

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. CUC/563/2020

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Between:

K.G.

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wikeley

Decision date: 6 November 2020

Decided on consideration of the papers

Representation:

Appellant: In person

Respondent: Mr S O'Regan, Decision Making and Appeals, DWP

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 16 July 2019 under number SC242/19/03678 was made in error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remake it as follows:

The appeal is allowed.

The Respondent's decision on 27 October 2018 is revised.

The Appellant is not subject to a low-level sanction on his Universal Credit award. No valid work-related requirement had been imposed on him in respect of the Jobcentre telephone appointment on 22 May 2018. Accordingly, section 27 of the Welfare Reform Act 2012 and regulation 104 of the Universal Credit Regulations 2013 did not apply.

REASONS FOR DECISION

1. I allow the Appellant's appeal to the Upper Tribunal. The First-tier Tribunal's decision at the London Fox Court venue, dated 16 July 2019, which had dismissed the Appellant's original appeal against the Department's decision to impose a sanction, involved an error of law and is set aside.

2. The usual outcome for a successful appeal before the Upper Tribunal is that the claimant's original appeal needs to be re-heard by a new First-tier Tribunal. However, I consider that such a Tribunal re-hearing is unnecessary in the circumstances of this case.

3. I therefore both (a) allow the Appellant's appeal to the Upper Tribunal; and (b) re-make the decision that the First-tier Tribunal ("the Tribunal") should have made (and in the terms as set out at paragraph 13 below). My reasons follow.

4. As part of his UC 'claimant commitment', the Appellant agreed to "attend and take part in appointments with an adviser when required". He was advised to participate in a Jobcentre telephone interview on 22 May 2018 at 1 p.m. He failed to do so despite two calls to his mobile phone and a text message. On 23 May 2018, however, the Appellant provided a copy of a letter from his GP, advising him that he had an h-pylori (stomach) infection and was on prescribed medication (Tribunal file at p.40). He failed to participate in a further telephone interview arranged for 3 July 2018. He then attended a telephone interview on 20 September 2018.

5. On 27 October 2018, the Secretary of State's decision-maker imposed a sanction in respect of the Appellant's universal credit (UC) entitlement. This was because, so it was said, the Appellant had failed to comply with a work-related requirement. In turn, this was because he had failed to participate in the Jobcentre telephone interview on 22 May 2018 and had not shown that he had good reason for failing to do so.

6. On 16 July 2019, the Tribunal heard the Appellant's appeal in his absence and dismissed the appeal. The decision-maker's decision of 27 October 2018 was confirmed. The Tribunal subsequently provided a statement of reasons for its decision.

7. On 16 May 2020 I gave the Appellant permission to appeal. In doing so, I made the following observations:

"In legal terms, the Appellant is saying that the First-tier Tribunal failed to find sufficient facts or give adequate reasons for its decision (and/or had insufficient evidence on which to arrive at its conclusion). This may apply in two contexts. First, did the Tribunal deal adequately with the question of the notification of the requirement to attend/participate in the interview on 22 May 2018? In this context the decision in *JB v Secretary of State for Work and Pensions (UC)* [2018] UKUT 360 (AAC) may be instructive. Second, did the

Tribunal deal adequately with the issue of good cause, given e.g. the apparently contemporary evidence at p.40?"

8. Mr Simon O'Regan, who now acts for the Secretary of State in these proceedings before the Upper Tribunal, has provided a helpful written submission in which he supports the appeal on both the points identified in the grant of permission to appeal.

9. As to the first point, Mr O'Regan contends that, on the facts, the Appellant in this case was aware of a general obligation to take part in interviews with his work coach when requested to do so. However, Mr O'Regan concedes that there is ambiguity as to whether the Appellant had been notified by the Jobcentre of the actual substance of the requirement to take part in the telephone interview and the consequences of non-compliance with such an interview. Mr O'Regan continues as follows:

"14. ... For example, it is not apparent from the appeal bundle whether the interview was a 'Work Focused Interview' requirement in accordance with section 15 of the Act and regulation 93 of the UC Regulations 2013; i.e. with a view to assessing [the Appellant]'s prospects of obtaining paid work; or to assist him in obtaining paid work; or to identify training or other activities that would assist him in obtaining paid work and so forth, or, whether the appointment was a verification appointment (a 'connected requirement') in accordance with section 23 of the Act in order to impose a new work-related requirement on [the Appellant], or to verify his compliance with a work-related requirement, or to assist him to comply with an existing work-related requirement. Unfortunately, this issue is made unclear owing to an inconsistency throughout the appeal bundle as to whether the appointment was a Work Focused Interview or, in fact, a review appointment (labelled as a 'Work Focused Review') (page 32 of the bundle; pages 44 to 47 of the bundle and pages 52 to 53 of the bundle). Further to this, I also submit that it is not clear from the appeal bundle whether [the Appellant] was adequately informed of the consequences of any such failure to comply with the interview.

15. Accordingly, it is my submission that [the Appellant] was not properly notified of the requirement to take part in an appointment on the above date with his work coach. In view of this, I respectfully submit that the FtT erred in law in not adequately addressing whether [the Appellant] had been properly notified of the requirement to take part in an appointment with his work coach on 22 May 2018. Consequently, I respectfully invite the UT to make a similar finding and to allow this appeal on the basis that no valid work-related requirement had been imposed on [the Appellant] in respect of the appointment of 22 May 2018."

10. As to the second point, Mr O'Regan argues that the Tribunal erred in law in failing to give adequate consideration to the Appellant's health condition at the time of the alleged failure to comply with a work-related requirement. Mr O'Regan submitted as follows:

"17. In this respect, I submit that [the Appellant] had good reason for not taking part in the telephone interview on 22 May 2018. I rely upon the evidence submitted by [the Appellant] (dated 23 May 2018 at page 40 of the bundle)

that at the material time he was suffering from a stomach complaint. Further to this, I submit that, on the balance of probabilities, [the Appellant]'s account that he was generally unwell is not inherently improbable - or so lacking in credibility - that on the day in question it would have been reasonable to expect him to take part in a telephone interview. It is my submission that it would have been unreasonable to expect him to have taken part in a telephone interview whilst unwell. Furthermore, [the Appellant]'s compliance history with his agreed work-related requirements is not so poor so as to consider that there is a consistent pattern of repeated failures, or of poor behaviours, which would make his account of being unwell unreasonable on this occasion."

11. The Appellant has not made any response to that submission, but that is doubtless because he agrees with it. In the circumstances it is fair and just to dispense with the need for any reply from the Appellant.

12. I agree with Mr O'Regan's analysis. The Tribunal's decision involved an error of law on two counts. First, the Tribunal erred in law in not adequately addressing whether the Appellant had been properly notified of the requirement to take part in an appointment with his work coach on 22 May 2018. Secondly, the Tribunal erred in law in failing to give adequate consideration to the Appellant's health condition at the time of the alleged failure to comply with a work-related requirement. I therefore allow the Appellant's appeal and set aside the Tribunal's decision.

13. I also agree with Mr O'Regan that it is fair and just for me to re-make the Tribunal's decision under appeal. I re-make the Tribunal's decision in the Appellant's favour; namely, that the Appellant's UC award should not have been reduced in accordance with section 27 of the Welfare Reform Act 2012 and regulation 104 of the Universal Credit Regulations 2013 (SI 2013/376). The substituted Tribunal decision is as follows:

The appeal is allowed.

The Respondent's decision on 27 October 2018 is revised.

The Appellant is not subject to a low-level sanction on his Universal Credit award. No valid work-related requirement had been imposed on him in respect of the Jobcentre telephone appointment on 22 May 2018. Accordingly, section 27 of the Welfare Reform Act 2012 and regulation 104 of the Universal Credit Regulations 2013 did not apply.

14. The decision of the First-tier Tribunal involved an error of law. I allow the appeal and set aside the decision of the tribunal (Tribunals, Courts and Enforcement Act 2007, section 12(2)(a)). I also re-make the tribunal's decision (section 12(2)(b)(ii)) in the terms set out above.

Nicholas Wikeley
Judge of the Upper Tribunal
Authorised for issue on 6 November 2020