



Department
for Work &
Pensions

Secretary of State's Response

Section 1: Personal details

Name: <Title> <Forenames> <Surname>

Address:

NI No: <NINo>

Benefit: <Benefit Type>

Date of decision: <Decision Date>

Date decision notified: <SODN>

Date of reconsideration: zDateRecon

Date appeal received: <Date Lodged>

**Decision maker's name
and address:** <Decision Maker>

**Name and address of the
decision maker's
representative (if any):
Address where documents
for the decision maker may
be sent or delivered:**

**Name and address of any
other respondents and
their representatives (if
any):** <RepName>

Section 2: Schedule of evidence

Comment [M1]: List all evidence included in the submission

Document No.	Date of document	Date of receipt/issue	Brief description of document

Section 3: The decision

Section 4: The facts of the case

- 1.<Title> <Surname> is a single/married <manwoman> and was born on <DoB>. <HeShe> was awarded Employment and Support Allowance from and including zClaimDate on the basis that <heshe> was suffering from zMedCon.
- 2. On * it came to light that <Title> <Surname> was working as *, for * per week, and earning * per week.
- 3. The Decision Maker considered all of the available evidence, and decided that <Title> <Surname> was not engaged in exempt work and the award of Employment and Support Allowance was superseded and disallowed from zDecApDate.
- 4. <Title> <Surname> made an appeal on the approved form, on the grounds that *.
- 5. The decision of <Decision Date> was reconsidered on zDateRecon but not revised.

Comment [M2]: Apply as appropriate

Comment [M3]: Enter date

Comment [M4]: Insert job title

Comment [M5]: Enter number of hours

Comment [M6]: Enter total earnings

Comment [M7]: Briefly summarise customer's grounds of appeal only addressing the issues raised in the appeal

Section 5: The response

1. Entitlement to Employment and Support Allowance depends on whether a claimant's capability for work is limited by their physical or mental condition, and if so, whether the limitation is such that it is not reasonable to require them to work.

Welfare Reform Act 2007, sections 1(3)(a) and (4)

2. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable or not of performing certain activities due to disease or bodily or mental disablement.

Welfare Reform Act 2007, section 8

3. The claimant can be treated as having limited capability for work pending assessment where certain conditions are satisfied, including the condition that the claimant provides medical evidence.

Employment and Support Allowance Regulations 2008, regulation 30

4. A claimant can be treated as having limited capability for work without assessment, or after being assessed as not having limited capability for work, where certain conditions are satisfied, such as where the claimant is undergoing specified treatment, or where there is a serious risk to health if the claimant is found not to have limited capability for work. *

Employment and Support Allowance Regulations 2008, regulations 20, 25, 26 or 29

5. Claimants who are treated as not entitled to ESA by reasons of working are treated as not having Limited Capability for Work unless the claimant remains entitled to ESA(Cont). This applies even if it is determined that the claimant has or is to be treated as having Limited Capability for Work due to certain conditions in ESA regulations 20,25,26, or 29(see paragraph 4).

ESA Regulations, regulation 40 and 45

6. A claimant is to be treated as not entitled to ESA in any week in which he/she does work. Work is any work which a person does, whether or not a person undertakes it in expectation of payment, apart from certain exceptions provided for in Regulations.

Employment and Support Regulations 2008, Regulation 40.

7. A person who works in a week which is;

(a) the week in which the person first becomes entitled to a benefit, allowance or advantage on account of that person's limited capability for work in any period;

or

(b) the last week in any period in which the person has limited capability for work or is treated as having limited capability for work,

shall be treated as not entitled to Employment and Support Allowance only on the actual day or days in that week on which they do that work.

Employment and Support Allowance Regulations 2008, Regulation 40(4)

8. There are exceptions to the general rule. These exceptions are for claimants who do certain categories of work or are receiving certain regular treatment or who do work in the first or last week of a period of limited capability for work.

ESA Regulations, reg 40.

9. In certain circumstances a person can be treated as being engaged in exempt work and therefore cannot be treated as not entitled to Employment and Support Allowance. *

Employment and Support Allowance Regulations 2008, Regulation 45.

Comment [M8]: State whether this applies the customer

Comment [79]: State if the customer does not satisfy the exemptions

Comment [M10]: State whether any of these categories apply to the customer.

10. The Decision Maker decided that the work done by <Title> <Surname> did not fall into any of the exempt categories but <Title> <Surname> disputes this.

11. *Appeal submission goes here.*

12. I respectfully request that the tribunal confirms the decision that <Title> <Surname> is not entitled to Employment and Support Allowance from zDecApDate as <heshe> does not have limited capability for work.

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries.

It can be accessed on-line via the DWP's website at

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

Reported decisions of the Social Security Commissioners from 1991 can be accessed on-line via the DWP's website at

<http://www.dwp.gov.uk/commdecs/index.asp>

Comment [M11]: Include argument as to why the decision should be upheld. Consideration should be given to all points raised in their appeal. Include references to **relevant** legislation to justify the argument. All include evidence used that influenced this view and why other evidence, if available, was not strong enough to contradict this