

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.

The (claimant) (employer) asserts that the appeal was filed late because . After hearing evidence on the matter, the Appeals Referee concluded that the (claimant) (employer) failed to show good cause for filing a late appeal.

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 not based on competent evidence, and declines to adopt the conclusions of law made by the Appeals Referee. 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). In this case, 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 the resultant decision was not in accordance with the law and facts. The Appeals Referee should have allowed the (claimant's) (employer's) late appeal for good cause shown. The (claimant's) (employer's) stated reason for the late appeal amounted to a legal excuse, and the (claimant) (employer) has shown that (he) (she) (it) acted with due diligence with regard to this important matter.

Based on the foregoing, decision of the Appeals Referee on the issue of the timeliness of the appeal is **REVERSED**.

The cause must be **REMANDED** to the Appeals Referee for the sole purpose of setting aside the Appeals Decision and issuing a new decision with new findings of fact and conclusions of law. No further evidence from the parties is necessary for rendering a decision. The new findings of fact shall state the procedural history of the remands, a summary of the requirements of the remand orders, and the parties and witnesses appearing at each hearing conducted in the matter. Additional findings must be made, and it must be evident from the new decision that the Appeals Referee heard and considered the evidence, and complied with the remand order of the Board.

IT IS ORDERED that all documents contained in the record shall be transmitted to the Appeals Referee with this decision, including the appeal and all other correspondence or documents by whatever name or designation, shall be marked as exhibits and entered into the record by the Appeals Referee on remand to complete the record as required by law.

IT IS FURTHER ORDERED that a decision in this matter shall be mailed within 15 days from the date of receipt of the remanded record in the Appeals Section, unless an extension is granted by the Chief Appeals Referee and made part of the record.

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

This the .

BOARD OF REVIEW

Chairman

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

IMPORTANT – SEE FOLLOWING PAGE

Higher Authority Decision No.
Page Three of Three



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: