in error of law because the reasons given for them were inadequate. However, since it was held in *LS v LB Lambeth* that an appeal lies against decisions in respect of which there is no obligation to give reasons, it must follow that any error of law revealed by reasons which have been given may be the subject of an appeal.

11. Compliance with time limits is of course important, but in tribunals constituted under the Tribunals, Courts and Enforcement Act 2007 it is necessary to have regard to the overriding objective when deciding how to exercise the discretion to extend time conferred by rule 5(3)(a). As the claimant's representative has pointed out in the grounds of appeal, the general principles to be applied in cases where there has been a failure to comply with a time limit have been considered in a number of authorities. Since those authorities have been fully analysed in Jacobs,

Tribunal Practice and Procedure, 4th ed., paras. 7.101-7.123, it is sufficient for the purposes of this appeal to adopt the summary of McCowan LJ in *Norwich and Peterborough Building Society v Steed* [1991] 1 WLR 449:

“The matters which this court takes into account in deciding whether to grant an extension of time are first, the length of the delay; secondly, the reasons for the delay; thirdly the chances of the appeal succeeding if the application is granted; and fourthly the degree of prejudice to the respondent if the application is granted.”

R12. I respectfully agree with the claimant’s representative that the reasons given in these cases for refusing to extend time fail to demonstrate that the discretion was properly exercised in accordance with the relevant principles. The delay in applying for a statement or reasons was about 14 days in *CE/216/2017* and about 31 days in *CE/217/2016*. There is no indication of any attempt by the judge to evaluate the extent to which the delay in each case was excusable in the light of the reasons for delay put forward by each of the claimants. The rules impose no requirement for it to have been impossible to apply for a statement of reasons within the permitted time, and there is similarly no requirement for corroborative evidence to be provided of the reasons for delay. In a case in which a statement of reasons is being requested in order to consider an appeal, it will be difficult to gauge the strength of any possible such appeal without the reasons, but there was nothing to suggest in either of these cases that an appeal was unlikely to succeed. The prejudice resulting from delay in requesting statements of reasons was expressed in general terms, but there was no investigation of whether preparation of full reasons would in fact be hampered by the comparatively short delays in these cases, as might occur if the case papers had been destroyed.

13. I have therefore concluded that the reasons given for refusing an extension of time for applying for a statement of reasons were in error of law if applied to either one of these cases individually, but in my view the fact that they were identical in both cases gives rise to a separate possible ground for allowing the appeal. The use of decisions in a standard form may give rise to doubt as to whether the individual facts and circumstances of a case have been fully considered, and in *Mansur v Turkey* (1995) Series A No. 319-B the European Court of Human Rights took into account the fact that reasons given by a Turkish court had been in a stereotyped form in holding that there had been a breach of Article 5(3) of the European Convention on Human Rights. Except for the word “vague” written by an unknown hand on one of the letters applying for an extension of time, there is nothing to indicate that the individual facts of each these cases were taken into consideration before standard form reasons were issued refusing the applications. However, because I have concluded that those reasons manifested the errors of law which I have identified above, I do not think that it is necessary to reach a final decision on this point.

14. For those reasons, I consider that both decisions refusing to extend time for applying for a statement of reasons were wrong in law. In view of the length of time since the cases were decided, it would probably not be practicable for statements of reasons to be drafted at this stage. However, it seems to me that the consequence of

my decision that there has been no valid exercise of the powers limiting the general right at common law and under Article 6 of the European Convention on Human Rights to be given reasons means that there has been a breach of those rights in relation to the substantive decisions dismissing the claimants' appeals. I therefore propose to deal with these appeals as appeals against those decisions and to exercise my power under rule 7(2) of the Tribunal Procedure (upper Tribunal) Rules 2008 to waive the requirement to apply for permission to appeal against those decisions and all relevant time limits. I give permission to appeal against those decisions, allow the appeals, set aside the decisions and refer the cases to the First-tier Tribunal for rehearing before fresh tribunals.

**E A L BANO
30 June 2017**