

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 and any briefs or written arguments timely submitted have been reviewed in their entirety.

In passing upon issues of fact in cases involving contested claims for unemployment insurance benefits, the Board is the ultimate judge of the credibility of the witnesses, and of the weight to be given to their testimony. The Board may accept or reject the testimony of a witness, either in whole or in part, depending solely upon whether it believes or disbelieves the same. See Moses v. Bartholomew, 238 N.C. 714, 78 S.E.2d 923 (1953). When the evidence as to the circumstances surrounding a claimant’s separation from employment is controverted, the Board must resolve the controversy by making findings of fact based on competent and credible evidence. See Phillips v. Kincaid Furniture Co., 67 N.C. App. 329, 313 S.E.2d 19 (1984). The Board is not bound by the credibility determinations made by the Appeals Referee. See Forbis v. Wesleyan Nursing Home, Inc., 73 N.C. App. 166, 325 S.E.2d 651 (1985). If there is a reasonable basis for the credibility determinations and the evidence relied upon is not inherently incredible, the Board usually defers to the Appeals Referee’s judgment in such matters.

In the appeal, the (claimant) (employer) addresses matters that were resolved by the Appeals Referee based on the credibility of the testimony presented by the witnesses. The Board concludes there was a reasonable basis for the credibility determinations made by the Appeals Referee and the evidence relied upon to make these determinations was not inherently incredible.

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 are supported by competent and credible evidence contained in the record, and adopts them as its own. Furthermore, the Board concludes that the Appeals Referee properly and correctly applied the Employment Security Law (N.C. Gen. Stat. § 96-1 et seq.) to the facts as found, and the resultant decision was in accordance with law and fact.



The decision of the Appeals Referee is (**AFFIRMED**)(**REVERSED**)(**MODIFIED**).

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

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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](http://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

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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: