

STATE OF NORTH CAROLINA
BOARD OF REVIEW



IN THE MATTER OF:

Higher Authority Decision No.

ATTN:

Claimant

Employer

Pursuant to N.C. Gen. Stat. § 96-15(e), this cause came before the Board of Review (“Board”) to consider the **(claimant’s) (employer’s) appeal** from a decision by Appeals Referee under Appeals Docket No. . Due to the (claimant’s) (employer’s) failure to appear and present testimony and other evidence at the hearing before the Appeals Referee pursuant to 04 N.C. Admin. Code 24C .0201, the (claimant) (employer) has moved the Board to set aside the aforesaid decision and remand the cause for additional evidence and a new decision.

In its appeal, the (claimant) (employer) [asserts] [fails to provide any reason]

The Board concludes that the (claimant) (employer) has failed to show to the satisfaction of the Board that good cause exists as defined in 04 N.C. Admin. Code 24A .0105(26) for the failure to appear at the evidentiary hearing to give testimony and other evidence. Good cause must be a legally sufficient reason amounting to a legal excuse for failing to perform an act required by law in the exercise of due diligence. "Due diligence" means the measure of carefulness, precaution, attentiveness, and good judgment expected from, and exercised by a reasonable and prudent person under the particular circumstances. 04 N.C. Admin. Code 24A .0105(21). Accordingly, the (claimant’s) (employer’s) motion for rehearing must be denied.

As the ultimate fact-finder in cases involving contested claims for unemployment insurance benefits, the Board further concludes that the findings of fact made by the Appeals Referee were supported by competent evidence contained in the record as presented by the (claimant) (employer) and adopts them as its own. No witness appeared at the hearing before the Appeals Referee to present any evidence on behalf of the (claimant) (employer) in this matter. Thus, it was proper and correct for the Appeals Referee to premise factual findings on the only



competent evidence presented in this matter. See Patrick v. Cone Mills Corp., 64 N.C. App. 722, 308 S.E.2d 476 (1983). The Board also concludes that the Appeals Referee properly applied the Employment Security Law (N.C. Gen. Stat. § 96-1 et seq.) to those facts, and the resultant decision was in accordance with law and fact.

The (claimant's) (employer's) motion for rehearing is **DENIED**.

The decision by the Appeals Referee is **AFFIRMED**.

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning .
(**NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning .

Board of Review members Susan Doe and John Doe participated in this appeal and concur with this decision.

This the .

BOARD OF REVIEW

Chairman

NOTE: This Higher Authority Decision will become final thirty (30) days after mailing unless a petition for judicial review is filed with the superior court as indicated below. The date of mailing is found on the last page of this decision. Although the Board does not impart legal advice, please see the enclosed pamphlet for additional guidance on how to appeal a Higher Authority Decision. The pamphlet is available in the public employment offices throughout the State, and on the Division of Employment Security's website. You may also visit the *Frequently Asked Questions* section on the Division of Employment Security's website at www.des.nc.gov, and consult an attorney of your choosing.

APPEAL RIGHTS FOR JUDICIAL REVIEW

Appeals from this Higher Authority Decision must be filed with the Clerk of Superior Court by the petitioner in the county in which he or she resides, or in which the petitioner has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina *or* with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This Higher Authority Decision will become final thirty (30) days after mailing unless a timely petition for judicial review is filed with the superior court pursuant to N.C. Gen. Stat. §§ 96-15(h) and (i).

IMPORTANT – SEE FOLLOWING PAGE



Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served upon the Division of Employment Security (“Division”) and upon all parties of record to the proceedings within ten (10) days of the filing of the petition. Copies of the petition must be served by personal service or by certified mail, return receipt requested. Petitions for superior court review must be served on and addressed to the registered agent for service of process for the Division:

Frank Doe
Chief Counsel
North Carolina Department of Commerce
Division of Employment Security
Mailing Address: Post Office Box 25903, Raleigh, NC 27611-5903
Physical Address: 700 Wade Avenue, Raleigh, NC 27605-1154

NOTE: If you are served with a Petition for Judicial Review by another party, you will not be a party to the judicial review proceedings unless you: (1) notify the superior court within ten (10) days after you receive the petition that you want to become a party to the proceedings, or (2) file a motion to intervene as provided in N.C. Gen. Stat. § 1A-1, Rule 24.

NOTICE TO ALL INTERESTED PARTIES

A legal representative as defined in 04 N.C. Admin. Code 24A .0105(32) (including individuals from a third-party company serving as an employer’s unemployment insurance administrator) must be a licensed attorney, or a person supervised by a licensed attorney in accordance with N.C. Gen. Stat. Ch. 84 and § 96-17(b). Notices and/or certification of attorney supervision must be in writing pursuant to 04 N.C. Admin. Code 24C .0504. **Legal representation in judicial proceedings must comply with N.C. Gen. Stat. Ch. 84.**

Pursuant to 04 N.C. Admin. Code 24C .0504, when a party has a legal representative, all documents or information required to be provided to the party will only be sent to the legal representative. Any information provided to a party’s legal representative will have the same force and effect as if it had been sent directly to the party.

For claims filed on or after June 30, 2013, claimants are subject to repayment of benefits received from any administrative or judicial decision that is later reversed on appeal. N.C. Gen. Stat. § 96-18(g)(2).

SPECIAL NOTICE TO CLAIMANTS: If you were receiving or have previously received unemployment insurance benefits in connection with the underlying claim and this Higher Authority Decision rules you ineligible or disqualified for all or part of such benefits, you may now have an overpayment of benefits pursuant to N.C. Gen. Stat. § 96-18(g)(2). If an overpayment is created by this Higher Authority Decision, you will be mailed a separate Notice of Overpayment or Determination of Overpayment from the Division’s Benefits Integrity/Benefit Payment Control Section. The Notice of Overpayment or Determination of Overpayment will specify, among other things, the amount of your overpayment and any penalties that apply. Please note that the only way you may contest the overpayment is to file a petition for judicial review of this Higher Authority Decision with the superior court as provided above, and in accordance with North Carolina law. In your petition, you must specify whether you are appealing (1) the issue of disqualification or eligibility and/or (2) the resulting determination that you received an overpayment of benefits.

Appeal Filed:

Decision Mailed: