

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 16

IN RE GARDNER
(Adopted August 30, 1984)

FINDINGS OF FACT:

1. The claimant last worked for the County Health Department on or around January 30, 1984. From February 5, 1984 until February 11, 1984, the claimant has registered for work and continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. 96-15(a) as of the time the Adjudicator issued a determination. The claimant appealed the Adjudicator's determination, and an evidentiary hearing was held by Albert Jerome Williams, Jr., Appeals Referee, under Docket No. III-UI-4528, who held that the claimant was disqualified for unemployment benefits. The claimant filed a timely appeal to the Commission.
2. The claimant was discharged from this job because she omitted her employment with the County Tax Department on employment applications, she submitted in order to obtain employment with the County Health Department.
3. The claimant filed two applications with the above-named employer. The first application was dated and signed May 21, 1982. It was admitted into evidence at the Appeals Referee's hearing without objection as the Employer's Exhibit No. 5. This application is handwritten. In the space for current or last employer, the claimant indicated a temporary services company located in Wilmington, North Carolina. The claimant entered her dates of employment with this company as 1980 to "present." This application lists two previous employers, a concrete company and UNC-W. This application for employment was submitted at the time the claimant applied for a temporary Clerk Typist III position with the Health Department. The claimant was hired for that job.

4. The claimant filed a second application with the County Health Department on October 8, 1982; the application was for a permanent position. This application was admitted into evidence at the Appeals Referee's hearing without objection as Employer's Exhibit No. 6. This application is typewritten. Under the work history entry for the temporary service company, the claimant shows employment from 1980 until June 1982. In addition to the concrete company and UNC-W, the claimant listed an agricultural chemicals company as her employer from 1967 until 1971. The claimant was hired as a permanent Clerk Typist III.
5. The claimant did not indicate on either application that she was employed by the County Tax Department from October 20, 1981, until December 7, 1981.
6. The applications filed by the claimant with the County Health Department were made on a form which bears the heading Application for Employment - State of North Carolina. The form requests that applicants complete a "Work History," including volunteer experience. The applicant is directed to use additional sheets if necessary. At the end of the form, there is a place for the signature of the applicant and the date. The following statement appears above the signature line:

I certify that all of the statements made in this application and any attached documents are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I authorize investigation of all statements made in this application and release to State Government hiring officials. I understand that false information may be grounds for rejection of my application and (or) dismissal if I am employed.

The claimant's signature appears below this statement on both applications.

7. In her testimony, the claimant gave two reasons for her failure to list her employment with the County Tax Department on her applications with the County Health Department: the claimant did not think that a five-week term of employment was important when she completed the first application since that application was for a temporary position; the claimant alleged that when she completed the second application she typed from the first application and did not think about her employment with the Tax Department. The Claimant's Exhibit No. 1, pages 5 and 14, contain similar statements to the effect that the claimant believed that a short term of employment was not important; there

are also statements that the claimant chose to block out or to forget her experience with the Tax Department, since she had found it unpleasant. Commission Exhibit No. 3, page 5, contains a statement that the claimant did omit her Tax Department employment on the application, and chose to "forget and forgive." It is found as a fact that the claimant's reason as to why she omitted the information from the second application is not persuasive, since that application includes information additional to that which was included in the first application, for example, the claimant's employment with the agricultural chemicals company.

8. During the claimant's tenure of employment with the County Tax Department, the claimant received oral warnings and a follow-up written warning. The claimant resigned from her job with the County Tax Department without notice because of what she deemed to be harassment by the Tax Administrator. The claimant did not file a grievance concerning the alleged harassment. Based on the above findings of fact and the competent and credible evidence of record, it is found as a fact that the claimant's omission of her employment with the County Tax Department from her applications for employment with the County Health Department was intentional, and that the claimant's actions were without good cause.
9. The employer's decision to discharge the claimant was made pursuant to personnel policies for Local Government Employment subject to the State Personnel Act, Section 4 - Disciplinary Action - Suspension and Dismissal.
10. The claimant has alleged that she was singled out for discharge for reasons other than the falsification of information on her employment applications. The claimant has failed to produce sufficient evidence tending to show that her discharge was for a reason other than the falsification of her job applications filed with the County Health Department.

MEMORANDUM OF LAW:

G.S. 96-14(2) provides that an individual shall be disqualified for benefits for the duration of the unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because the individual was discharged for misconduct connected with the work.

Misconduct connected with the work is defined as conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. G.S. 96-14(2). See also, In re Collingsworth, 17 N.C. App.340, 194 S.E.2d 210 (1973); Yelverton v. Kemp Furniture Industries, Inc., 51 N.C. App. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

It is concluded from the facts at hand that the claimant did willfully and without good cause omit information from her application for employment with the above-named employer, with the knowledge that false information could be grounds for the rejection of her application and/or her dismissal if she were to be employed. This conduct was clearly a deliberate disregard of standards of behavior which an employer has the right to expect of an employee, and shows an intentional and substantial disregard of the employer's interest as well as the employee's duties and obligations to the employer.

The claimant must, therefore, be disqualified for benefits for having been discharged from the job for misconduct connected with the work.