

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

**INTERPRETATION NO. 263**

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Between Terms Denial for Educational Personnel

Questions have arisen concerning the interpretation of N.C.G.S. 96-13(b)(1) with regard to the requirements of 26 USC 3304(a)(6). This interpretation is to clarify the meaning of N.C.G.S. 96-13(b)(1) to assure, as required by N.C.G.S. 96-20, that the application of the North Carolina Employment Security Law is compliant with all relevant Federal Law, declared by the General Assembly of North Carolina in N.C.G.S. 96-19 to be the purpose of our law.

Question #1 – In view of the provisions of 26 USC 3304(a)(6) can N.C.G.S. 96-13(b)(1) conformably require the retroactive payment of benefits to instructional and principal administrative (professional) personnel in or for educational institutions?

A. The U.S. Department of Labor has interpreted 26 USC 3304 (a)(6)(i) to allow the retroactive payment of benefits to professional educational personnel only where the Commission determines that the reasonable assurance upon which the disqualification is based was faulty when given. As of the effective date of this interpretation, N.C.G.S. 96-13 (b)(1) is interpreted to allow the retroactive payment of benefits to personnel in instructional, research or principal administrative capacities only upon a redetermination under circumstances allowed by Federal guidelines. (See Supplement #1, Q&A Supplementing Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 – Public Law 94-566, Question 7, Page 20). Any questions regarding retroactive claims payments to professional personnel should be routed directly to the Legal Department.

Question #2 – May non-professional educational workers be disqualified under N.C.G.S. 96-13(b)(1) for periods of leave between non-consecutive school terms, i.e., during leaves of absence or sabbaticals?

A. No. Federal law does not allow such disqualifications. Such non-professional educational workers must be treated as any other worker on leave of absence. Therefore, a leave of absence is with pay, an issue

of whether the worker is unemployed within the meaning of N.C.G.S. 96-8 (10) will arise if a claim is filed during the pendency of the leave. Similarly, unpaid leaves of absence shall be treated in accordance with usual Commission procedures.

Question #3 – Does G.S. 96-13(b)(1) require a disqualification for weeks occurring between terms or years or during a vacation period of professional and non-professional employees of educational service agencies who perform service in an educational institution covered by G.S. 96-13(b)(1)?

A. It does. N.C.G.S. 96-13(b)(1) requires between terms denials for claims “with respect to services in . . . educational institutions.” The Commission’s interpretation of this language as reaching educational service agencies has recently been approved by the North Carolina Court of Appeals.

Question #4 – Do the provisions of G.S. 96-13(b)(1) require the disqualification of all educational personnel during a vacation period or holiday recess if the individual worked prior to such period and has a reasonable assurance of employment after such period?

A. Such disqualifications are required. The Commission has always interpreted the language of 96-13(b)(1), except as interpreted in Answer #2 above, to comprehend all periods of vacation or recess.

Question #5 – May an individual who has worked in one capacity during one school year, e.g., non-professional, be denied benefits at the beginning of the summer if the employment in the next year for which a reasonable assurance is offered is in another capacity, e.g., professional work? May retroactive benefits be denied if the work offered at the end of the summer is in a different category?

A. The U.S. Department of Labor interprets Federal law to forbid such “crossover” disqualifications. Therefore, if the only assurance of continued employment or the only job offered is in a substantially different capacity, the claimant may not be disqualified between terms or denied retroactive benefits.

Adopted as an official Interpretation of the Commission effective September 10, 1984.