

# Administrative Appeals Tribunal decisions

## Job search allowance: employer contact certificates; whether special circumstances

**CHAMPION and SECRETARY TO DSS**  
(No. 10597)

**Decided:** 13 December 1995 by M.T. Lewis.

Champion was in receipt of job search allowance (JSA) when, on 14 July 1994, she was issued with a notice requiring her to complete employer contact certificates (ECCs) to verify that she had applied for two advertised job vacancies for the period 25 August 1994 to 7 September 1994. On 7 September 1994 her JSA was cancelled because the ECCs which she had lodged, were not for advertised job vacancies. The SSAT affirmed the decision to cancel payment of JSA for two weeks and Champion lodged an appeal to the AAT.

### The issue

The issue was whether Champion satisfied the activity test for the period 25 August 1994 to 7 September 1994 pursuant to s.522 of the *Social Security Act 1991* and whether she was therefore qualified for JSA under s.513 of the Act.

### The facts

The AAT found that Champion had been issued with ECCs because the DSS doubted that she was employable or that she was actively looking for work. Champion was a 42 year-old woman who had been unemployed for about 10 years. She had refused to apply for disability support pension, and her claim for special benefit had been rejected. She had an unusual personality, and was living in an extremely socially marginalised way. She exhibited eccentric behaviour, refusing to use the telephone or public transport. There was no evidence that she suffered from a physical or psychiatric illness.

The AAT said that she was a significant fringe dweller of our society who did

not neatly fit into any specific categories of the social security system.

The AAT noted that an activity agreement with the CES, which Champion had signed on 14 July 1994, required her to seek advertised positions. Champion's genuine belief that this was not the case, was incorrect. The AAT also noted that for the pay period immediately before the period in question, Champion had completed ECCs for non advertised positions which had been accepted by the DSS.

### The law

Champion argued that special circumstances existed whereby it was not reasonable to expect her to provide ECCs in respect of advertised job vacancies. The AAT said that the DSS had correctly invoked the power of s.522(1A) to require a person to apply for a particular number of advertised job vacancies. Champion had not complied with the requirement of s.522(1C) as she had not provided a written statement confirming that she had applied for an advertised job vacancy. However, the requirement of s.522(1C) does not apply if there are 'special circumstances' as provided by s.522(1E). In considering the words 'special circumstances' the AAT relied on the decision of the High Court in *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 7 CLR 492 and said that it was not proper to consider the present situation to be one of special circumstances if, in so doing, it ran counter to the basic purpose of JSA, which is to provide income support to an unemployed person provided she is actively seeking work and willing to undertake it.

The AAT found that Champion's unpreparedness to use public transport or telephones, did not prevent her from pursuing advertised vacancies, as she could respond by letter or personally. Although sympathetic to Champion, the AAT concluded that it could not find that there were special circumstances whereby it was not reasonable to expect Champion to seek employment through advertised job vacancies. Therefore, the ameliorating provisions of s.522(1E) did not apply and the DSS had correctly applied the provisions of s.522(1A) and (1C) to the facts of the case.

### Formal decision

The AAT affirmed the decision under review.

[G.H.]

## Job search allowance: 'enrolled in a full-time course of education'

**SECRETARY TO DSS and CHENG**  
(No. 11121)

**Decided:** 2 August 1996 by D. Chappell.

The DSS requested review of an SSAT decision which had set aside the DSS decision that Cheng was enrolled in a full-time course of education, and thus not qualified to receive job search allowance (JSA). The DSS had raised and sought recovery of an overpayment of \$2565.41 paid to Cheng for the period 27 February 1995 to 7 July 1995. It had also sought recovery of an overpayment to Cheng's wife of \$2442.30 for the same period.

### The facts

Cheng applied for JSA on 23 August 1994 claiming his wife as a dependant. Cheng and his wife enrolled in a Master of Arts course in Chinese studies which commenced on 27 February 1995. On his fortnightly 'Application for Payment of Job Search' forms Cheng replied 'no' to the question 'Did you enrol or did you study in a full-time course between (dates)?'

Cheng explained to the AAT that he had returned from a trip overseas in August 1994. He decided to apply for a one-year Master of Arts course to improve his employment prospects. The course required him to attend 6 hours a week for face-to-face teaching, and he estimated that he would need to spend approximately 10 extra hours studying because he was a native Chinese speaker and had done considerable study in the area. The course required students from a non-Chinese background to study approximately 40 hours extra a week. Cheng was aware that the University considered the course 'full-time'. The University offered the same course on a part-time basis taking two years.

Cheng told the AAT that he had twice attended the offices of the DSS to inquire whether he was entitled to receive JSA while he was attending the Masters