

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 139

TO: R. F. Martin, Director
FROM: R. B. Billings, Attorney
RE: Eligibility of Individuals Who Are Primarily Self-employed and Others
Who Supplement Regular Earnings but Are Not Engaged in Self-
employment

The question has arisen as to the benefit status of certain individuals under the Act who are primarily not engaged in self-employment but who work customarily in industry for their main means of livelihood. Such individuals perform some services of personal nature for others during the time they are not working at their regular work. The benefit status as to certain individuals who ordinarily work in industry for a living and who perform some services during off hours on farms has also been raised.

Under the law "self-employment" is not a defined term. It is generally recognized that self-employed individuals are those who engage in a business venture of their own and who by virtue of such venture endeavor to make their chief means of livelihood in such manner. These self-employed individuals among others include farmers, independent loggers, professional men such as lawyers, doctors, engineers, etc., as well as individuals who have set themselves up in business to serve the public by the performance of personal services or selling of some commodity. It does not, in our opinion, refer to personal or domestic services or non-business activities in which an individual engages for his sole satisfaction, comfort, or convenience. Under the law the only reference made to self-employed individuals is contained in the section relating to disqualification for benefits (Sec. 96-14(f)), and this provides that an individual shall be disqualified for benefits if the Commission finds that he is customarily self-employed and can reasonably return to self-employment. This specific disqualification applies to that group which the Commission finds from the facts existing in a particular case is customarily self-employed. In other words, an individual may have been engaged in some business venture or as a farmer for a number of years and sufficiently so for the Commission to find that such individual during the period has been self-employed or has been engaged in some business activity from which he has derived his chief means of livelihood. In such cases if these individuals have temporarily entered into the labor market and have become unemployed and filed claims, the law requires that they be disqualified from receiving benefits if the Commission finds that they can reasonably return to self-employment.

The provision referred to above has been in the law since its passage in 1936. So, where an individual has farmed during the preceding season on a small farm of fifty

acres and at the time of filing had harvested all his crop and did not intend to farm the next farming season, and had worked in public work and had not been engaged in farming for a period of eight years prior to the preceding farming season, and had actively sought work and did not intend to farm during the ensuing season, it was held that such individual was not customarily self-employed as a farmer, and therefore, could not reasonably be expected to return to such self-employment and was found to be available for work. (Commission Decision No. 1018) (See also Commission Decisions No. 712 and 876.)

Those individuals who are customarily self-employed and are primarily engaged in a business enterprise for a livelihood do not cause too much concern or worry with respect to their status, and nothing further will be said with respect to such individuals. The group with which we are chiefly concerned is made up of those workers who for a number of years have been engaged in what we call public work and have worked in industry, business, or commerce and as a result of this employment have derived their chief means of livelihood from their jobs. Some of these individuals, in addition to their regular work, supplement their earnings by performing services for others or in some cases live on a farm and perform some work on the farm. The question then arises during a period of unemployment whether such individuals are eligible for benefits and whether such individuals are in effect unemployed. It must be borne in mind that each of these particular cases must be decided upon the facts existing in the case. If the individual is not customarily self-employed, it seems that the matter comes down to a practical application as to whether such individual is available for work or whether the individual has established himself in the particular activity to such an extent that he would not be available for work and intended to set himself up as a self-employed individual. An illustration as to this particular point may be made by calling attention to a case in which a lawyer who had worked for sixteen years in business as a manager of a company and also during a portion of the time in personnel work was laid off from his employment and shortly thereafter made arrangements to share office space with other attorneys in order to resume the practice of law. He sent out hundreds of notices announcing his return to law practice and held himself out to the public as being in the practice of law. He stated upon filing his claim that he would be willing to give up his law practice or business to accept suitable work in the personnel field or other work which was satisfactory to him. He did not have any reportable earnings during the period of his claim. In this case the facts and circumstances show that this individual was in fact self-employed and was holding himself out as being in business for himself. Under such circumstances he was not entitled to benefits although he did not have any earnings from his business venture during the period of his claim.

In most instances we are concerned with the individual who may be engaged, in addition to his regular work, two or three hours a day and works for instance mowing lawns, mas a music teacher, watchmaker, or in the performance of some other

personal services for which the individual receives remuneration. In these types of cases it can be said as a general rule that the individuals should report their earnings during the week in question and should be paid benefits under the law if they are available for work and meet the other conditions of eligibility contained in the Act. In this connection it may be said that in our opinion a person who has worked in industry or elsewhere and who is temporarily laid off from his work and during this period of unemployment attends to domestic duties or perhaps does work around his home for his own convenience, if available for work and otherwise eligible under the law, is not to be considered within the category of a self-employed individual and should not be disqualified or declared ineligible for benefits on such ground. It seems that the test under such circumstances would be whether such individual has made a reasonable effort to secure employment and is actually and genuinely in the labor market, willing and able to accept suitable employment.

With respect to those individuals who are customarily employed in industry and who live on farms but are not primarily engaged in farming as a means of livelihood, who may work during some hours of the day on the farm but whose activities are such that they do not interfere with the individuals taking employment, and to accept work, it is our opinion that such individuals as a general rule are not disqualified per se because they live on a farm or have some interest or derive some income by virtue of the ownership of the farm. In the past the Commission has looked at each case and has determined from the facts and circumstances as to whether such individual is entitled to benefits. In numbers of these cases it is found that the individual has made arrangements about the farming activities which do not require his personal services and the activity as stated hereinbefore does not interfere with his taking work. Under such circumstances the Commission has allowed benefits. As a general rule it may be stated that income received by a claimant from the sale of crops would not be wages or earnings with respect to a particular week and, therefore, should not be considered in determining the weekly benefit amount of such claimant.

There are a number of cases in which the questions discussed here have been passed upon by the Commission, and without setting out the facts in each of these cases the numbers of such decisions are set forth here in order that they may be reviewed if found necessary. These are as follows: Decisions No. 712, 876, 877, 884, 1038, 1552, 1635, 1718, 1728, 2313, 2317, 2364, and 2376.

Adopted as an official interpretation of the Commission on July 24, 1956.

This interpretation cancels and replaces Interpretation No. 136, dated March 27, 1956.