

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No CE/1320/2017

Before UPPER TRIBUNAL JUDGE WARD

Decision: I consent to the application by the Secretary of State to withdraw this appeal. A copy of this decision is to be placed on the Chamber's website.

REASONS FOR DECISION

1. This appeal has raised matters concerning the effect upon the worker status of an EU national of a short disallowance from JSA on the ground that the claimant is adjudged not to have been "actively seeking work".
2. Contrary to the submission made in her name to the First-tier Tribunal ("FtT"), the Secretary of State now accepts that an EU citizen who retains worker status by virtue of reg.6(2)(b) of the Immigration (European Economic Area) Regulations 2006 (as were then relevant) ("the 2006 Regulations") will not lose that worker status merely because his or her JSA is disallowed on the grounds of "not actively seeking work".
3. The Secretary of State has applied for permission to withdraw her appeal. Because the issue may arise in the context of other EU nationals also, who, unlike the present claimant, may not have professional assistance, and because the case has yielded some evidence which may be relevant in other cases, I indicated that, while I was minded to give consent, I considered it appropriate for the withdrawal decision to be placed on the Chamber's website.
4. The claimant is a Polish man in his late 50s. He had worked from 1 December 2011 to 1 April 2013 and then been in receipt of JSA from 8 April – 9 September 2013. From 10 to 23 September 2013 he was disallowed JSA on the grounds mentioned above. From 24 September 2013 to 13 January 2014 he was once again in receipt of JSA. From 14 to 27 January 2014 JSA was, once again, disallowed. JSA resumed from 28 January to 9 March 2014. There was a gap between 10 March and 14 April 2014. JSA resumed between 15 April 2014 and 23 March 2015. On 24 March 2015 he claimed ESA, which by a decision dated 21 April 2016 was refused.
5. On 15 April 2013 he had been admitted to hospital following a heart attack; he was discharged on 9 May 2013. I have not received evidence nor heard argument as to how the JSA claim continued in those circumstances: though regulation 55 of the Jobseeker's Allowance Regulations 1996 was in force, that could apply only for up to 2 weeks and regulation 55ZA, which provided for longer periods of sickness, was not then in force. However, it does appear that the claim continued.

6. Computer printouts in evidence before the FtT relating to the disallowances with effect from 10/9/13 and 14/1/14 cited an “AR Code” of CSN016 and CSN 015 respectively. AR codes are used for DWP administrative purposes only. The decision-maker selects an AR code to identify the decision made and enters it on the computer system. The code is a system identifier to enable control of the decisions process and to generate associated system notifications (outcome decisions) to be issued to the claimant.

7. A list of the AR Codes and their apparent significance forms the Schedule to this decision. It will be observed that there are several areas of apparent overlap between the various codes.

8. An area for debate in the present case has been whether the claimant was made the subject of decisions imposing a sanction or whether, rather, his claim came to an end (“an entitlement decision”) and was subsequently resumed.

9. In the AR Codes, JSA sanction and conditionality decisions are divided into five categories identified by a letter code, as set out in the Schedule. “CS” stands for Conditionality and Sanction decision, followed by a letter for the type of decision. “N” in “CSN” stands for conditionality not met, thus reflecting an entitlement decision (as opposed to a sanctions decision). Following a “CSN” entitlement decision, the claimant must reclaim JSA, but that is done by way of “rapid reclaim” if the new claim is made within 6 months of the previous claim. In such a case, the claimant does not complete a new claim form, but rather Form JSA1(ILS) to declare that there has been no change of circumstances. What the other categories of code stand for is set out in the relevant part of the Schedule: these are sanctions decisions.

10. While no definitive explanation could be provided to me of the difference between codes CSN015, CSN016 and CSN017, all reflect entitlement decisions on grounds of not actively seeking work. Code “CSM002” on the other hand reflects a medium level sanction penalty for not actively seeking work. As foreshadowed at [8], if a sanctions decision is imposed, the award continues but with a sanction; in a “CSN” case, entitlement ceases.

11. The FtT’s decision in favour of the claimant (put briefly) appeared to have conflated the various limbs of regulation 6(2) of the 2006 Regulations concerning when “worker” status is retained. However, while the Secretary of State maintains that the FtT’s reasoning was wrong, she no longer seeks to contend that its outcome decision was wrong. This is because she is no longer able to produce contemporaneous documents establishing what occurred at the material time and the relevant questions were not asked of the claimant at the FtT.

12. I have accepted the application by the Secretary of State to withdraw her case, which is not opposed by the claimant’s representative. The Secretary of State no longer maintains what may have been regarded as an error in principle in the approach that had been put forward to the FtT and for his part,

the claimant has succeeded in his aim of countering the original refusal of ESA on the ground that he lacked the right to reside. The Secretary of State will now need to consider the remaining aspects of his ESA claim.

CG Ward
Judge of the Upper Tribunal
6 August 2018

Schedule

- o **ESA & JSA JSAPS Dialogue Codes**
 - o Dialogue Codes
 - o Sub Event Types
 - o Capital, Income and Housing
 - o Creditors and codes
 - o Payments
 - o Claim Information
 - o Over/underpayments
 - o Event Maintenance
 - o Miscellaneous Input Codes
 - o Case Controls
 - o Terminations
 - o Exceptional conditions
 - o Other benefits
 - o Other income
 - o Current Incapacities
 - o **AR Decision Codes**

Operational instructions >> jobseekers allowance >> Jobseekers Allowance Supplementary Guidance >> JSA ESA JSAPS Deskaide

AR Decision Codes

AR Decision Codes					
Labour Market					
Benefits (JA210211)		Decision (JA210211)		Appeal status (JA210)	
1660	Prescribed Benefit	ALLD	Decision is to allow	L	Appeal lodged
5610	Compensation payment	DISD	Decision is to disallow	D	Appeal is dismissed
999H	Holiday Pay	REVA	Revised decision to allow	U	Appeal is upheld
9999	Payment suspension	REVD	Revised decision to disallow	P	Appeal is partly upheld
APLTAS	Appeal against the Appeal Service			W	Withdrawn appeal or decision is revised
FINFO	Further information required				
SOSREX	Secretary of State Re-examination				
Reasons to end a joint claim (JA050)			Source of contribution details (JA097)		
01	Child in Household	1	Employer		

02	Partnership split	2	NIRS
03	Disentitlement involved	3	DSS
04	Member Found Work	4	DCI
05	Claim Transfer Required		
06	Other		
AR code	Circumstances	Decode in JA210	
54001	Whether jobseeker has entered into a JSAg	Not entered into JSAg	
5410	Whether JSAg is reasonable (decision notified by DMAS)	JSAg reasonable	
5430	Proposed variation of a JSAg (decision notified by DMAS)	Proposed variation of JSAg	
54401	Whether jobseeker has complied with a direction on the JSAg. JSAg terminated	Not comply with direction JSAg terminated	
ESA001	When a gap occurs with the provision of valid medical evidence	Gap in Medical Evidence	
ESA011	When a claimant contributes to their stated medical condition	Contributed to Medical Condition	
JSA550	Claimant is not available for employment and cannot be treated as available for employment	Claimant has no work permit and is unable to work in this country	
JSA550S	Claimant is a part-time student	Claimant is studying for 16 hours or less but not willing to give course up for employment	
JSA553S	Claimant is full time student	Claimant is a full time student	
FR0001	20% Sanction "Two strikes"	20% Sanction "Two strike" ESA (IR) only	
FR0002	40% Sanction "Two strikes"	40% Sanction "Two strike" ESA (IR) only	
FR0003	Full sanction "One strike"	Full sanction "One strike" ESA (C) JSA (C+IB)	
FR0004	20% Sanction "One strike"	20% Sanction "One strike" ESA (IR) only	
FR0005	40% Sanction "One strike"	40% Sanction "One strike" ESA (IR) only	
FR0006	Full sanction "Two strikes"	Full sanction "Two strikes" ESA (C) JSA (C+IB)	
72001	Whether the jobseeker was involved in a stoppage of work	Involved in a stoppage of work	
72101	Whether the jobseeker withdrew their labour in connection with a trade dispute	Withdraw labour due to trade dispute	
71303	whether the jobseeker left a New Deal placement voluntarily	Left ND Voluntarily	
71403	Whether the jobseeker left a New Deal placement due to misconduct	New Deal -- misconduct	

714045	Whether the jobseeker lost his place on Project Work due to misconduct	Project Work – misconduct
71509	Whether the jobseeker failed to apply for a place on New Deal	Fail to apply New Deal
71510	Whether the jobseeker failed to accept a place on New Deal	Fail to accept New Deal
71511	Whether the jobseeker refused to apply for a place on New Deal	Refuse to apply New Deal
71512	Whether the jobseeker refused to accept to accept a place on New Deal	Refuse to accept New Deal
71602	Whether the jobseeker took advantage of a place on a Training scheme	Fail to take Training scheme place
71603	Whether the jobseeker took advantage of a place on New Deal	Fail to take New Deal place
71703	Whether the jobseeker failed to attend their place on New Deal	FTA New Deal
8200	Failure to comply with Community Sentences	COM – Sanction for Community Sentence
8300	Partner failed to attend WFI (from 12.04.04)	WFI – Partner failed to attend WFI
Sanction and Conditionality decisions		
CSF - Fraud Sanction AR code		
AR code	Decode in JA210	
CSF01C	Ad Pen or a Caution for benefit fraud 4 WKS (Customer)	
CSF01F	Ad Pen or a Caution for benefit fraud 4 WKS (Family member)	
CSF01P	Ad Pen or a Caution for benefit fraud 4 WKS (Partner)	
CSF02C	Conviction of benefit fraud JSA 13 WKS (Customer)	
CSF02F	Conviction of benefit fraud JSA 13 WKS (Family Member)	
CSF02P	Conviction of benefit fraud JSA 13 WKS (Partner)	
CSF03C	Conviction of benefit fraud JSA 26 WKS (Customer)	
CSF03F	Conviction of benefit fraud JSA 26 WKS (Family Member)	
CSF03P	Conviction of benefit fraud JSA 26 WKS (Partner)	
CSF04C	Conviction of benefit fraud JSA 3YRS (Customer)	
CSF04F	Conviction of benefit fraud JSA 3 YRS (Family Member)	
CSF04P	Conviction of benefit fraud JSA 3YRS (Partner)	
CSF05C	Ad Pen/Caution for ben frd ESA 40% 4WKS (Customer)	
CSF05F	Ad Pen/Caution for ben frd ESA 40% 4WKS (Family member u 25)	
CSF05H	Ad Pen/Caution for ben frd ESA 40% 4WKS (Family member o 25)	
CSF05P	Ad Pen/Caution for ben frd ESA 40% 4WKS (Partner)	
CSF07C	Conviction of ben fraud ESA 40% 13WKS (Customer)	
CSF07F	Conviction of ben fraud ESA 40% 13WKS (Family member u 25)	
CSF07H	Conviction of ben fraud ESA 40% 13WKS (Family member o 25)	

CSF07P	Conviction of ben fraud ESA 40% 13WKS (Partner)
CSF09C	Conviction of ben fraud ESA 40% 26WKS (Customer)
CSF09F	Conviction of ben fraud ESA 40% 26WKS (Family member u 25)
CSF09H	Conviction of ben fraud ESA 40% 26WKS (Family member o 25)
CSF09P	Conviction of ben fraud ESA 40% 26WKS (Partner)
CSF11C	Conviction of ben fraud ESA 40% 3YRS (Customer)
CSF11F	Conviction of ben fraud ESA 40% 3YRS (Family member u 25)
CSF11H	Conviction of ben fraud ESA 40% 3YRS (Family member o 25)
CSF11P	Conviction of ben fraud ESA 40% 3YRS (Partner)
CSF13C	Ad Pen/Caution for ben frd ESA nil 4WKS (Customer)
CSF13F	Ad Pen/Caution for ben frd ESA nil 4WKS (Family member)
CSF13P	Ad Pen/Caution for ben frd ESA nil 4WKS (Partner)
CSF14C	Conviction of ben fraud ESA nil 13WKS (Customer)
CSF14F	Conviction of ben fraud ESA nil 13WKS (Family member)
CSF14P	Conviction of ben fraud ESA nil 13WKS (Partner)
CSF15C	Conviction of ben fraud ESA nil 26WKS (Customer)
CSF15F	Conviction of ben fraud ESA nil 26WKS (Family member)
CSF15P	Conviction of ben fraud ESA nil 26WKS (Partner)
CSF16C	Conviction of ben fraud ESA nil 3YRS (Customer)
CSF16F	Conviction of ben fraud ESA nil 3YRS (Family member)
CSF16P	Conviction of ben fraud ESA nil 3YRS (Partner)
CSH – High Level Sanction AR Code	
CSH001	Loss of employment through misconduct
CSH002	Leaving employment voluntarily
CSH003	Refusing to apply for a job
CSH004	Failing to apply for a job
CSH005	Failing to accept a job
CSH006	Refusing to accept a job
CSH007	Fail to avail of reasonable emp opp
CSH008	Fail to go to a Mand Work Activity (JSA)
CSH009	Discharged from HM Forces
CSL – Low Level Sanction AR Code	
CSL001	Fail to attend advisor interview
CSL002	Fail to attend advisor interview
CSL003	Fail to attend advisor interview
CSL004	Fail to attend advisor interview
CSL005	Fail to carry out jobseeker direction
CSL006	Fail to carry out jobseeker direction
CSL007	Neglect to avail reasonable opp (EP)
CSL008	Fail to apply for (EP)
CSL009	Fail to accept place (EP)

	Fail to apply place (EP)
CSL011	Refuse accept place (EP)
CSL012	Leave place (EP)
CLS013	Giving up or failing to attend (EP/TS)
CSL014	Losing a place (EP/TS)
CSL015	Failure to attend a WFI
CSL016	Fail to take part in the ES and E scheme
CSL017	Fail to undertake Work Related Activity
CSL018	FTA Training Scheme place
CSL019	Fail to apply Training
CSL020	Fail to accept Training
CSL021	Refuse to apply Training
CSL022	Refuse to accept Training
CSL023	Left Training voluntarily
CSL024	Training Scheme – misconduct
CSL025	Fail to take Training Scheme place
CSM – Medium Level Sanction AR Code	
CSM001	Penalty doubt availability for work
CSM002	Penalty not actively seeking
CSN – AR Code	
CSN001	Not available for work
CSN002	Not available for work
CSN003	Not available for work
CSN004	Not available for work
CSN005	Not available within time limits
CSN006	Not available within time limits
CSN007	Not avail – rest hours
CSN008	Not avail – rest hours
CSN009	Not avail – rest hours
CSN010	Not avail – rest hours
CSN011	Not regarded as available
CSN012	Not regarded as available
CSN013	Not regarded as available
CSN014	Not regarded as available
CSN015	Not actively seeking work
CSN016	Not actively seeking work
CSN017	Not actively seeking work
CSN018	Failed to make a signed declaration