

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 to an adjudicator on the issue of separation from last employment. The adjudicator issued a Determination by Adjudicator under Docket No. finding the claimant (eligible) (not eligible) for benefits. 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) from receiving unemployment insurance benefits pursuant to N.C. Gen. Stat. § 96-14.9(d). **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 at 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).



MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual is not available to work during any week that one or more of the following applies:

- (1) The individual tests positive for a controlled substance. An individual tests positive for a controlled substance if all of the conditions of this subdivision apply. An employer must report an individual's positive test for a controlled substance to the Division.
  - a. The test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes.
  - b. The test is required as a condition of hire for a job.
  - c. The job would be suitable work for the individual.
- (2) The individual is incarcerated or has received notice to report to or is otherwise detained in a state or federal jail or penal institution. This subdivision does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work.
- (3) The individual is an alien and is not in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.
- (4) The individual is on disciplinary suspension for more than 30 days based on acts or omissions that constitute fault on the part of the employee and are connected with the work.

N.C. Gen. Stat. § 96-14.9(d).

CONCLUSIONS OF LAW:

The undersigned concludes from the competent and credible evidence and the facts found that the claimant was

Based on the foregoing, the decision of the Appeals Referee must be (affirmed/reversed/modified). Further, the claimant must be held (eligible) (not eligible) to receive unemployment insurance benefits.

DECISION:

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



The claimant is **ELIGIBLE** to receive unemployment insurance benefits for the week(s) ending . . . . (NOT ELIGIBLE to receive unemployment insurance benefits for the week(s) 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

**IMPORTANT – SEE FOLLOWING PAGE**



**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: