

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No CJSA/538/2016

Before UPPER TRIBUNAL JUDGE WARD

Decision: The appeal is allowed. The decision of the First-tier Tribunal (“FtT”) sitting at Wolverhampton on 30 September 2015 under reference SC053/15/00708 involved the making of an error on a point of law and is set aside.

Acting under s.12(2)(b) of the Tribunals, Courts and Enforcement Act 2007 I remake the decision as follows:

The claimant’s appeal against the Secretary of State’s decision dated 4 June 2015 is allowed. Her income-based jobseeker’s allowance (“JSA”) is not to cease from 22 May 2015 on the ground of her having failed the so-called Genuine Prospects of Work (“GPoW”) test. She remained entitled to JSA until 15 July 2015, the day before she started a job with M Confectioners.

REASONS FOR DECISION

1. Mr Page on behalf of the Secretary of State has expressed the view that the decision of the FtT involved the making of an error on a point of law and has agreed to my substituting a decision in the claimant’s favour to the maximum extent possible on the facts. In those circumstances I consider it preferable to give the decision rather than to invite a further submission on the claimant’s behalf. It is unnecessary to set out the history of the case or to analyse the whole of the evidence or arguments in detail. I need only deal with the reason why I am setting aside the tribunal’s decision.
2. The claimant is a German national, who had been claiming JSA since 03/09/13. She was found not to have a GPoW by the decision maker on 04/06/15, following an interview on 27/05/15. While claiming JSA she had taken over a dozen bookkeeping, IT, Maths and English courses. She had also been volunteering at the British Heart Foundation since 23/10/14 and as a voluntary teaching assistant at a local College since January 2015. She was still doing both at the date of the GPoW interview.
3. After the decision was given she obtained a job at M Confectioners. The contract was signed on 16/07/15. She has provided payslips and a P45 to show that the job lasted until 02/03/16. Her total pay over the period was £10,654.68 and there is no dispute that the work she obtained was genuine and effective.

4. The FtT, sitting on 30 September 2015, carefully evaluated the courses and the work experience it was told about before in para 12 of its reasons: finding “as a fact that as of 23 May 2015 [the claimant] did not have a genuine chance of being engaged in employment.”

What it had not considered at any point leading up to that conclusion was what, if anything, the subsequently obtained job with M Confectioners said about the claimant’s chances of being engaged at the date of decision. At para 15 it went on to say:

“[The claimant] obtained a job with [M Confectioners] after the decision that she could no longer claim [JSA]. Her contract was signed by [M] on 16 July 2015. There was no contact with [M] or awareness of the potential for such a job prior to the date of the ... decision in the case.”

5. It seems that the FtT thought that the job obtained 6 weeks after the date of the decision under appeal was not relevant to the matters with which it was concerned. Indeed, although the present appeal is not against the FtT’s refusal of permission to appeal, it is plain from the latter, decided by the same judge who had heard the substantive case, that she considered that taking the subsequent job into account was precluded by s.12(8)(b) of the Social Security Act 1998.

6. However, as Mr Page for the Secretary of State accepts, that section does not preclude inferences being drawn from events which occurred after the decision date about circumstances obtaining when, or before, the decision was made: see, inter alia, R(DLA) 2/01 and 3/01.

7. I therefore conclude the FtT’s decision was in error of law and set it aside. I accept the submission that a genuine chance of being engaged can be evidenced from the furtherance of the claimant’s qualifications and by the job offer which she received just 6 weeks after the date of the DWP’s decision.

8. As I have set the tribunal’s decision aside and am remaking it, I am able to have regard to evidence before me, which was only in part before the FtT. In a witness statement the claimant explains how she was recruited following assessments of her ability to carry out specific oral instructions accurately, which she passed but many others did not; and that following a subsequent interview she was told when being offered the post that she had been selected to work as a machine operator because of her qualifications in IT and English. If that was the view of one company as to her employability in a non-specialist role, it is hard to see why others should not have held the same view.

9. I conclude for the reasons in the two paragraphs immediately above that as at the date of the DWP’s decision under appeal, the claimant did have a genuine chance of being engaged.

10. I have been assisted by the careful and thorough written submission (and accompanying evidence) on behalf of the claimant by Ms Platts, who describes herself as “student representative” with the welfare rights service, as I have also by the submission from Mr Page.

11. In conclusion, I observe that the principle that subsequent job search outcomes may be relevant to whether, as at the decision date, there was a genuine chance of being engaged cuts both ways. A tribunal would in general equally be able to take into account, with other factors, a period of post-decision lack of success.

(signed)

**C.G.Ward
Judge of the Upper Tribunal
9 March 2017**