

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 what has been acknowledged by the Appeals Section of the North Carolina Department of Commerce, Division of Employment Security (“Division”) as the ‘S APPEAL from a decision by Appeals Referee (name) under Appeals Docket No. .

In the document acknowledged as the claimant’s appeal, it appears that the claimant expresses no disagreement with the decision of the Appeals Referee with regard to the issues of eligibility and/or disqualification that were before the Appeals Referee. It further appears that the claimant also expresses no disagreement with the Notice of Overpayment or Determination of Overpayment that was sent to the claimant by the Division’s Benefits Integrity/Benefit Payment Control Section (“BPC”). BPC placed the claimant on notice that the claimant received an overpayment of benefits that the Division intends to recoup. In addition to other information, the Notice of Overpayment or Determination of Overpayment listed the type of overpayment made, the time period during which the overpayment was made, and the amount of overpayment of benefits that the Division alleges that the claimant received.

It appears from the document before the Board that the claimant merely expresses reasons why the Division should waive the statutory requirement that the claimant repay the amount of the overpayment of unemployment insurance benefits to which (he) (she) was not entitled. As such, it appears that the claimant is not challenging the Appeals Decision, Notice of Overpayment, or Determination of Overpayment, but is merely seeking a waiver of repayment of the overpayment of benefits. Pursuant to N.C. Gen. Stat. § 96-4(w), the Division, and not the Board, has the authority to waive repayment of overpayment of benefits.

MEMORANDUM OF LAW:

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). Before the Division can require repayment of an overpayment of benefits, it must give the claimant notice of its determination that there has been an overpayment. N.C. Gen. Stat. § 96-18(g)(3)b; 04 N.C. Admin. Code 24B .0601. The Division can provide notice of an overpayment at any time. The Division must also give the claimant a reasonable opportunity for an administrative hearing to determine whether there was an overpayment of benefits made to



the claimant. N.C. Gen. Stat. § 96-18(g)(3)b. If the Division determines, after the administrative process has concluded, that the claimant was overpaid benefits, and a final determination or decision as to the overpayment has been made, the Division will mail a bill to the claimant to recoup the overpayment. N.C. Gen. Stat. § 96-18(g); 04 N.C. Admin. Code 24B .0602.

However, upon a finding of good cause, the Division may forgive, in whole or in part, any nonfraudulent overpayment arising under N.C. Gen. Stat. § 96-18(g)(2)c. N.C. Gen. Stat. § 96-4(w). Good cause must be a substantial reason amounting to a legal excuse for failing to perform an act required by law in the exercise of due diligence. See 04 N.C. Admin. Code 24A .0105(26). The Employment Security Law provides that the Division must not consider any request or petition to waive a fraudulent overpayment. N.C. Gen. Stat. § 96-18(g)(2)(c); 04 N.C. Admin. Code 24B .0702. Furthermore, the Division will not consider any request to waive the overpayment of benefits until the decision as to the issue of eligibility or qualification in the case becomes final. A decision becomes final when (1) there has been no appeal, (2) there has been no timely appeal, or (3) appeals rights have been exhausted.

CONCLUSIONS OF LAW:

It appears from the record that the claimant is seeking a waiver of repayment of overpayment of benefits that was received from the Division. The Board has no authority to waive repayment of any overpayment owed to the Division. Instead, the Division's Assistant Secretary has given BPC the exclusive authority to resolve requests or petitions for waiver of overpayment. The Board therefore concludes that no party aggrieved by the decision of the Appeals Referee has entered an appeal as required by N.C. Gen. Stat. § 96-15(c). The Board further concludes that no party aggrieved by the determination of BPC that the claimant received an overpayment of benefits has entered an appeal as required by N.C. Gen. Stat. § 96-18(g)(3)b. Accordingly, the appeal erroneously acknowledged by the Division's Appeals Section must be dismissed.

To request a waiver of repayment of the overpayment of benefits, the claimant may file a written request for a waiver of the overpayment with BPC according to the instructions provided with the Notice of Overpayment or Determination of Overpayment. The written request must be accompanied by all evidence and documents that the claimant wants the Division to consider in deciding whether to grant the waiver request. 04 N.C. Admin. Code 24B .0701.

What was erroneously acknowledged by the Division's Appeals Section as the claimant's appeal is **DISMISSED**.

The decision of the Appeals Referee under Docket No. \_\_\_\_\_ is **FINAL**.

The determination by the Assistant Secretary's designee that the claimant received an overpayment of unemployment insurance benefits is **FINAL**.

IT IS ORDERED that the document submitted by the claimant will be forwarded to BPC for appropriate processing as a request for waiver of an overpayment of benefits.

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

**IMPORTANT – SEE FOLLOWING PAGE**



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BOARD OF REVIEW

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Chairman

**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.

Appeal Filed:

Decision Mailed: