

STATE OF NORTH CAROLINA
BOARD OF REVIEW



IN THE MATTER OF:

Higher Authority Decision No.

ATTN:

Claimant

Employer

Pursuant to N.C. Gen. Stat. § 15(e), this cause came before the Board of Review (“Board”) to consider the **(claimant’s) (employer’s) appeal** from (a decision) (an Order for Dismissal) by Appeals Referee [name] under Appeals Docket No. .

N.C. Gen. Stat. § 96-15(c), in pertinent part, provides:

Whenever an appeal is taken from a decision of the appeals referee or hearing officer; the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the Board of Review may dismiss the appeal.

...the decision of the appeals referee shall be deemed to be the final decision of the Division unless within 10 days after the date of notification or mailing of the decision, whichever is earlier, a written appeal is filed pursuant to such rules as the Board of Review and the Division may adopt.

In the present case, the Appeal Referee’s (decision) (Order for Dismissal) was mailed to all interested parties on . The parties were informed of the “grounds” requirements under the Appeal Rights heading on page(s) of the (decision) (Order).

It appears from the record that the following statement of appeal from the (claimant) (employer) was received by the (Local Office of the Division of Workforce Solutions) (Section) (Unit) of the Division of Employment Security of the North Carolina Department of Commerce.



The Board concludes that the (claimant's) (employer's) statement clearly fails to state any grounds for the appeal. Consequently, it does not meet the mandatory requirement of N.C. Gen. Stat. § 96-15(c) and 04 NCAC 24C .0501 that a clear statement of the grounds for the appeal be filed.

It also appears from the record that the applicable appeal rights expired on (which includes the extra three days mandated by N.C. Gen. Stat. § 96-15(c2)); and that the (claimant's) (employer's) appeal was received by the (Local Office of the Division of Workforce Solutions) (Section) (Unit) of the Division of Employment Security of the North Carolina Department of Commerce on .

The Board also concludes that the (claimant's) (employer's) appeal was not filed within the time period established by law. Thus, the appeal was untimely and must be dismissed for failure to meet the mandatory requirements of timeliness as set forth in N.C. Gen. Stat. §§ 96-15(c) and (c2). Furthermore, the (claimant) (employer) has not shown good cause as defined in 04 N.C. Admin. Code 24A .0105(26) for failing to meet the timeliness requirements as outlined in 04 N.C. Admin. Code 24A .0100. 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). No basis for permitting the late appeal has been shown. As such, the (claimant's)(employer's) appeal must be dismissed for failure to state grounds and for failure to meet the timeliness requirements of N.C. Gen. Stat. § 96-15(c).

The (claimant's) (employer's) appeal is **DISMISSED**.

The Appeals Referee's (decision) (Order for Dismissal) is **FINAL**.

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).

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).

IMPORTANT – SEE FOLLOWING PAGE



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: