

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 (disqualified) (not disqualified) (eligible) (not eligible) for benefits. The (claimant) (employer) filed an appeal from the Determination and the matter was heard by Appeals Referee (name) 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 (disqualified) (not disqualified) (eligible) (not eligible) from receiving unemployment insurance benefits pursuant to N.C. Gen. Stat. § 96-(). **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 .



MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual is unemployed for the purpose of establishing a benefit year if one of the following conditions is met:

- (a) Initial Unemployment. -
 - (1) Payroll attachment. - The individual has payroll attachment but because of lack of work during the payroll week for which the individual is requesting the establishment of a benefit year, the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which the individual has payroll attachment as a regular employee.
 - (2) No payroll attachment. - The individual has no payroll attachment on the date the individual files a claim for unemployment benefits.

For benefit weeks within an established benefit year, a claimant is unemployed as provided in this subsection:

- (b) Unemployed. - For benefit weeks within an established benefit year,
 - (1) Totally unemployed. - The claimant's earnings for the week, including payments in subsection (c) of this section, would not reduce the claimant's weekly benefit amount as calculated in G.S. 96-14.2.
 - (2) Partially unemployed. - The claimant is payroll attached and both of the following apply:
 - a. The claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which the claimant is employed because of lack of work during the payroll week for which the claimant is requesting benefits.
 - b. The claimant's earnings for the payroll week for which the claimant is requesting benefits, including payments in subsection (c) of this section, would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-14.2.
 - (3) Part-totally unemployed. - The claimant has no payroll attachment during all or part of the week, and the claimant's earnings for odd jobs or subsidiary work would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-14.2.



(c) Separation Payments. - An individual is not unemployed if, with respect to the entire calendar week, the individual receives or will receive as a result of the individual's separation from work remuneration in one or more of the forms listed in this subsection. If the remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it had been earned by the individual during a week of employment. An individual may be unemployed, as provided in subsection (b) of this section, if the individual is receiving payment applicable to less than the entire week:

- (1) Wages in lieu of notice.
- (2) Accrued vacation pay.
- (3) Terminal leave pay.
- (4) Severance pay.
- (5) Separation pay.
- (6) Dismissal payments or wages by whatever name.

N. C. Gen. Stat. § 96-15.01.

In re Fallin (adopted April 30, 1997), Precedent Decision No. 33, provides the following guidance in the case of claimants who are employed by temporary personnel service employers:

An individual employed by a temporary personnel service employer who files a NIC or AIC for unemployment insurance benefits after an assignment has ended or after he is not permitted to return to an assignment and prior to an offer of another assignment shall not be considered separated from employment under G.S. §96-14(1), (2), (2a) or (2b),¹ but shall be deemed unemployed in accordance with G.S. §96-8(10)a. and b., unless the claimant has been discharged. If the claimant has been discharged, then claimant's qualifications to receive benefits shall be determined in accordance with under G.S. §96-14(2), (2a) or (2b).

For any week when a claimant is receiving benefits under G.S. §96-8(10)a. or b.² and fails to work all of the work her/his temporary personnel service employer has made available to the claimant, the claimant's eligibility to receive benefits shall be decided under G.S. §96-13(a).³

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Division finds that has met the weekly certification requirements. N. C. Gen. Stat. § 96-14.9.

CONCLUSIONS OF LAW:

In the present case, any controverted evidence was resolved by making findings of fact based on competent and credible evidence presented at the hearing.

¹ Repealed by Session Laws 2013-2, effective July 1, 2013. See N.C. Gen. Stat. §§ 96-14.5, 96-14.6, 96-14.7(a) in the current law.

² Repealed by Session Laws 2013-2, effective July 1, 2013. See N.C. Gen. Stat. § 96-1 in the current law.

³ Repealed by Session Laws 2013-2, effective July 1, 2013. See N.C. Gen. Stat. §§ 96-14.1, 96-14.9, 96-14.10 in the current 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

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: