



[2021] UKFTT 0460 (TC)

TC 08344A/V

NICS – whether class 3 contributions made were precluded – no – whether paid in error – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/06783

BETWEEN

CHRISTINE BRADLEY

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE AMANDA BROWN QC
DR CAROLINE SMALL**

The hearing took place on 6 December 2021. The hearing was listed as a video hearing using the Tribunal Video Platform. In the event, and as described below, Ms Bradley did not participate in the hearing by way of the platform but was able to participate. A face-to-face hearing was not held due to the ongoing Covid pandemic. The documents available to the Tribunal were contained in a bundle consisting of 132 pages including all correspondence between the parties and separately a skeleton argument prepared by HMRC.

Ms Bradley represented herself

Ms Gemma Milner litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This is an appeal by Ms Christine Bradley (**the Appellant**) against a decision by HM Revenue & Customs (**HMRC**) to refuse the Appellant's request for repayment of class 3 National Insurance Contributions (**NICs**) that had been paid by the Appellant for the tax year 2016/17 (**the Decision**). The Decision was dated 15 August 2019.

PROCEDURAL MATTER

2. Shortly before 10am on 6 December 2021 and as the hearing was about to start, the Appellant spoke with the Tribunal staff and said that she had previously indicated that she did not want to attend a video hearing, that she was anxious about doing so, and that as she was now self employed as a pet-sitter she really needed to walk the dog.

3. In view of the nature of the appeal it was important to hear from the Appellant. Having sought the consent of Ms Milner, I contacted the Appellant by telephone. I explained the importance of her explanation in this matter and talked through the format of the hearing. The Appellant indicated that she would join the hearing but then had technical difficulties doing so.

4. The Appellant called me back and it was established that if my phone was put on speaker both Dr Small and Ms Milner could hear the Appellant. Whilst she could not hear them, I was able to repeat what they said to the Appellant.

5. The Appellant and Ms Milner indicated they were content for the hearing to proceed in this manner.

6. In accordance with the requirement to act in the interests of justice (known as the overriding objective as set out in rule 2 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009) the Tribunal determined to proceed with the hearing in this way.

EVIDENCE AND FACTS FOUND

7. From the documents available and by reference to what the Appellant said in the hearing the Tribunal finds the following facts:

(1) For the period from 2005 to 2015 the Appellant was employed as a personal shopper at an online supermarket. Over that period the Appellant felt that she was subjected to a sustained period of insidious bullying in which she felt that she was persecuted by her co-employees. Despite raising this with line management the situation did not improve and eventually she left the role.

(2) The Appellant was 46 when she left her job and, at that time, had 29 years of NICs contributions. To be entitled to a full state pension she required 35 years contributions.

(3) After ceasing her employment she had no income. She did have some savings she had inherited from her parents. She could not engage mentally with the prospects of getting a new job as she believed all workplaces would be the same as her previous employer and that she would be bullied again.

(4) She believed that she could live "off the land" picking and eating berries.

(5) The Appellant did not seek medical assistance in connection with the anxiety she felt because she believed the doctor would put her on medication which would not assist her.

(6) The Appellant felt very alone at this time, she has few friends and whilst the situation was improving she had had a strained relationship with her brother.

(7) In late 2016/early 2017 the Appellant contacted HMRC's NICs department who confirmed that she had made 29 years of contributions and explained that class 3 contributions could be made on a voluntary basis.

(8) On 6 March 2017 the Appellant paid £733.20 by way of class 3 NICs which were allocated to the tax year 2016/17. The contributions paid enhanced the Appellant's entitlement to receive a state pension when she reaches retirement age (67).

(9) The Appellant did not seek any advice or discuss with friends or family whether it was sensible to make the NICs payments at that time.

(10) With effect from 1 April 2018 the Appellant started house sitting for pet owners and has subsequently established a small business providing pet sitting services. As a consequence of this business she is entitled to make class 2 contributions but is not required to do so as he business operates below the small business profit threshold.

(11) On each of 11 April 2018 and 16 February 2019 the Appellant wrote to HMRC requesting that the class 3 contribution paid be refunded and/or reallocated to later years as payment for 2017/18 and 2018/19 class 2 NICs contributions.

On each occasion HMRC has refused the refund request and stated that the payments cannot be reallocated. HMRC issued the Decision on 15 August 2019. That Decision was initially appealed to HMRC and subsequently notified to the Tribunal.

TEST TO BE APPLIED

8. By virtue of s13 Social Security Contributions and Benefits Act 1992 (**SSCBA**) individuals without employment earnings or self-employment profits are entitled "if they so wish" to pay class 3 NICs. Such payments are allowed only where payment of them enhances the contributor's entitlement to, in this case, the state retirement pension.

9. Section 14 SSCBA requires that the payment of any sum as class 3 NICs which does not enhance the contributor's entitlement to benefit at the time it is paid must be refunded.

10. However, where contributions have benefited the contributor the circumstances in which they may be refunded are limited. By virtue of regulation 52 Social Security (Contributions) Regulations 2001 an application may be made to HMRC for the return of contributions paid in circumstances in which the contributor can show that the contributions pad as a consequence of an error made at the time of payment which related to some past or present matter.

11. In the case of *Bonner and others v HMRC* [2010] UKUT 450 (TCC) the Upper Tribunal considered and explained what it considered would amount to an error within the terms of the regulation and justifying a contribution refund. The Upper Tribunal considered that the word "error" was to be given its ordinary meaning and would encompass a mistake. They noted that:

26... The error or mistake can be of as to matters of fact or of judgment or on matters of law – subject to the temporal limitation. But the test is no more nor less than whether ordinary users of English would consider what happened to be an error or mistake."

12. That case concerned a number of individuals who had made class 3 contributions understanding or believing that they needed to make them in order to enhance their entitlement to state pension. They did so following an announcement that the number of qualifying years for full entitlement was to be reduced. Contributors had a range of explanations including that some had read and misunderstood or forgotten the guidance which would have told them they need not pay and others who were unaware of the guidance. However, in all instances the Tribunal considered that there had been an error or mistake made by the contributor as a

consequence of failing to appreciate, at the time the payment was made, that it need not be paid.

13. By reference to the statutory provisions and the guidance given in that case it is clear that the Tribunal must first consider whether payment of the class 3 NICs was precluded and therefore automatically repayable. If they are not automatically repayable the Tribunal must assess all of the facts and circumstances and determine whether there was an error or mistake of fact or of judgment or of law when the Appellant made her payment of class 3 NICs. In this context a change of heart and the benefit of hindsight are not sufficient to represent an error.

DISCUSSION

14. When the Appellant made the payment of class 3 NICs on 6 March 2017 she was, in the terms set out at law, entitled to make the payment. She was not in employment in that year (having left her job in the tax year 2015/16) and she had not yet set up her pet sitting business.

15. As of 5 April 2016 the Appellant had paid NICs for 29 years and required a further 6 to reach the maximum state pension. The payment of the class 3 contributions she made did therefore contribute to her entitlement to benefit.

16. As a consequence the Appellant was not precluded from making the payment she made, and it is not automatically repayable.

17. By reference to the facts found as set out in paragraph 7 above the Tribunal considers that following her decision to leave employment the Appellant was extremely anxious. By reference to her description of that time the Tribunal considers that her judgment was impaired by an unsubstantiated belief that she would never be able to work again (either in employment or self-employment). Despite the anxiety and fear she felt she did not seek medical assistance, nor did she seek advice or guidance on whether the decision to make the class 3 contributions was sensible. Had she taken a rational assessment of her position she would have realised that she was only 47 years old with 20 years until reaching retirement age during which she needed to work only 6 years and/or at some point, make class 3 contributions to be entitled to a full state pension. She did not, at that time, need to make the contributions and it was unreasonable/irrational to conclude otherwise.

18. The Tribunal acknowledges that there is a fine line between a decision taken on the facts as then known which is subsequently regretted and one which was a mistake at the time. This is a case which is just on the side of the line in which an error was made at the time the payment was made. There was a mistake of fact: that the Appellant would be unable to work and only by paying the class 3 contributions immediately would she become entitled to a full state payment; and there was an error of judgment: the Appellant's anxiety and fear caused her to take a decision which was not a rational decision in all the circumstances.

19. For these reasons the Tribunal considers that the appeal should be allowed, and the Appellant is entitled to be refunded £733.20 paid in error.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

20. This document contains full findings of fact and reasons for the decision. Any 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)" which accompanies and forms part of this decision notice.

**AMANDA BROWN QC
TRIBUNAL JUDGE**

Release date: 08 DECEMBER 2021