

STATE OF NORTH CAROLINA  
BOARD OF REVIEW



IN THE MATTER OF:

Higher Authority Decision No.

ATTN:

Claimant

Employer

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective . Thereafter, the Division of Employment Security (“Division”) determined that the weekly benefit amount payable to the claimant was \$ and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$ .

The claim was referred for adjudication on the issue of **antedating**. The adjudicator issued a Determination by Adjudicator under Docket No. on , finding the claimant (eligible) (not eligible) for benefits pursuant to N.C. Gen. Stat. § 96-14( ). The (claimant) (employer) filed an appeal from the Determination and the matter was heard by Appeals Referee under Appeals Docket No. The following individuals appeared at the hearing before the Appeals Referee: . On , the Appeals Referee issued a decision finding the claimant (eligible) (not eligible) to receive benefits pursuant to N.C. Gen. Stat. § 96-14( ). **The (claimant) (employer) has appealed.**

FINDINGS OF FACT:

1. The claimant has filed continued claims for unemployment insurance benefits for the period through . The claimant has registered for work with the Division, has continued to report to an employment office as requested by the Division, and has made a claim for benefits in accordance with N.C. Gen. Stat. § 96-15(a).

2. The claimant began working for the employer on as (a/an) . (He) (She) last worked for the employer on .

3. The claimant’s method for filing (his) (her) (claim) (weekly certification) was by . The claimant did not contact the Division to file (his) (her) (claim) (weekly certification) prior to because .



4. The claimant (could) (could not) have contacted the Division by (telephone) (internet), as prescribed in the North Carolina Administrative Code and instructions available to the claimant. Alternatively, the claimant (could) (could not) have contacted the Division by mail, delivery service, fax, or through a public employment office due to

MEMORANDUM OF LAW:

The Employment Security Law provides:

To obtain benefits, an individual must file a valid claim for unemployment benefits and register for work. An individual must serve a one-week waiting period for each claim filed. A valid claim is one that meets the employment and wage standards in this subsection for the individual's base period. A valid claim for a second benefit year is one that meets the employment and wage standards in this subsection since the beginning date of the prior benefit year and before the date the new benefit claim is filed.

N.C. Gen. Stat. § 96-14.1(b).

A benefit year is the fifty-two-week period beginning with the first day of a week with respect to which an individual first files a valid claim for benefits and registers for work. If the individual is payroll attached, the benefit year begins on the Sunday preceding the payroll week ending date. If the individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the individual filed a valid claim for benefits and registered for work. N.C. Gen. Stat. § 96-1(b)(5).

Individuals must contact the Division by internet or by telephone to file a valid claim for benefits. 04 N.C. Admin. Code 24B .0101(a). The Division's rules provide for alternative methods for filing a claim or weekly certification by mail, delivery service, facsimile, or through one of the public employment offices throughout the State when specified conditions exist that make it impracticable for a representative of the Division to accept a claim or weekly certification by internet or telephone due to inclement weather or a declared natural disaster. 04 N.C. Admin. Code 24B .0102.

The Employment Security Law further provides:

Claims for benefits must be made in accordance with rules adopted by the Division. An employer must provide individuals providing services for it access to information concerning the unemployment compensation program. The Division must supply an employer with any printed statements and other materials that the Division requires an employer to provide to individuals without cost to the employer.

N.C. Gen. Stat. § 96-15(a).



After a representative of the Division examines and determines a claim to be valid, a monetary determination must be issued showing the week with respect to when benefits commence, the weekly benefit amount payable, and the potential maximum duration of benefits. N.C. Gen. Stat. § 96-15(b)(1). The Law further provides that a valid initial claim will be retroactively effective to the Sunday of the calendar week during which a claimant would have filed a claim if the failure to file the claim at that time was because:

- (1) a notice of the time and place for filing a claim for benefits that should have been posted was not posted in the claimant's employment establishment;
- (2) the claimant's employer coerced the claimant not to file a claim for benefits and the claimant contacted an authorized representative of DES no later than 14 days following his or her last day of work;
- (3) of a natural disaster; or
- (4) an invalid claim was filed in good faith in another state.

04 N.C. Admin. Code 24B .0105.

Good cause, as used in the Employment Security Law, must amount to a legal excuse for failing to perform an act required by law in the exercise of due diligence. 04 N.C. Admin. 24A .0105(26).

CONCLUSIONS OF LAW:

In the present case, the undersigned concludes from the competent and credible evidence and the facts found that the claimant did not file a (claim) (weekly certification) before because . The undersigned further concludes that the claimant's reason for filing on (is) (is not) a substantial reason that amounts to a legal excuse for failing to file before . As such, the claimant (has) (has not) shown good cause.

Based on the foregoing, the decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant's request to antedate (his) (her) claim must be (allowed) (disallowed), and the claimant must be held (eligible) (not eligible) from receiving unemployment insurance benefits.

DECISION:

The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

The claimant's request to antedate (his) (her) claim is (**ALLOWED**) (**NOT ALLOWED**).

The claimant is (**ELIGIBLE**) (**NOT ELIGIBLE**) for unemployment insurance benefits for the weeks ending .

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



This the .

BOARD OF REVIEW

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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](http://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.

**IMPORTANT – SEE FOLLOWING PAGE**



**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: