

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 the **(claimant's) (employer's) appeal** from an Order for Dismissal pursuant to 04 N.C. Admin. Code 24C .0209(b) under Appeals Docket No. . Appeals Referee dismissed the matter when the (claimant) (employer), as the appealing party, failed to appear at the scheduled hearing on , 20 to prosecute the appeal from a Determination by Adjudicator under Docket No. . The (claimant) (employer) has moved the Board to set aside the Order for Dismissal and remand the cause for rehearing and decision.

The Board has thoroughly examined the record forwarded for review. The Board concludes that the Appeals Referee's Order for Dismissal is supported by the record. Furthermore, the Board concludes that the (claimant) (employer) has failed to show good cause as defined in 04 N.C. Admin. Code 24A .0105(26) for failure to appear at the hearing or to contact the Appeals Referee to request a change in the hearing date and/or time pursuant to 04 N.C. Admin. Code 24C .0207. 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). The (claimant) (employer) has not shown good cause for (his) (her) (its) failure to appear at the hearing, or to contact the Appeals Referee to request a change in the hearing date and/or time as explained on the Notice of Hearing that was mailed to each party on . Thus, the (claimant's) (employer's) request for another hearing must be denied.

The (claimant's) (employer's) request for rehearing is **DENIED**.

The Appeals Referee's Order for Dismissal is **AFFIRMED**.

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



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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

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: