

Secretary of State's Response

Section 1: Personal details

Appeal Tribunal Reference Number

Personal Details <Title> <Forenames> <Surname>

<CustAdd>

Date of Birth <DoB>

National Insurance Number <NINO>

Date of Death [box to be removed if not applicable] [Customer_DoD]

Name and address of Appointee [box to be removed if not applicable] <AppTitle> <AppForenames>
<AppSurname>
<AppAddress1>
<AppAddress2>
<AppAddress3>
<AppAddress4>
<AppPostCode>

Benefit <Benefit Type>

Date of Outcome Decision <Decision Date>

Date Outcome Decision Notified <SODN>

Date of Mandatory Reconsideration Decision

Date Mandatory Reconsideration Notified

Date of Appeal Request received by HMCTS

Date of Appeal Request received by DWP <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 <RepName> respondents and their representatives (if any):

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
			Secretary of State's Response
			SSCS1 Appeal Form/Letter or Appeal Pack
			LT54 Disallowance decision
			MR1 Mandatory Reconsideration request
			LT54 Mandatory Reconsideration decision

Section 3: The decision

Section 4: The facts of the case

<Title> <Surname> was born on XX.XX.XXXX. <HeShe> claimed ESA from and including xx/xx/xxxx on the basis that <heshe> was suffering from xxxxxxxxx. To be entitled to ESA <Title> <Surname> must have Limited Capability for Work or be treated as having Limited Capability for Work.

<Title> <Surname> was treated as having limited capability for work until a work capability assessment could be completed. This is the first assessment in the current claim.

Or

<Title> <Surname> has limited capability for work as <heshe> has previously satisfied the work capability assessment in the current claim. To retain entitlement to ESA <heshe> must continue to have Limited Capability for Work.

In order to establish whether <Title> <Surname> has /continues to have LCW a self-assessment questionnaire was sent to him/her on xx.xx.xxxx. As no reply was received a further request was sent on xx.xx.xxxx. Records show that the ESA50 questionnaire was not returned.

On xx/xx/xxxx the Decision Maker considered all the available evidence and decided that <Title> <Surname> was to be treated as not having limited capability for work because he failed without good cause to return the self-assessment questionnaire form by xx.xx.xxxx. As

a result the decision awarding ESA was superseded and disallowed from and including xx.xx.xxxx.

On xx/xx/xxxx, <Title> <Surname> requested a revision of that decision.

<Title> <Surname> was contacted on.....

The decision was reconsidered on xx.xx.xxxx but not revised.

On xx/xx/xxxx <Title> <Surname> made an appeal to HMCTS.

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. Where it falls to be determined whether a claimant has Limited Capability for Work the claimant must provide information requested by the Secretary of State. A limited capability for work questionnaire was issued to <Title> <Surname># on xx.xx.xxxx and a reminder was issued on xx.xx.xxxx.

Employment and Support Allowance Regulations 2008, Regulation 21 (1) (b).

5. A person is treated as not having limited capability for work if they fail without good cause to provide the information asked for in the limited capability for work questionnaire. A person cannot be treated as not having limited capability for work until;

- (i) at least 4 weeks have passed since the questionnaire was sent to the claimant and
- (ii) a reminder was issued at least 3 weeks after the questionnaire was sent and
- (iii) at least 1 week has passed since the reminder was sent.

The information was not provided within the specified time scale.

Employment and Support Allowance Regulations 2008, regulations 22 (1) and (2)

6. Good cause means some fact which, having regard to all the claimant's circumstances, would probably have caused a reasonable person of their age and experience to act (or fail to act) as the claimant did. It is up to the claimant to prove that there is good cause.

R(S) 2/63(T), R(SB) 6/83, CS 371/49(KL).

7. When determining whether the claimant has shown good cause, matters to be taken into account include;

- a) whether the claimant was outside Great Britain at the relevant time
- b) the claimant's state of health at the relevant time
- c) the nature of any disability the claimant has

Employment and Support Allowance Regulations 2008, Regulation 24

The Decision maker decided that <Title> <Surname> has not shown good cause for the delay but <Title> <Surname> disputes this.

8. On XX.XX.XXXX <Title> <Surname> made an appeal on the grounds that
.....

9. INSERT RESPONSE

10. I respectfully request that the tribunal confirms the decision that <Title> <Surname> is not entitled to Employment and Support Allowance from and including xx.xx.xxxx as <heshe> is treated as not having limited capability for work as <heshe> has not provided good cause for failing to return the questionnaire .

11. I respectfully advise the Tribunal that the claimant may be in receipt of another benefit. Should the Tribunal decide to award ESA then any payments should be offset against this award.

Social Security (Payment on Account, Overpayments and Recovery) Regulations 1988 reg 5(1) and (2).

ADD IF APPLICABLE -

12. The Tribunal is also advised that since the decision dated xx.xx.xxxx a self-assessment questionnaire has been completed and returned on xx.xx.xxxx. A Decision Maker has decided that <Title> <Surname> is treated as having limited capability for work from and including xx.xx.xxxx pending the application of the WCA. As a result the question of whether <Title> <Surname> can be treated as having limited capability for work is limited to the period xx.xx.xxxx to xx.xx.xxxx inclusive.

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>