

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 a decision by Appeals Referee under Appeals Docket No. . The record evidence has been reviewed in its entirety.

[NOTE to Legal Assistant or typist: The additional 3 days does not apply to the Determination by Adjudicator. The appeal rights expire 30 days after the date of mailing].

The Employment Security Law provides that the conclusion of the adjudicator shall be deemed the final decision of the Division unless within thirty (30) days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed. N.C. Gen. Stat. § 96-15(b)(2). The Determination by Adjudicator Docket No. was mailed on . The appeal rights to the Determination expired thirty (30) days thereafter on . N.C. Gen. Stat. § 96-15(b)(2). When the last day of any period of time is a Saturday, Sunday or legal state holiday, the period is extended to the next business day. In this case, the (claimant's) (employer's) appeal period expired on , which (was a Saturday, Sunday, or legal state holiday) (was not a Saturday, Sunday, or legal state holiday, so the period was not extended). In this case, the appeal to the Determination was filed on , ____ () days after expiration of the appeal rights to the Determination.

As the ultimate fact-finder in cases involving contested claims for unemployment insurance benefits, the Board concludes that the facts found by the Appeals Referee on issue of the timeliness of the appeal were based on competent evidence and adopts them as its own with the following modification(s):

The Board declines to adopt the conclusions of law made by the Appeals Referee with regard to the issue of the timeliness of the appeal because the Appeals Referee failed to properly apply the definition of "good cause" as defined in 04 N.C. Admin. Code 24A .0105(26) to the (claimant's) (employer's) failure to submit a timely appeal. 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).

While the (claimant) (employer) asserted _____, the (claimant) (employer) has failed to show good cause for failing to meet the timeliness requirements required by law, and as outlined in the Determination. The Appeals Referee failed to properly and correctly apply the Employment Security Law (N.C. Gen. Stat. § 96-1 et seq.) to the facts as found and modified, and the resultant decision was not in accordance with the law and fact. Consequently, the Appeals Referee should not have allowed the (claimant's) (employer's) appeal, as it was untimely.

The decision of the Appeals Referee on the SEPARATION ISSUE is **SET ASIDE**.

The decision of the Appeals Referee on the issue of the TIMELINESS OF THE APPEAL is **REVERSED**. The (claimant's) (employer's) late appeal from Determination by Adjudicator Docket No. _____ is **NOT ALLOWED**.

The Determination by Adjudicator in Docket No. _____ is **FINAL**.

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning _____. **NOT DISQUALIFIED** and will receive unemployment insurance benefits beginning _____.

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).

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).

IMPORTANT – SEE FOLLOWING PAGE



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: