DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 19

IN RE TYNDALL
(Adopted December 17, 1984)

FINDINGS OF FACT:

1. The claimant last worked for this employer on July 3, 1984. From July 1, 1984 until July 14, 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 employer appealed the Adjudicator's determination, and an evidentiary hearing was held by an Appeals Referee who held that the claimant was disqualified for unemployment benefits. The claimant filed a timely appeal to the Commission.

2. Approximately eight (8) days prior to his last day of work, claimant was promoted from his shop production position to a driver of semi-tractor trailers for the employer. The promotion caused claimant's hourly wage to be increased from $3.75 to $4.00 or a 6 1/4% increase. The permanency of the promotion depended upon claimant's performance during his probationary period (thirty (30) days). The employer had retained the option of returning claimant to his shop production position if his performance as a driver was not satisfactory.

3. On or about July 3, 1984 or the 8th day of his employment as a driver, claimant crashed into the rear end of a 1976 Buick that had come to a complete stop in preparation to turn into a driveway. The collision totaled the car. The employer's insurance carrier was required to pay to the driver of the car $1,077.59 for property damage and $150.00 for bodily injury. Claimant admitted that he was told by the police officer that the police report would reflect that he was following too close.

4. Pursuant to the option which it had retained, the employer, in the person of Mr. Arnold Gaspersohn, President of Woodcomp Corporation, directed

claimant to check with the shift supervisor about returning to his former position as a shop production worker. Claimant would have retained all benefits which he had accrued during his period of employment with the Corporation. The claimant's former position was still vacant and it was the intent of the employer to return him to that position.

5. Claimant did not comply with Mr. Gaspersohn's instructions; instead, he left the employer's place of business. Claimant was of the opinion that the accident was unavoidable and that he should not have been removed from the driver position.

6. When claimant left the employer's place of business, continuing work was available for him there.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for the duration of his unemployment if it is determined by the Commission that such individual is unemployed because he left work voluntarily without good cause attributable to the employer. G.S. 96-14(l).

Prior to 1981, the Commission treated a termination of employment and an immediate offer of continuing work as involving two (2) issues: a discharge and suitable work, G.S. 96- 14(2) and G.S. 96-14(3), respectively. In most of these cases, both claimant and the employer unequivocally stated that the claimant left work or quit because the claimant did not want to accept continuing work for the employer in a different job. It became very difficult for the Commission to explain how it could take an admitted quit and turn it into a discharge for no work available, and an offer of suitable work. The Commission, after much consideration, determined that such practice was legally unsound, both as to the provisions of the Employment Security Law and as to judicial interpretations. E.g., In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965), which contains an analysis of this type of fact situation in the terms of G.S. 96-14(l) - voluntarily leaving.

In order to be in conformity with sound legal principles and common sense, the Commission determined that the type of case involving the termination of "old work" and the immediate offer of "new work" would be treated as an issue of voluntarily leaving with or without good cause attributable to the employer under G.S. 96-14(l). If the claimant had the choice of continuing to work for the employer, even though it was a different job, the leaving was voluntary. In determining whether

the claimant had good cause attributable to the employer, the Commission would consider whether the different job was suitable at the time for the claimant. If the different job was suitable, the claimant did not have good cause attributable to the employer for voluntarily leaving the job. If the different job was not suitable, the claimant did have good cause attributable to the employer.

In determining suitability, the standards set forth in G.S. 96-14(3) were to be considered:

> . . . the degree of risk involved to his (employees) health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation and the distance of the available work from his residence.

In the present case, the job that the-claimant rejected was the same one which he had held just eight (8) days prior to his removal as a driver. Claimant does not in any way allege that the shop production position was not suitable work for him. The hourly wage in the old job was 6 1/4% less than the new job but the Commission has consistently held that unless an offer of continuing work results in a 15% or more decrease in wages, the individual would not have good cause attributable to the employer for voluntarily leaving his employment. See Precedent Decision No. 2, In re Springer, (1982).

Based on the foregoing, it is concluded that claimant voluntarily left his job and was not discharged. It is further concluded that the shop production job was suitable for the claimant. Consequently, claimant did not have good cause attributable to the employer for voluntarily leaving based upon the suitability of the work offered so that claimant could remain employed.

As to whether the employer was justified in demoting claimant from the driver position to the shop production job, one must consider that the employer had retained the option to make that decision. Such a decision was to be based upon whether claimant performed his job satisfactorily. The undersigned is of the opinion that the employer had a reasonable basis for deciding that the claimant's performance as a truck driver was unsatisfactory and therefore justified his removal from that position.

In that the employer's actions were reasonable in light of the existing circumstances and not arbitrary or capricious, it is concluded that claimant did not

have good cause to reject the offer of continuing suitable work; i.e., good cause for voluntarily leaving his employment.

It is, therefore, concluded that claimant must be disqualified for benefits for voluntarily leaving his job without good cause attributable to the employer.