

The complaint

Mr J has complained that Great Lakes Insurance SE has declined a claim he made for unemployment on his mortgage payment protection insurance policy.

What happened

Mr J's last day at work was 21 May 2021 and he was paid in lieu of notice up to 19 June 2021. Mr J contacted Great Lakes in May 2021 to register his claim. Great Lakes declined the claim on the basis that Mr J's unemployment was not as a result of involuntary redundancy. Instead, it said that Mr J had entered into a settlement agreement with his employer, whereby it had been mutually agreed that he would leave.

I wrote a provisional decision in February 2022 in which I explained why I was minded to uphold Mr J's complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Neither Great Lakes nor Mr J had any further substantive comments to make.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so I have taken account of the law, relevant rules and regulations, and good industry practice.

The policy terms set out the circumstances in which unemployment would not be covered, including that a policyholder had:

- agreed to take voluntary unemployment, resign or retire
- refused any offer of alternative employment by an employer, which would be reasonable for the policyholder to consider, given their experience and location

It is not in dispute that Mr J signed a settlement (or compromise) agreement with his employer. However, on the claim form Mr J has written: '*contract ended with third party*' as the reason for his unemployment.

In the section of the form that Mr J's former employer had to complete, the employer has given the reason for termination as: '*Employment ceased following settlement agreement*'. The employer also said Mr J had not been subject to any disciplinary action, that he had been offered suitable alternative employment and that his employment would not have been terminated but for the settlement agreement. In response to the question about why Mr J had declined the alternative employment, the employer has written: '*FAMILY UNSUITABILITY*'.

Great Lakes subsequently made further enquiries to the employer, who explained that the contract that Mr J had been working on had come to an end and so they were redeploying him. He had been offered work as a Site Operative which was believed to be suitable for

him. The employer said that Mr J had undergone a health surveillance check previously which deemed him physically fit to undertake the role. Mr J had initially accepted the role and attended training, but then declined the job offer. It was then that they decided to make him a settlement offer which was not redundancy. The employer said that a solicitor had viewed the agreement and considered it to be legally sound.

On the basis of the information provided to Great Lakes, it is not surprising that it concluded that Mr J had chosen to leave his job rather than being made redundant. However, Mr J says he effectively had no choice but to leave and that Great Lakes has not taken the full circumstances into account.

The job that Mr J had held with his employer for some years was as a workshop technician that mainly involved fixing machinery and it was based in a single location. The new role was a physically demanding role that would involve digging trenches and pulling cables through. It could also be based at any site around the country which would involve overnight stays. Mr J says that the job was unsuitable for him due to his poor health. In addition, he has a disabled daughter with whom he shares caring responsibilities with his wife, meaning that he needed to be home at nights.

I've seen correspondence between Mr J and his employer in which it is clear that Mr J was keen to maintain employment and that he was optimistic that his health would not be an issue. Mr J therefore did sign the job contract agreeing to the new role. The employer has deemed themselves satisfied that a role that included physical labouring was suitable for him.

However, although the employer said that Mr J had undertaken a health assessment, that had been in April 2019, some two years earlier. Mr J has provided evidence that he was experiencing health issues around the time of discussing his new contract. For example, he had emailed his employer on 10 April 2021 (prior to signing the new contract on 12 April 2021) to say that he was about to have some heart tests due to having experienced an arterial flutter just before Christmas. He had also been shielding under Covid restrictions due to an existing medical condition. And yet I cannot see that the employer took any notice of that information to consider whether in fact Mr J's health would be a barrier to him performing the requirements of the new job. Mr J has also provided evidence that his health subsequently declined further, leading him to be signed off sick on 4 May 2021, with the GP citing long standing aches and pains as part of the reason.

Also, I'm not persuaded that Mr J fully understood the level of expectation with regard to working away from home. Correspondence from his employer simply says: *'if there is a need to stay overnight this will be arranged by the company'* which does not convey any sense of how often Mr J might need to be away from home. It appears that Mr J had the impression that he would continue to be locally based with perhaps the odd night away. Indeed, I have seen that Mr J was initially told that he would be starting in his new role on 18 April 2021 at a site within a reasonable distance of his home.

In advance of that start date, Mr J was sent on a training course on 16 April 2021. That seems to have been when the truly physical nature of the job became apparent to him. In addition to that, he was then told that the local project had been put on hold and that he was expected to start work the following Monday at a distant location that would involve being away for the whole week. It was at this point that Mr J appreciated that the new job was not suitable for him, in regards to both his health and location. Mr J changed his mind about the new job very quickly after signing the contract, which supports his position that he had been given very little advance information about what the job actually entailed.

In response to turning down the role, his employer's reaction was to offer him a settlement agreement rather than making him redundant. However, my view is that the circumstances played out in such a way as to be more akin to redundancy rather than a parting of the ways by mutual agreement.

My conclusion is partly based on evidence more recently provided by Mr J. It is an email that his solicitor had sent to his employer on 5 May 2021. After setting out the circumstances of the case, the solicitor goes on to say that: *'...it is most definitely a redundancy situation as the role he carried out no longer exists and the role he has been offered is unsuitable for valid reasons. (Mr J) was still within his 4 week trial period when he confirmed the role as unsuitable...'*

This document has been shared with Great Lakes. However, it has maintained its decision to decline the claim as it says that Mr J ultimately still took voluntary redundancy. However, in the interests of treating Mr J fairly, Great Lakes should look behind the reasons for the settlement agreement.

Mr J has said that he was very stressed at the time and was pressured into signing the settlement agreement. He says that his choices were to take on the new role or accept the goodwill payment and leave. As my view is that the new role was unsuitable for Mr J, I consider that he was put in the position of feeling that he had to sign the compromise agreement. As such, he was effectively made involuntarily redundant.

As neither party has provided any further comments, I feel no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold Mr J's complaint.

My final decision

My final decision is that I uphold Mr J's complaint.

Great Lakes should re-consider Mr J's claim, treating him as having been made involuntarily unemployed.

I'm aware that Mr J was subsequently signed off sick. Therefore, Great Lakes would also need to consider converting the claim from unemployment to accident/sickness. It should ask Mr J for any additional information it needs in this regard.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 April 2022.

Carole Clark

Ombudsman