

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 255 – SUPPLEMENT NO. 1

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Claims Reporting of National Guard Pay

Questions have arisen concerning the applicability of Interpretation No. 255 to payments made to claimants by National Guard units in which they serve. Interpretation No. 255 is applicable to such payments and its application results in the conclusion that such payments are not reportable earnings for claims purposes.

The fundamental policy expressed by Interpretation No. 255 is that any payment by an employer that is reportable as wages for unemployment insurance tax purposes or reportable by the claimant for federal and state income tax purposes is also reportable as earnings by the claimant for unemployment claims purposes. Conversely, any nonreportable wages or income are likely to be nonreportable as earnings by claimants.

G.S. 96-8(6)i(c) specifically declares that service in a National Guard unit is not employment and, therefore, remuneration for that service is not reportable for unemployment tax or reimbursement purposes.

G.S. 105-141(b)(26) expressly exempts most National Guard pay from state income tax.

The two statutes mentioned above express a clear intention on the part of the Legislature to accord special treatment to guardsmen's pay. This intention would appear to grow out of a sound public policy to encourage participation in National Guard units. It is also noteworthy that the activities for which guardsmen are paid are largely concerned with training for the national defense and service to this state in time of emergency. For the Commission to require unemployed guardsmen to report National Guard pay as earnings would not only be inconsistent with Interpretation No. 255, but would also tend to penalize them for their service to our state and nation and thereby tend to frustrate the manifest intent of the Legislature and the public policy of this state.

Commission Interpretation No. 101 holds, inter alia, that a member of a National Guard or Military Reserve unit who performs services for remuneration during any week for which unemployment insurance benefits are claimed cannot be deemed totally unemployed. This supplement to Interpretations No. 255 expressly overrules that portion of Interpretation No. 101 but only as it applies to members of National Guard units. It is noted, however, that a guardsman's duties might raise a question of availability for work under G.S. 96-13(a)(3). Such a question would ordinarily be raised only where the claimant/guardsman was on active duty for more than a majority of the days of a week for which unemployment benefits have been claimed.

It is, therefore the policy of the Commission that a guardsman's weekend drills cause no nonavailability for work but that the two (or more) weeks of summer active duty will ordinarily render a guardsman to be unavailable for work and, therefore, ineligible for unemployment insurance benefits during those weeks. Active duty caused by the mobilization of the guardsman's unit in time of emergency will be decided on a case-by-case basis.

While the same policy considerations that appear to have moved the Legislature to speak to the remuneration of National Guard members may be equally applicable to the pay of military reservists, the Legislature has spoken only regarding members of National Guard units. While a military reserve unit is, unlike a National Guard unit, wholly a federal instrumentality and its taxable status under state unemployment insurance law is doubtful, the pay received by members of military reserve units is clearly subject to both state and federal income tax. Therefore, military reserve pay continues to be reportable earnings for claimants that receive it and its receipt may render a reservist "not unemployed" under Interpretation No. 101.

In summary, the pay received by claimants for services in National Guard units is not reportable earnings for claims purposes and those individuals are not rendered "not unemployed" solely by reason of receipt of those payments, but their active duty may render them unavailable for work where that active duty substantially removes them from the labor market during a claims week. The pay received by claimants for service in military reserve units is reportable earnings for claims purposes and may, alone, render those individuals to be "not unemployed" within the meaning of the law.

Adopted as an official Interpretation of the Commission on November 10, 1982.