



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/civil partnership <manwoman> and was born on <DoB>. <HeShe> claimed Employment and Support Allowance from and including zClaimDate. <Title> <Surname>'s own doctor completed a medical certificate (Form Med*) on (Date) and confirmed the diagnosis as zMedCon.

Comment [M2]: Apply as appropriate

Comment [M3]: Insert Form name

2. On <Decision Date> the Decision Maker considered all the evidence and decided that <Title> <Surname> is not entitled to contribution-based Employment and Support Allowance, and has not claimed or is not entitled to Income Related Employment and Support Allowance, from zClaimDate because *

Comment [M4]: Use appropriate paragraph from examples below

*<Title> <Surname> has not paid Class 1 or Class 2 contributions in respect of any of the last three complete tax years before the beginning of the relevant benefit year.

***OR**

*The earnings factor derived from earnings upon which primary Class 1 contributions have been paid, or treated as paid, by <Title> <Surname> is less than the lower earnings limit multiplied by 25 in each of the last three complete tax years.

***OR**

* <Title> <Surname> has not paid Class 1 or Class 2 contributions or been credited with earnings in respect of any of the last three complete tax years before the beginning of the relevant benefit year.

3. <Title> <Surname> made an appeal on the approved form, on the grounds that

Comment [M5]: Summarise customer's grounds of appeal only addressing the points raised in the appeal

4. The decision of <Decision Date> was reconsidered on zDateRecon but not revised.

Section 5: The response

The disputed decision was made in accordance with the following Acts and Regulations.

1. A person under pensionable age is required to satisfy the relevant contribution conditions (conditions relating to national insurance) for entitlement to Employment and Support Allowance. **Welfare Reform Act 2007, Section 1(2)(a).**

2. The relevant contribution conditions for Employment and Support Allowance are set out in the Welfare Reform Act 2007, Schedule 1, Part 1 (conditions relating to national insurance):-

The **first condition** is that:-

- (a) the person must have actually paid contributions of a relevant class in respect of one of the last 3 complete years before the beginning of the relevant benefit year, **and**
- (b) those contributions must have been paid before the relevant benefit week;
- and**
- (c) the earnings factor must not be less than that year's lower earnings limit multiplied by 25.

Welfare Reform Act 2007, Schedule 1, Part 1, paragraph 1(1).

3. The relevant contribution conditions for Employment and Support Allowance are set out in the Welfare Reform Act 2007, Schedule 1, Part 1 (conditions relating to national insurance);

The **second condition** is that;

- (a) the person has either paid, or been credited with Class 1 or Class 2 contributions, or been credited with earnings in respect of the last two complete tax years before the beginning of the relevant benefit year;
- and**
- (b) the earnings factor must be not less in each of those years than the year's lower earnings limit multiplied by 50.

Welfare Reform Act 2007, Schedule 1, Part 1, paragraph 2(1).

4. The first day of <Title> <Surname>'s period of limited capability for work was zClaimDate. Therefore the relevant tax years for the purposes of the first contribution condition are zTax1, zTax2 and zTax3

In order to satisfy the first contribution condition <Title> <Surname> must have paid national insurance contributions, as per paragraph 5 of this submission, in any one of those tax years.

❗ <Title> <Surname>'s national insurance record shows that <heshe> has not paid contributions of a relevant class in respect of one of the last 3 complete years before the beginning of the relevant benefit year.

***OR**

<Title> <Surname>'s national insurance record shows that although <heshe> has paid contributions of a relevant class in respect of one of the last 3 complete years before the beginning of the relevant benefit year, those contributions were not paid before the relevant benefit week.

***OR**

<Title> <Surname>'s has paid contributions of a relevant class in respect of one of the last 3 complete years before the beginning of the relevant benefit year and those

Comment [M6]: Apply one of the following three paras as appropriate

contributions were paid before the relevant benefit week. However, <hisher> national insurance record shows that the earnings factor is less than that year's lower earnings limit multiplied by 25.

Consequently the decision maker has decided that <Title> <Surname> does not satisfy the first contribution condition and is not entitled to Employment and Support Allowance.

Welfare Reform Act 2007, Schedule 1, Part 1, paragraph 1(1).

5. In order to be entitled to Employment and Support Allowance, <Title> <Surname> must satisfy both contribution conditions. As <Title> <Surname> did not satisfy the first contribution condition, the second contribution condition has not yet been determined.

6. Should the Appeal Tribunal find that <Title> <Surname> does satisfy the first contribution condition, the Appeal Tribunal is respectfully advised that <hisher> claim will have to be remitted to the Secretary of State for Work and Pensions to determine whether the second contribution is satisfied before <Title> <Surname>'s claim to Employment and Support Allowance can be decided.

7. In conclusion, it is respectfully requested that the Appeal Tribunal make findings on the following matters:

1. **Does <Title> <Surname> satisfy the first contribution condition?**
2. **Can <Title> <Surname> be treated as satisfying the first contribution condition?**
3. **Should the decision that <Title> <Surname> is not entitled to Employment and Support Allowance dated <Decision Date> be upheld?**

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>