



TC04481

Appeal number: TC/2014/04474

***NATIONAL INSURANCE – CONTRIBUTIONS – WHETHER
CONTRIBUTIONS PAID – ENTITLEMENT TO CREDIT ON GROUNDS
OF SICKNESS – APPEAL ALLOWED IN PART***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN GORDON COBB

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE IAN HYDE and NOEL
 BARRETT**

Sitting in public at Fox Court, London on 23 March 2015

The Appellant appeared n person

Mrs Linda Gordon, Officer of HMRC, for the Respondents

DECISION

Introduction

5 1. This appeal concerns whether the Appellant's National Insurance record understates the contributions which have been paid by or on behalf of the Appellant and as to whether or not during periods when the Appellant was not in work, he was entitled to have contributions credited to his record.

10 2. The Appellant's National Insurance record is used to calculate the amount of state retirement pension to which the Appellant is entitled. The calculation of the Appellant's state retirement pension based on paid or credited contributions is not a matter for this Tribunal but will be adjusted, if necessary based on the decision in this appeal.

15 3. The dispute is as to whether or not for the period 10th February 1964 to 5th April 1975 National Insurance contributions have either been paid by or on behalf of the Appellant or otherwise the Appellant was eligible to have contributions credited to him.

20 4. As a preliminary issue the Appellant made an application to adjourn the hearing on the grounds that he was waiting for a response from the Department of Work and Pensions as to whether in the periods in issue he had been claiming sickness benefit or the precursor to supplementary benefit. For reasons set out more fully below, we rejected this application on the grounds that the point was not relevant to determining that part of the Appellant's claim.

25 5. The Appellant appealed against a decision issued on 29 January 2014 under section 8 of the Social Security Contributions (Transfer of Functions) Act 1999 ("the Decision"). In the Decision the Respondents amended their earlier decision of 2 October 2013 and credited the Appellant with contributions for the period from 5 April 1975 to 3 December 1978. There is therefore no dispute about the Respondents record of the Appellant's contributions record for these later years.

30 6. Appeals from such decisions lie to this Tribunal by virtue of section 8 of the Social Security (Transfer of Functions) Act 1999, as amended, and sections 49A to 49I of the Taxes Management Act 1970. The Appellant brought his appeal out of time but the Respondents did not object and so this appeal was allowed to proceed.

National Insurance contributions

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7. The National Insurance Act 1946 established the system for the payment of national insurance contributions by insured persons and the provision of unemployment benefit, retirement pensions and other benefits. Under section 5 of the Act provision is made for regulations excepting insured persons from liability to pay

contributions in certain circumstances and crediting excepted insured persons with contributions. Insured persons were excepted during any period of unemployment or incapacity for work (section 5(1)(a)(i)) or not being in receipt of income exceeding £104 a year (section 5(1)(a)(iii)). Adjustments to the financial limits were made from time to time. This regime was substantially repeated in Section 10 of the National Insurance Act 1965.

8. Regulation 13(1) and (2) of the National Insurance (Contributions) Regulations 1948 and regulation 13(1) and (2) of the National Insurance (Contributions) Regulations 1969 implement section 5(1)(a)(iii) of the 1946 Act and section 10 of the 1965 Act and provide that an insured person can be excepted from liability to pay contributions on the grounds of small income by applying for a certificate.

9. Section 10(1)(b) of the 1965 Act allowed contributions to be credited to certain classes of persons.

10. Section 10(2) of that Act provides:

15 “Regulations.....shall not provide for excepting a person from liability to pay contributions otherwise than on that person’s own application...

.....and regulations made under paragraph (b) of that subsection shall not provide for crediting contributions to a person excepted from liability to pay them by virtue of the said paragraph (a)(iii) otherwise than for the purpose of entitling that person to unemployment benefit or sickness benefit for periods after he has ceased to be so excepted”

11. If a person applies for a certificate and a certificate is granted, then whilst that certificate is in force, an insured person is excepted from liability to make contributions, may make voluntary contributions, but is not credited with contributions.

12. Where an individual has been excepted from liability to make contributions because of incapacity for work then regulation 3(1) of the National Insurance (Contributions) Regulations 1948 provides that for an employed person class 1 contributions can be credited provided one of conditions I or II set out in the Schedule to the Act are satisfied;

Condition I : “That not less than twenty-six contributions as an employed person have been paid by or creditedin respect of the contribution year immediately preceding the benefit year which includes the relevant week”

35 Condition II: “That not less than ten contributions as an employed have been made or creditedin respect of the thirteen weeks immediately preceding the relevant week”

13. Alternatively under regulation 3(1), Condition II could be treated as satisfied if it could be shown that the individual became incapable of work following unemployment and he “will normally rely upon such employment for his livelihood”.

Evidence

14. We were able to read and refer to the document bundle provided by HMRC,
5 including copies of the Appellant's national insurance record sheet, RF1, and his
Ministry of Pensions and National Insurance deduction card for 1961-62 showing that
the Appellant left his employment on 1 August 1961.

15. The Respondents also produced generic copies of the relevant forms and leaflets
as referred to but there was no evidence they were actually sent to or indeed
10 completed by the Appellant.

16. We also heard oral evidence from the Appellant, Mr John Cobb and from Mr
Alan Greenshields, (an officer at the HM Revenue and Customs National Insurance
Contributions and Employer Office).

17. The Appellant is 71 years old and gave evidence as to his working and benefits
15 history.

18. In February 1960 the Appellant started work at a company called Tool & Die
but, according to the Appellant, left in January 1962. Immediately after leaving Tool
& Die in January 1962 the Appellant signed on for unemployment benefit at the
Employment Office and recalled the relevant officer treating the Appellant as having
20 worked for two years even though he was a few weeks short. The Appellant recalls
the officer suggesting holiday pay would make up the shortfall. The Appellant noted
that, had he left Tool & Die in August 1961, as the Respondents contend, he would
have signed on at the Youth Employment Office as, his 18th birthday being in October
1961, he would still have been under 18. However, his firm recollection was that
25 signed on at the adult office. Further he had very clear memories of attending two
Christmas works parties at Tool & Die, the second being a lot less impressive than the
first.

19. The Appellant recalls being chased for contribution shortfalls for the 1959-60
year and the Appellant tried to make contributions but was told he was too late.

20. At the end of February 1962 the Appellant found employment at Fenton
Engineering but he was made redundant in May 1962. The Appellant then received
unemployment benefit from 18 May 1962, surrendering his national insurance card as
30 required and he never saw it after that.

21. In January 1963 the Appellant's mother became ill and the Appellant became
35 her full time carer. The Appellant visited the Employment Exchange Office in
January 1963 to notify them of this change in status which stopped unemployment
benefit but it was suggested to the Appellant that he complete an application for a
small income exemption certificate ("SIE certificate") which he duly did and
received the relevant certificate. The Appellant claims that this certificate was

effective from January 1963. The Appellant claims that at this time he was reassured by the officer that claiming benefit would “protect his pension”.

22. In January or February 1964 the Appellant renewed the SIE certificate.

23. In December 1964 or January 1965 the Appellant suffered a nervous breakdown and was diagnosed with anorexia nervosa. The Appellant was visited by Department of Health and Social Services (“DHSS”) officers and the Appellant completed benefit claim forms. The Appellant gave evidence that he DHSS officers obtained medical and benefit forms or certificates but the Appellant was unclear as to the nature of the benefit forms or certificates. There then followed a number of years of ill health for the Appellant and in 1978 the Appellant again became a full time carer for his mother. Throughout this period the Appellant completed benefit claim forms on a regular basis and supplied medical certificates. The Appellant does not recall receiving letters alerting him to the shortfall in his contributions. The Appellant’s argument is that during this period he was on benefit and therefore received contribution credits but in giving evidence the Appellant was unable to recall which benefit he was on or which forms he received or completed.

24. There is no suggestion that Appellant has made any voluntary contributions, the Appellants argument being that, aside from 1959-60, he was never told he was in arrears.

25. The Appellant denied any knowledge of ever having received form CF169, pointing out the details of the period and arrears covered by any waiver and in correspondence, (within the evidence bundle) denied receiving leaflet NI27, telling the person the effect of non-payment might have on future benefit entitlement and of the time limits for making contributions.

26. Mr Alan Greenshields in his oral evidence confirmed that he had some 40 years experience in the records branch of HM Revenue and Customs National Insurance Contributions and Employer Office.

27. Mr Greenshields accepted that did not have any experience of the Appellant’s individual records but gave evidence as to the administrative and record keeping procedures for national insurance records, particularly as they applied prior to computerisation in 1975.

28. He confirmed that before 1975 each insured person was allocated a national insurance contribution card which that person gave to his employer to enable Class I (employed person) contributions to be made and a stamp affixed to the card. For self-employed or non-employed the individual themselves would purchase stamps from the Post Office and affix them to the card. At the end of each year, when a card expired the employer (or if not employed, the person himself) would surrender the card to the National Insurance office and a new card issued. The contribution card would be sent to the Records Branch at Newcastle upon Tyne Central Office where a permanent record sheet, known as an RF1, was kept for each insured person. The RF1 would then be updated for that year’s contributions.

29. The Appellant's RF1 was produced in evidence and Mr Greenshields reviewed and explained both the general structure of the record and, based on his longstanding understanding of the system, the specific entries upon it.

5 30. The Appellant's contribution year ran from the beginning of December with 52 stamps representing a full year's contributions. As regards the years in dispute the RF1 showed;

(1) 1960-61: 34 Class 1 stamps paid and none credited, being 34 weeks in total

10 (2) 1961-62: 5 Class 1 stamps paid and 21 Class 1 stamps credited, being 26 weeks in total

(3) 1962-63: none paid and 8 Class 1 stamps credited, being 8 weeks in total

(4) 1963-64 to April 1975: none paid or credited

15 31. Mr Greenshields explained the notation on the Appellant's RF1 for each year in dispute again with the caveat that he had no direct experience of what happened in the Appellant's case but assumed the RF1 was an accurate record of what did happen. Mr Greenshields acknowledged that mistakes were sometimes made on contribution records but believed them to be rare.

20 32. Mr Greenshields made no observations about the 1960-61 and 1961-62 contribution years beyond noting that the payment of 34 stamps in 1960-61 would be consistent with the Appellant ceasing work in August 1961.

25 33. For 1962-63 Mr Greenshields' reading of the RF1 was that the Appellant failed to surrender his card for this year so that on 9 March 1964 a letter was issued to the Appellant asking for the return of the card, this being noted on the RF1 as "172 9/3". "172" referred to a standard chasing letter known as form RF172 which would have been sent. Mr Greenshields was confident that the year the letter was sent was 1964 but in respect of 1962-63 because the procedure was to wait a few months after the year end to write chaser letters.

30 34. Mr Greenshields thought that the card must have been returned because when that happened the "172" reference would be crossed out on the record, as has happened here. The card must have been returned blank as the only contributions for the year were 8 credited contributions on the grounds of unemployment. This corresponded with the notes on the RF1 under "Benefits" that an unemployment benefit enquiry had been received on 18 May 1962.

35 35. As a result of the deficiency on the record Mr Greenshields's evidence was that there would have been a local office enquiry. From the RF1 and the notes "CF169 28.1.63 to 9.2.64" Mr Greenshields identified that this enquiry resulted in a waiver of contribution arrears for the period 28 January 1963 to 9 February 1964. Further the reference "SIE 10.2.64 to 6.12.64" indicated that an SIE certificate was issued in the period 10 February 1964 to 6 December 1964. Mr Greenshields disagreed with the

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Appellant's assertion that the SIE was effective from January 1963. However, the waiver had had the effect of backdating the SIE.

36. According to Mr Greenshields the record then showed that SIE certificates were reissued annually until 1968 when they were issued on a five yearly basis.

5 37. Mr Greenshields explained the other notations under the heading "Benefits" as
being in respect of enquiries being made by a local officer (in this case identified as
2595) in respect of sickness benefit (noted on the RF1 as "SB"). The reference to
"DNR" against an enquiry on 9 August 1968 which has been crossed out meant "Does
10 Not Refer". Mr Greenshields did not know the reason but his supposition was that this
meant that that particular enquiry from a local office was closed because the local
office had made the enquiry into the wrong person. However, Mr Greenshields was
clear in his evidence that these notes under "Benefits" and the use of "SB" did not
mean that the Appellant was claiming sickness benefit.

15 38. As regards a waiver of contributions, in Mr Greenshields' experience giving a
waiver was common practice where an individual had not made sufficient
contributions and so applied for an SIE certificate. As an SIE certificate could only be
backdated for thirteen weeks the gap was normally covered by a waiver. the
Respondents submitted that a waiver had no basis in law and did not remove a
20 person's liability to make contributions but neither did it give the person any credit for
contributions. Mr Greenshields confirmed that the practice at the time of granting a
waiver was that the Respondents would give the person Form CF169, pointing out the
details of the period and arrears covered by the waiver and Leaflet NI48 telling the
person the effect of non-payment might have on future benefit entitlement and time
25 limits for making contributions. When an SIE certificate was being offered, applied
for or renewed the individual would be sent leaflet NI27 with the application form
attached, described how to apply and gave and advice on the consequences including
the effect on future entitlement to benefits including pension;

"whilst you hold a certificate of exception, contributions cannot be credited to
you for weeks of sickness or unemployment"

30 39. Copies of these forms and leaflets were produced to the Tribunal but there was
no evidence they were sent to the Appellant beyond Mr Greenshields' evidence of
practice at the time.

35 40. The Appellant did not challenge what Mr Greenshields said as to the general
practices of HM Revenue and Customs National Insurance Contributions and
Employer Office and we accept this part of his evidence.

40 41. Whilst we accept the evidence of Mr Greenshields as to the meaning and
administration of national insurance contributions during the relevant period, and are
grateful to him for the assistance he was able to lend the Tribunal as to the general
practice and procedures of HM Revenue and Customs National Insurance
Contributions and Employer Office at the relevant times, our acceptance is subject to
the limitation that Mr Greenshields had no knowledge the specific facts or
circumstances of the Appellant's case as a result of which Mr Greenshields could not

give therefore give any direct evidence as to what occurred, save by inference, from his recollection of departmental practice at the relevant times.

The Parties' Submissions

5 42. The Appellant had a number of arguments;

(1) The Appellant did not leave Tool & Die on 1 August 1961 as indicated by his contributions record but that he in fact left in January 1962 so that he is entitled to contributions during that period being partly in the contribution year 1961-62 and partly in the contribution year 1962-63 (“the Contributions Claim”);

(2) In the alternative, even if he did leave Tool & Die on 1 August 1961, he was entitled to two weeks additional contributions for the two weeks of holiday pay to which he was entitled (“the Holiday Pay Claim”);

(3) The Appellant’s record does not credit him with contributions for the period from 18 May 1962 (when the Appellant left Fentons, his employers at the time), until the end of January 1963 during which period the Appellant received unemployment benefit (“the Unemployment Benefit Claim”); and

(4) The Appellant is entitled to credit in the period December 1964 or January 1965 to April 75 because he was on either supplementary benefit or sickness benefit (“the Credit Claim”).

43. The Respondents submitted that the evidence provided by Mr Greenshields as to the practice and procedure of the HM Revenue and Customs National Insurance Contributions and Employer Office should be accepted.

44. The Respondents further submitted that the written records of the Appellant’s National Insurance contributions and credits, as provided in the evidence bundle, accurately reflects the contributions correctly made and credits correctly awarded to the Appellant and so the Appellant’s appeal must fail.

Decision

30 45. This appeal presents difficulties for the Appellant in that he is faced with the State’s process driven record keeping and in order to challenge those records he has had to try and recollect events over 30 years ago and in relation to difficult times in his life. Nevertheless, the Appellant gave clear and credible evidence as to his employment record and other the events in his life. However, he is less clear, for
35 understandable reasons, as to the nature of the benefits he claimed and the forms he completed.

46. Notwithstanding that his account contradicts the RF1 and his employment deduction certificate, we accept the Appellant's evidence that he did not leave Tool & Die in August 1961 but was employed by them until February 1962.

47. We accept the Respondents' evidence relying on the record in the RF1, that the Appellant received an SIE certificate from February 1964 and that this was periodically renewed, initially yearly and then on a five yearly basis, until at the earliest 1974-75. The Appellant's evidence is unclear but he accepted that he completed forms each year. There was some discussion in the hearing as to whether the Appellant's SIE certificate was effective from January 1963 or February 1964. The Appellant recalls completing such a form in the Employment Exchange Office in January 1963 but the Respondents point to the RF1 and that it was not the responsibility of Employment Exchange Offices to help individuals complete SIE applications. We therefore find as a fact that the Appellant was granted a waiver from January 1963 with the SIE certificate starting from February 1964.

48. As regards the Contributions Claim, the Appellant relies upon his memory of events. The Respondents rely not only on the RF1 but also the Appellants contributions record. As we have preferred the Appellant's evidence on this point we allow the Appellant's appeal on this issue.

49. As we have found in favour of the Appellant on the Contributions Claim there is no need to decide the Holiday Pay Claim.

50. The Unemployment Benefit Claim was not argued to any extent in the hearing by the Appellant but we have addressed it for completeness. For this purpose, as the point has not been disputed by the Respondents, we assume that the Appellant was satisfying the requirement for attendance at an Unemployment Benefits Office so that the Appellant was entitled to credits. The Appellant argued that in the contribution year 1961-62 and 1962-63 the Appellant he should have had full credits for the period 18 May 1962 when the Appellant left Fentons until January 1963. However, in the contribution year 1961-62 the Appellant received 21 credits and in the contribution year 1962-63 the Appellant received 8 credits. These appear to be sufficient credits for this period and we find that these credits were in respect of this period of unemployment. Accordingly, we dismiss the Appellant's appeal on this issue.

51. As regards the Credit Claim, the Appellant's argument is that when he became ill in December 1964 or January 1965 the SIE certificate became invalid as he was then on benefits being either supplementary benefit (or its predecessor) or, as he argued in the hearing, sickness benefit. The Respondents rely upon the RF1 in that the notation showed that the SIE certificates continued and that there were no record on the RF1 of any credits. The Respondents further argued that neither supplementary benefit (or its predecessor) nor sickness benefit provided for automatic credits.

52. The Appellant did not argue in the hearing that supplementary benefits provided benefits but relied upon having claimed sickness benefit. The Respondents pointed out that even if he has been claiming sickness benefit, under the conditions for credits for incapacity, outlined at paragraphs 12 and 13 above, the Appellant did not qualify.

For the first year in which the Appellant would arguably be entitled to credits, being 1964-65, to satisfy Condition 1 he would need to have paid or have credited 26 weeks contributions in 1963-64 but only 8 had been credited. Further, he could not satisfy Condition II, not having paid or had credited contributions for 10 of the last 13 weeks.

5 HMRC further argued that the Appellant would not have satisfied the supplemental “normally relying on” test described at paragraph 13 above, principally because he did not become incapable of work immediately after employment but following a period of unemployment, being from May 1962 to January 1963. For similar reasons, the Appellant would not have qualified for credits in subsequent years.

10 53. There was no evidence before the Tribunal as to the type of benefit being claimed by the Appellant from December 1964 or January 1965 to April 1975. However, we are satisfied that the Appellant was not entitled to any credits during this period. There was no evidence that supplementary benefits or its predecessor carried an entitlement to national insurance credits. Even if the Appellant was on sickness

15 benefit, the conditions attaching to national insurance credits for incapacity were such that the Appellant would not have qualified in any event.

54. The Appellant argued that he did not receive any notification that he had a shortfall in his contribution record. The Respondents’ position is that on renewing the SIE certificate the Appellant would have been sent leaflet NI27 with the application

20 form attached. Leaflet NI27, as produced to the Tribunal and as described above, contains clear warnings as to the consequences of obtaining an SIE certificate. Accordingly, having determined that the Appellant applied for and obtained SIE certificates every year we also find that the Appellant was aware of his position as to his contribution record. However we would add that, in any event, even if he had not

25 been so informed, any failure to alert him can only have given the Appellant an entitlement to make voluntary contributions and cannot be equated with being treated as if contributions were made.

55. Accordingly, we dismiss the Appellant’s appeal on the Credit Claim.

56. This document contains full findings of fact and reasons for the decision. Any

30 party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”

35 which accompanies and forms part of this decision notice.

**IAN HYDE
TRIBUNAL JUDGE**

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RELEASE DATE: 18 June 2015