

NORTH CAROLINA
DEPARTMENT OF COMMERCE
DIVISION OF EMPLOYMENT SECURITY

LOWER AUTHORITY APPEALS

FORM DECISIONS TEMPLATES

FORM DECISION MANUAL

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EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

Claimant's S. S. No.

ORDER FOR DISMISSAL

THIS MATTER coming on before Special Deputy Commissioner on at , by telephone from Raleigh, North Carolina in the office of the Employment Security Commission.

Upon examination of the record it appearing:

1. That a notice of hearing was mailed to the claimant's last known address on , by a representative of the Appeals Department of the Employment Security Commission; and,
2. That the notice of hearing has not been returned to the Appeals Department of the Employment Security Commission as being unclaimed. No request for a continuance has been made; and,
3. At the time for the regularly scheduled hearing, the undersigned Special Deputy Commissioner had/had not received a telephone questionnaire bearing a number where claimant could be called to initiate the hearing.
4. The claimant was telephoned at at

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the claimant's appeal is dismissed and that the Determination of Overpayment is declared FINAL.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant began work for the above-named employer on and was continuously employed until he/she left the job.
4. On , the employer notified claimant that claimant would be separated on because of lack of continuing available work.
5. Claimant declined to work until the anticipated layoff date. Claimant left this job because .
6. .

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 without good cause attributable to the employer. G.S. 96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984);

(IMPORTANT! SEE FOLLOWING PAGE[S])

In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

When an employer notifies an employee that such employee will be separated on some definite future date for lack of available work, the impending separation does not constitute good cause for quitting that employment. However, if the individual quits because of the impending separation and shows to the satisfaction of the Commission that it was impracticable or unduly burdensome for the individual to work until the announced separation date, the period of disqualification imposed shall be reduced to the greater of four weeks or the period running from the beginning of the week during which application for benefits was made until the end of the week of the announced separation date. G.S. 96-14(1).

Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A). On the facts of this case, claimant left work in anticipation of layoff on a future date because .

The competent evidence in the record and the facts found therefrom support/do not support a conclusion that it was impracticable or unduly burdensome for claimant to work until the announced separation date.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until date/requirement.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant left this job to move to with his/her spouse who secured new employment in that location. Claimant currently resides miles in one direction from his/her former place of employment and said distance is too far to commute.
4. When claimant decided to terminate his/her employment, the employer had continuing work available.

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 without good cause attributable to the employer. G.S. 96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen.

(IMPORTANT! SEE FOLLOWING PAGE[S])

Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1a).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The Employment Security Law of North Carolina further provides that any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall constitute good cause for leaving work. G.S. 96-14(1d). The record indicates that claimant should be disqualified pursuant to this subsection.

Benefits paid on the basis of the spousal relocation provision shall not be charged to the account of the employer, provided the employer has met all the requirements for noncharging. G.S. 96-14(1d) and 96-9(c)(2)b.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant left this job to move to with his/her spouse who secured new employment in that location. Claimant currently resides miles in one direction from his/her former place of employment and said distance is too far to commute.

4. When claimant decided to terminate his/her employment, the employer had continuing work available.

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 without good cause attributable to the employer. G.S. 96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen.

(IMPORTANT! SEE FOLLOWING PAGE[S])

Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The Employment Security Law of North Carolina further states that any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall serve a time certain disqualification for benefits for a period of five weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits. G.S. 96-14(1D). The record indicates that claimant should be disqualified pursuant to this subsection.

DECISION:

Claimant is disqualified for unemployment benefits for a period of five weeks beginning and ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant left this job because .

4. .

5. .

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 without good cause attributable to the employer. G.S. 96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

(IMPORTANT! SEE FOLLOWING PAGE[S])

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant left the job because .

4. .

5. .

6.

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 without good cause attributable to the employer. G.S. 96-14(1).

It is concluded that claimant left the job but it must still be determined whether the leaving was with good cause attributable to the employer.

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning

(IMPORTANT! SEE FOLLOWING PAGE[S])

Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

It is concluded from the competent evidence in the record and the facts found therefrom that claimant had good cause for leaving the job and that such cause was attributable to the employer because .

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. The claimant was employed with the above-named employer from until .
4. Claimant separated from this job under the following circumstances: .
5. .
6. .

MEMORANDUM OF LAW:

G.S. 96-14(1) provides that where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and

(IMPORTANT! SEE FOLLOWING PAGE[S])

- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

In this case, the claimant has failed to meet the burden of proving .

The Employment Security Law of North Carolina also provides that an individual shall be disqualified for benefits for the duration of his unemployment if it is determined by the Division that such individual is unemployed because he left work without good cause attributable to the employer. G.S. 96-14(1).

“Good cause” has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). “Attributable to the employer” as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant had good cause attributable to the employer for the leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979). It is further concluded that claimant has failed to establish that he has satisfied the requirements of G.S. 96-14(1)a. and b.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was employed with the above-named employer from until .

4. Claimant left this job under the following circumstances: .

5. .

6. .

MEMORANDUM OF LAW:

G.S. 96-14(1) provides that where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That at the time of leaving, an adequate disability condition, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty-five percent (85%) of the individual's regular wage, whichever is greater; and

(IMPORTANT! SEE FOLLOWING PAGE[S])

- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

In this case, the claimant has failed to meet the burden of proving .

The Employment Security Law of North Carolina also 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 without good cause attributable to the employer. G.S. 96-14(1).

“Good cause” has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). “Attributable to the employer” as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant had good cause attributable to the employer for the leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979). It is further concluded that claimant has failed to establish that he has satisfied the requirements of G.S. 96-14(1)a. and b.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was employed with the above-named employer from until .

4. Claimant separated from this job under the following circumstances: .

5. .

6. .

MEMORANDUM OF LAW:

G.S. 96-14(1) provides that where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and

(IMPORTANT! SEE FOLLOWING PAGE[S])

- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

The record indicates that . It is therefore concluded that the claimant was discharged or left work solely due to a disability incurred or other health condition and has satisfied the requirements of G.S. 96-14(1) for the receipt of benefits.

Benefits paid on the basis of this provision may not be charged to the account of the employer, provided the employer has met all the requirements for noncharging. G.S. 96-9(c)(2)b.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was employed with the above-named employer from until .

4. Claimant left this job under the following circumstances: .

5. .

6. .

MEMORANDUM OF LAW:

G.S. 96-14(1) provides that where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That at the time of leaving, an adequate disability condition, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty-five percent (85%) of the individual's regular wage, whichever is greater; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

(IMPORTANT! SEE FOLLOWING PAGE[S])

Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A). The record indicates that . It is therefore concluded that the claimant left work solely due to a disability incurred or other health condition and has satisfied the requirements of G.S. 96-14(1) for the receipt of benefits.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant was employed from until .

4. Claimant left this job due to a permanent and unilateral reduction in pay. Claimant's pay was reduced from \$ to \$.

5. Claimant's pay was reduced because .

6. .

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 without good cause attributable to the employer. G.S. 96-14(1).

Where an individual leaves work solely due to a unilateral and permanent reduction in his rate of pay of more than fifteen percent (15%), said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance,

(IMPORTANT! SEE FOLLOWING PAGE[S])

misfeasance or nonfeasance on the part of the individual, such reduction in pay shall not constitute good cause attributable to the employer for leaving work. G.S. 96-14(1C).

Based on the competent evidence in the record, it is concluded that . As such, claimant has failed to establish that he had good cause attributable to the employer for leaving employment.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant was employed from until .

4. Claimant left this job due to a permanent and unilateral reduction in pay. Claimant's pay was reduced from \$ to \$.

5. Claimant's pay was reduced because .

6. .

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 without good cause attributable to the employer. G.S. 96-14(1).

Where an individual leaves work solely due to a unilateral and permanent reduction in his rate of pay of more than fifteen percent (15%), said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance,

(IMPORTANT! SEE FOLLOWING PAGE[S])

misfeasance or nonfeasance on the part of the individual, such reduction in pay shall not constitute good cause attributable to the employer for leaving work. G.S. 96-14(1C).

Based on the competent evidence in the record, it is concluded that claimant left work solely due to a unilateral and permanent reduction in his rate of pay of %. It is further concluded that the reduction was not due to malfeasance, misfeasance or nonfeasance on the part of claimant. As such, claimant left work with good cause attributable to the employer.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant was employed from until . Claimant was customarily scheduled to work hours per week.

4. Claimant left this job due to .

5. .

6. .

7. .

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 without good cause attributable to the employer. G.S. 96-14(1).

Where an individual leaves work solely due to a unilateral and permanent reduction in work hours of more than twenty percent (20%) of the customary scheduled full-time work hours in the establishment,

(IMPORTANT! SEE FOLLOWING PAGE[S])

plant, or industry in which he was employed, said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in work hours shall not constitute good cause attributable to the employer for leaving work. G.S. 96-14(1B).

Based on the competent evidence in the record, it is concluded that . As a result, claimant has failed to establish that he had good cause attributable to the employer for leaving employment.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant was employed from until . Claimant was customarily scheduled to work hours per week.

4. Claimant left this job due to a permanent and unilateral reduction in hours. Claimant's hours were reduced from to .

5. Claimant's hours were reduced because .

6. .

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 without good cause attributable to the employer. G.S. 96-14(1).

Where an individual leaves work solely due to a unilateral and permanent reduction in work hours of more than twenty percent (20%) of the customary scheduled full-time work hours in the establishment, plant, or industry in which he was employed, said leaving shall constitute good cause attributable to the

(IMPORTANT! SEE FOLLOWING PAGE[S])

employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in work hours shall not constitute good cause attributable to the employer for leaving work. G.S. 96-14(1B).

Based on the competent evidence in the record, it is concluded that claimant left work solely due to a unilateral and permanent reduction in hours of %. It is further concluded that the reduction was not due to malfeasance, misfeasance or nonfeasance on the part of claimant. As such, claimant left work with good cause attributable to the employer.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1E).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. On , claimant was laid off by the employer due to lack of available work. Said layoff was temporary and claimant was retained on the employer's payroll.

4. On , the employer attempted to recall the claimant to work. Claimant failed to return to work because .

5. .

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 the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of the separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer. G.S. 96-14(1E).

(IMPORTANT! SEE FOLLOWING PAGE[S])

“Good cause” has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). “Attributable to the employer” as used in N. C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for refusing to return to work after being recalled from temporary layoff.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1E).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. On , claimant was laid off by the employer due to a lack of available work. Said layoff was temporary and claimant was retained on the employer's payroll.

4. On , the employer attempted to recall the claimant to work. Claimant failed to return to work because .

5. .

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 the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of the separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer. G.S. 96-14(1E).

(IMPORTANT! SEE FOLLOWING PAGE[S])

“Good cause” has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). “Attributable to the employer” as used in N. C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

It is concluded from the competent evidence in the record and the facts found therefrom that claimant had good cause attributable to the employer for refusing to return to work after being recalled from temporary lay off because .

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. On or about , claimant gave employer a verbal/written resignation with notice of his/her intent to leave the employment effective .

4. Claimant left this job because .

5. Employer accepted claimant's notice to leave and terminated the employment effective .

6. .

7. .

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 without good cause attributable to the employer. G.S. 96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984);

(IMPORTANT! SEE FOLLOWING PAGE[S])

In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

Where a claimant for unemployment insurance benefits tenders a resignation to his or her employer coupled with a unilateral offer or intent to work a notice, where the employer immediately accepts the resignation thus terminating the employment relationship on a date not selected by the claimant, it was nevertheless the claimant's action of quitting which resulted in his or her unemployment. The impetus leading to separation and unemployment comes from the employee, not the employer.

The Commission has held in some cases that an employee has been discharged where an employer refuses or fails to allow the employee to work a required or contractual notice period. However, if the employer is able to show (1) it has a policy of not allowing or requiring employees to work a notice, (2) it has a policy on the length of the notice period contrary to the notice period offered or given by the employee, (3) the employee was paid for the notice period, or (4) it establishes for some other reason a reasonable basis for not allowing the employee to work an offered notice period, the employee's separation from employment shall remain an issue to be decided under G.S. 96-14(1). The question is whether the employee left work with or without good cause attributable to the employer. The Appeals Referee shall not adjudicate the case as a discharge under G.S. 96-14(2) or G.S. 96-14(2A). In re Garrett, 95(UI)4192 (Commission Precedent Decision No. 30).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. On or about , claimant gave employer a verbal/written resignation with notice of his/her intent to leave the employment effective .
4. Claimant planned to leave this job because .
5. Employer accepted claimant's notice to leave and planned to terminate the employment effective .
6. Thereafter, on or about , claimant advised employer of his/her desire to rescind the resignation. Employer did not accept claimant's attempted rescission and terminated the employment on .
7. .

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 without good cause attributable to the employer. G.S. 96-14(1).

(IMPORTANT! SEE FOLLOWING PAGE[S])

“Good cause” has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). “Attributable to the employer” as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

Where a claimant for unemployment insurance benefits tenders a resignation to his or her employer coupled with a unilateral offer or intent to work a notice, where the employer immediately accepts the resignation thus terminating the employment relationship on a date not selected by the claimant, it was nevertheless the claimant’s action of quitting which resulted in his or her unemployment. The impetus leading to separation and unemployment comes from the employee, not the employer.

The Commission has held in some cases that an employee has been discharged where an employer refuses or fails to allow the employee to work a required or contractual notice period. However, if the employer is able to show (1) it has a policy of not allowing or requiring employees to work a notice, (2) it has a policy on the length of the notice period contrary to the notice period offered or given by the employee, (3) the employee was paid for the notice period, or (4) it establishes for some other reason a reasonable basis for not allowing the employee to work an offered notice period, the employee’s separation from employment shall remain an issue to be decided under G.S. 96-14(1). The question is whether the employee left work with or without good cause attributable to the employer. The Appeals Referee shall not adjudicate the case as a discharge under G.S. 96-14(2) or G.S. 96-14(2A). In re Garrett, 95(UI)4192 (Commission Precedent Decision No. 30).

When a claimant voluntarily notifies the employer that he intends to resign at some future date, the employer is under no legal obligation to allow claimant to continue to work after the announced separation date if the claimant changes his mind and attempts to rescind his resignation. The Commission has consistently held that a claimant’s separation under the above circumstances constitutes a leaving under G.S. 96-14(1) rather than a discharge under G.S. 96-14(2). This is true even if the attempted rescission occurs prior to the announced separation date. Whicker v. High Point Schools, 56 N.C. App. 253, 287 S.E.2d 439 (1982).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant voluntarily sold his/her ownership share of the employing entity. G.S. 96-14(6).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. The above-named employer, , is a .
4. When claimant became unemployed, he/she maintained an ownership interest in employer's business as follows: . Claimant's interest in the business represented % of the total ownership of the business.
5. The business was sold because . Such sale was voluntary.
6. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides an individual shall be disqualified for benefits for the duration of his unemployment if it is determined by the Commission such individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of sale:

- a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;

(IMPORTANT! SEE FOLLOWING PAGE[S])

- b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner: or
- c. The employing entity was a proprietorship, and the individual was a proprietor. N.C.G.S. 96-14(6A).

Based on the competent evidence in the record, it is concluded the claimant is unemployed because . As such, claimant voluntarily sold his/her ownership share of the business. Since claimant is unemployed as a result of said sale, claimant is disqualified for unemployment benefits.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant voluntarily sold his/her ownership share of the employing entity. G.S. 96-14(6).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. The above-named employer, , is a .
4. When claimant became unemployed, he/she maintained an ownership interest in employer's business as follows: . Claimant's interest in the business represented % of the total ownership of the business.
5. The business was sold because . Such sale was not voluntary.
6. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides an individual shall be disqualified for benefits for the duration of his unemployment if it is determined by the Commission such individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of sale:

- a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;

(IMPORTANT! SEE FOLLOWING PAGE[S])

- b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner: or
- c. The employing entity was a proprietorship, and the individual was a proprietor. N.C.G.S. 96-14 (6A).

Based on the competent evidence in the record, it is concluded the claimant is unemployed because . Such sale should not result in a disqualification under G.S. 96-14(6A) because .

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant left work without good cause attributable to the employer. G.S. 96-14(1).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant left this job to move to with his/her spouse due to reassignment from one military assignment to another.

4. When claimant decided to terminate his/her employment, the employer had continuing work available.

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 without good cause attributable to the employer. G.S. 96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen. Stat. 96-14(1) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

(IMPORTANT! SEE FOLLOWING PAGE[S])

The determination of whether the claimant had good cause attributable to the employer for leaving work must be made by considering the competent and credible evidence presented by the parties. Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer. G.S. 96-14(1A).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for leaving. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980), In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

The Employment Security Law of North Carolina further states that any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall serve a time certain disqualification for benefits for a period of two weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits. G.S. 96-14(1D).

Further, any claimant leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed good cause for leaving work. G.S. 96-14(1D). The record indicates that claimant should be found not disqualified pursuant to this subsection.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant was discharged from this job for .

4. .

5. .

6. .

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See also In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton

(IMPORTANT! SEE FOLLOWING PAGE[S])

v. Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

Misconduct is further defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; and refusing to perform reasonably assigned work tasks. North Carolina Session Law 2011-401 [the Employment Security Law as amended] and N.C.G.S. §96-19(b) [the suspension of enforcement subsection], effective November 1, 2011, N.C.G.S. §96-14(2).

It is concluded from the competent evidence in the record that the claimant .

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2B).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was discharged from this job because .

4. .

5. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for the duration of the individual's unemployment if it is determined by the Division that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision. G.S. 96-14(2b).

(IMPORTANT! SEE FOLLOWING PAGE[S])

It is concluded from the competent evidence in the record that the claimant .

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2B).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. The claimant was discharged from this job because .
4. .
5. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for the duration of the individual's unemployment if it is determined by the Division that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision. G.S. 96-14(2b).

(IMPORTANT! SEE FOLLOWING PAGE[S])

It is concluded from the competent evidence in the record that the claimant .

The Employment Security Law of North Carolina further provides that an individual shall be disqualified for benefits for the duration of his unemployment if it is determined by the Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See also In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v. Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

The Employment Security Law of North Carolina also provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct unless, based on findings by the Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to the employer's job requirements. Reasonable control coupled with failure to live up to a reasonable employment policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

The employer has the responsibility to show that claimant was discharged for substantial fault or misconduct within the meaning of the law.

It is concluded from the competent evidence in the record that the evidence fails to show that claimant was discharged from the job for substantial fault or misconduct connected with the work.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant was discharged from this job for reporting to work significantly impaired by alcohol/illegal drugs. The impairment occurred on or about .

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v. Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

Misconduct is further defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by

(IMPORTANT! SEE FOLLOWING PAGE[S])

alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; and refusing to perform reasonably assigned work tasks. North Carolina Session Law 2011-401 [the Employment Security Law as amended] and N.C.G.S. §96-19(b) [the suspension of enforcement subsection], effective November 1, 2011, N.C.G.S. §96-14(2).

It is concluded from the competent evidence in the record that . Therefore, claimant was discharged for misconduct connected with the work.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant was discharged from this job for being convicted by a court of competent jurisdiction/in district court/in superior court for manufacturing/selling/distribution of a controlled substance punishable under General Statutes 90-95(a)(1) or General Statutes 90-95(a)(2). The date of the conviction was .

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v. Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

(IMPORTANT! SEE FOLLOWING PAGE[S])

Misconduct is further defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; and refusing to perform reasonably assigned work tasks. North Carolina Session Law 2011-401 [the Employment Security Law as amended] and N.C.G.S. §96-19(b) [the suspension of enforcement subsection], effective November 1, 2011, N.C.G.S. §96-14(2).

It is concluded from the competent evidence in the record that . Therefore, claimant was discharged for misconduct connected with the work.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant was discharged from this job for consuming alcohol/illegal drugs on the employer's premises. The consumption occurred on or about .

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v. Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

Misconduct is further defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by

(IMPORTANT! SEE FOLLOWING PAGE[S])

alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; and refusing to perform reasonably assigned work tasks. North Carolina Session Law 2011-401 [the Employment Security Law as amended] and N.C.G.S. §96-19(b) [the suspension of enforcement subsection], effective November 1, 2011, N.C.G.S. §96-14(2).

It is concluded from the competent evidence in the record that . Therefore, claimant was discharged for misconduct connected with the work.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant disqualified for benefits. appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Employer has a policy concerning drugs in the workplace which provides with respect to drug testing employees. The policy was adopted on or about . Employer made employees aware of the policy by .
4. On or about employer required claimant to submit to a drug test because .
5. Employer was required to drug test claimant pursuant to Department of Transportation or Nuclear Regulatory Commission regulations, and the test complied with those regulations.
6. The drug test complied with the North Carolina Controlled Substance Examination Act in that the test was conducted by a lab approved by the US Department of Health and Human Services or College of Pathologists; the sample was collected in sanitary conditions; appropriate chain of custody procedures were in effect to ensure that the sample collected was the sample tested; a positive result was confirmed by a second test utilizing gas chromatography with mass spectrometry; and positive samples were retained by confirming laboratory for a period of at least 90 days from the mailing/delivery of the results.
7. The results of claimant's drug test were .

(IMPORTANT! SEE FOLLOWING PAGE[S])

8. Employer informed claimant of his/her test results by . Claimant's response was . Claimant was/was not informed of his/her right to request a retest of the sample at his/her own expense. Claimant did/did not request that the sample be retested.

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v. Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

Misconduct is further defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; and refusing to perform reasonably assigned work tasks. North Carolina Session Law 2011-401 [the Employment Security Law as amended] and N.C.G.S. §96-19(b) [the suspension of enforcement subsection], effective November 1, 2011, N.C.G.S. §96-14(2).

In Division Precedent Decision No. 21, In re Roecker (adopted August 31, 1987), it was held that a positive drug test result is misconduct connected with the work. The Controlled Substance Examination Regulation Act (G.S. 95-230 through 234, effective October 1, 1991, as amended June 24, 1993) is an Act to protect individuals from "unreliable and inadequate examinations and screening for controlled substances." If an employer can show through affidavit or testimony from the laboratory that a controlled substance test met the standards as set forth in G.S. 95-232, then the results of said test shall be presumed proved in accord with Roecker, unless the claimant shows otherwise. Either the affidavit or testimony must explain what the results mean. The Division of Employment Security cannot accept test results which do not meet these requirements.

In Lynch v. P.P.G. Industries, 105 N.C. App. 223, 412 S.E.2d 163 (1992), Division Precedent Decision No. 26, In re Lynch (adopted January 20, 1993), Justice Parker, then writing for the North Carolina Court of Appeals, held that the legislature has manifested its concern about the serious drug problem in the work force in the 1989 addition of the second paragraph to the statutory definition in G.S. 96-14(2), and that an employee who was convicted of cocaine possession with intent to sell or deliver properly was disqualified for misconduct even though he never consumed illegal drugs while at work and never was impaired by illegal drugs at work.

The specific language in the amendment, "include but not be limited to", reasoned the Court, shows that it is not an exclusive list of drug or alcohol misconduct but instead "illustrates and illuminates the more general language" in the first paragraph. 105 N.C. App. at 225. An employer must prove its case, but it is not required to show actual harm to its interests. Gregory v. Department of Revenue & ESC, 93 N.C. App. 785,

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379 S.E.2d 51 (1989). Eury v. N.C. Employment Security Comm., 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 383 (1994).

It is concluded from the competent evidence in the record that . Therefore, claimant was discharged for misconduct connected with the work.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Employer has a policy concerning drugs in the workplace which provides with respect to drug testing employees. The policy was adopted on or about . Employer made employees aware of the policy by .

4. On or about employer required claimant to submit to a drug test because

5. The drug test did not comply with the North Carolina Controlled Substance Examination Act in that .

6. The results of claimant's drug test were .

7. Employer informed claimant of his/her test results by . Claimant's response was . Claimant was/was not informed of his/her right to request a retest of the sample at his/her own expense. Claimant did/did not request that the sample be retested.

(IMPORTANT! SEE FOLLOWING PAGE[S])

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v. Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

Misconduct is further defined to include but not be limited to separation initiated by an employer for violating the employer's written alcohol or illegal drug policy; reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer; any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public; inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment; theft in connection with the employment; forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation of an employer's written absenteeism policy; and refusing to perform reasonably assigned work tasks. North Carolina Session Law 2011-401 [the Employment Security Law as amended] and N.C.G.S. §96-19(b) [the suspension of enforcement subsection], effective November 1, 2011, N.C.G.S. §96-14(2).

The Employment Security Law of North Carolina also provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct unless, based on findings by the Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the mental and physical ability to conform his conduct to the employer's requirements. Reasonable control coupled with failure to live up to a reasonable employer policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

In Division Precedent Decision No. 21, In re Roecker (adopted August 31, 1987), it was held that a positive drug test result is misconduct connected with the work. The Controlled Substance Examination Regulation Act (G.S. 95-230 through 234, effective October 1, 1991, as amended June 24, 1993) is an Act to protect individuals from "unreliable and inadequate examinations and screening for controlled substances." If an employer can show through affidavit or testimony from the laboratory that a controlled substance test met the standards as set forth in G.S. 95-232, then the results of said test shall be presumed proved in accord with Roecker, unless the claimant shows otherwise. Either the affidavit or testimony must explain what the results mean. The Division of Employment Security cannot accept test results which do not meet these requirements.

In Lynch v. P.P.G. Industries, 105 N.C. App. 223, 412 S.E.2d 163 (1992), Division Precedent Decision No. 26, In re Lynch (adopted January 20, 1993), Justice Parker, then writing for the North Carolina Court of Appeals, held that the legislature has manifested its concern about the serious drug problem in the work force in the 1989 addition of the second paragraph to the statutory definition in G.S. 96-14(2), and that an employee who was convicted of cocaine possession with intent to sell or deliver properly was disqualified for misconduct even though he never consumed illegal drugs while at work and never was impaired by illegal drugs at work.

The specific language in the amendment, "include but not be limited to", reasoned the Court, shows that it is not an exclusive list of drug or alcohol misconduct but instead "illustrates and illuminates the more general language" in the first paragraph. 105 N.C. App. at 225. An employer must prove its case, but it is not required to show actual harm to its interests. Gregory v. Department of Revenue & ESC, 93 N.C. App. 785, 379 S.E.2d 51 (1989). Eury v. N.C. Employment Security Comm., 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 383 (1994).

It is concluded from the competent evidence in the record that the employer has not shown that the claimant was discharged for either misconduct or substantial fault connected with the work.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2A).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. The claimant was discharged from this job for .
4. .
5. .
6. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising the level of misconduct unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

(IMPORTANT! SEE FOLLOWING PAGE[S])

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to the employer's job requirements. Reasonable control coupled with failure to live up to a reasonable employment policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

It is concluded from the competent evidence in the record that . As such, the claimant was discharged for substantial fault on his/her part connected with the work.

As such, the maximum benefit amount shall be reduced by the number of weeks of the disqualification.

DECISION:

Claimant is disqualified for unemployment benefits for a period of nine weeks beginning and ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was discharged from this job because .

4. .

5. .

6. .

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v.

(IMPORTANT! SEE FOLLOWING PAGE[S])

Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

The Employment Security Law of North Carolina also provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct unless, based on findings by the Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to the employer's job requirements. Reasonable control coupled with failure to live up to a reasonable employment policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

The employer has the responsibility to show that claimant was discharged for substantial fault or misconduct within the meaning of the law.

It is concluded from the competent evidence in the record that the evidence fails to show that claimant was discharged from the job for substantial fault or misconduct connected with the work.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2A).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was discharged from this job because .

4. .

5. .

6. .

7. Mitigating/Aggravating circumstances surrounding claimant's conduct are as follows: .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

(IMPORTANT! SEE FOLLOWING PAGE[S])

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to the employer's job requirements. Reasonable control coupled with failure to live up to a reasonable employment policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

It is concluded from the competent evidence in the record that . As such, claimant was discharged for substantial fault on his/her part in connection with the work. Due to mitigating/aggravating circumstances, claimant is disqualified for four/thirteen weeks.

As such, the maximum benefit amount shall be reduced by the number of weeks of the disqualification.

DECISION:

Claimant is disqualified for benefits beginning and ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2A).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was discharged from this job for .

4. .

5. .

6. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising the level of misconduct unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

(IMPORTANT! SEE FOLLOWING PAGE[S])

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to the employer's job requirements. Reasonable control coupled with failure to live up to a reasonable employment policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

The court in Lindsey set forth six factors to be considered when a claimant is discharged for attendance policy violations. Those factors are:

1. When the claimant was notified of the attendance policy;
2. The degree of departure from expected conduct that warranted either a demerit or other disciplinary action;
3. The degree the policy accommodates the need to deal with the exigencies of everyday life;
4. The claimant's ability to make amends for rule violations;
5. The amount of counselling the claimant received concerning violations; and
6. The amount of warning the claimant had that rule violations may result in discharge.

It is concluded from the competent evidence in the record that . As such, the claimant was discharged for substantial fault on his/her part connected with the work.

As such, the maximum benefit amount shall be reduced by the number of weeks of the disqualification.

DECISION:

Claimant is disqualified for unemployment benefits for a period of nine weeks beginning and ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , claimant has registered for work and continued to report to an employment office of the Division and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. The claimant was discharged from this job because .
4. .
5. .
6. .

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 Division that such individual is unemployed because he was discharged for misconduct connected with his work. G.S. 96-14(2).

Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard. G.S. 96-14(2). See In re Collingsworth, 17 N.C. App. 340, 194 S.E.2d 210 (1973); Yelverton v.

(IMPORTANT! SEE FOLLOWING PAGE[S])

Kemp Industries, 51 N.C. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

The Employment Security Law of North Carolina also provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Division that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct unless, based on findings by the Division of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to the employer's job requirements. Reasonable control coupled with failure to live up to a reasonable employment policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

The court in Lindsey set forth six factors to be considered when a claimant is discharged for attendance policy violations. Those factors are:

1. When the claimant was notified of the attendance policy;
2. The degree of departure from expected conduct that warranted either a demerit or other disciplinary action;
3. The degree the policy accommodates the need to deal with the exigencies of everyday life;
4. The claimant's ability to make amends for rule violations;
5. The amount of counselling the claimant received concerning violations; and
6. The amount of warning the claimant had that rule violations may result in discharge.

The employer has the responsibility to show that claimant was discharged for substantial fault or misconduct within the meaning of the law.

It is concluded from the competent evidence in the record that the evidence fails to show that claimant was discharged from the job for substantial fault or misconduct connected with the work.

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was discharged for misconduct or substantial fault connected with work.
G.S. 96-14(2A).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. The claimant was discharged from this job because .

4. .

5. .

6. .

7. Mitigating/Aggravating circumstances surrounding claimant's conduct are as follows: .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for a period of nine weeks if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened to not less than four or more than thirteen weeks. G.S. 96-14(2A).

(IMPORTANT! SEE FOLLOWING PAGE[S])

The term "substantial fault" is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failure to perform work because of insufficient skill, ability, or equipment.

An employee has "reasonable control" when he has the physical and mental ability to conform his conduct to the employer's job requirements. Reasonable control coupled with failure to live up to a reasonable employment policy equals substantial fault. Lindsey v. Qualex, Inc. 103 N.C. App. 585, 591, 406 S.E.2d 609, 612 (1991), rev. denied, 330 N.C. 196, 412 S.E.2d 57 (1991).

The court in Lindsey set forth six factors to be considered when a claimant is discharged for attendance policy violations. Those factors are:

1. When the claimant was notified of the attendance policy;
2. The degree of departure from expected conduct that warranted either a demerit or other disciplinary action;
3. The degree the policy accommodates the need to deal with the exigencies of everyday life;
4. The claimant's ability to make amends for rule violations;
5. The amount of counselling the claimant received concerning violations; and
6. The amount of warning the claimant had that rule violations may result in discharge.

It is concluded from the competent evidence in the record that . As such, claimant was discharged for substantial fault on his/her part in connection with the work. Due to mitigating/aggravating circumstances, claimant is disqualified for four/thirteen weeks.

As such, the maximum benefit amount shall be reduced by the number of weeks of the disqualification.

DECISION:

Claimant is disqualified for benefits beginning and ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant has failed without good cause to apply for available suitable work.
G.S. 96-14(3)(i).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. On , claimant was directed by the local employment office of the Commission to apply for a job at , which is miles from claimant's residence.
4. A brief description of the job is as follows: .
5. Claimant failed to apply for the job because .
6. Claimant is qualified by experience and training to perform the following types of work: . Claimant's prospects for obtaining work in his/her customary occupations in his/her area of residence are good/not good.

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 has failed without good cause to apply for available suitable work when so directed by the employment office of the Commission. G.S. 96-14(3)(i).

(IMPORTANT! SEE FOLLOWING PAGE[S])

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

Based on the competent evidence in the record, it is concluded that the job for which the claimant was directed to apply was suitable for claimant within the meaning of the law.

It is further concluded that claimant did not have good cause for failing to apply for the job.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant failed without good cause to apply for available suitable work. G.S. 96-14(3)(i).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. On , claimant was directed by the local employment office of the Commission to apply for a job at , which is miles from claimant's residence.
4. A brief description of the job is as follows: .
5. Claimant failed to apply for the job because .
6. Claimant is qualified by experience and training to perform the following types of work: . Claimant's prospects for obtaining work in his/her customary occupations in his/her area of residence are good/not good.

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 has failed without good cause to apply for available suitable work when so directed by the employment office of the Commission. G.S. 96-14(3)(i).

(IMPORTANT! SEE FOLLOWING PAGE[S])

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

Based on the competent evidence in the record, it is concluded that the job for which the claimant was directed to apply was not suitable for claimant within the meaning of the law, in that .

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant failed without good cause to apply for available suitable work. G.S. 96-14(3)(i).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. On , claimant was directed by the local employment office of the Commission to apply for a job at , which is miles from claimant's residence.
4. A brief description of the job is as follows: .
5. Claimant failed to apply for the job because .
6. Claimant is qualified by experience and training to perform the following types of work: . Claimant's prospects for obtaining work in his/her customary occupations in his/her area of residence are good/not good.

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 has failed without good cause to apply for available suitable work when so directed by the employment office of the Commission. G.S. 96-14(3)(i).

(IMPORTANT! SEE FOLLOWING PAGE[S])

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

Based on the competent evidence in the record, it is concluded that the job for which the claimant was directed to apply was suitable for claimant within the meaning of the law. There was good cause for failing to apply for the suitable work, in that .

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant failed without good cause to accept suitable work. G.S. 96-14(3)(ii).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. On , claimant was offered a job by , which is miles from claimant's residence.

4. A brief description of the job is as follows: .

5. Claimant failed to accept the job because .

6. Claimant is qualified by experience and training to perform the following types of work: . Claimant's prospects for obtaining work in his/her customary occupations in his/her area of residence are good/not good.

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 has failed without good cause to accept suitable work when offered him. G.S. 96-14(3)(ii).

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his

(IMPORTANT! SEE FOLLOWING PAGE[S])

experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

Based on the competent evidence in the record, it is concluded that the job offered claimant was suitable for claimant within the meaning of the law.

It is further concluded, however, that there was good cause for failing to accept the suitable work in that .

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant failed without good cause to accept suitable work. G.S. 96-14(3)(ii).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. On , claimant was offered a job by , which is miles from claimant's residence.

4. A brief description of the job is as follows: .

5. Claimant failed to accept the job because .

6. Claimant is qualified by experience and training to perform the following types of work: . Claimant's prospects for obtaining work in his/her customary occupations in his/her area of residence are good/not good.

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 has failed without good cause to accept suitable work when offered him. G.S. 96-14(3)(ii).

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his

(IMPORTANT! SEE FOLLOWING PAGE[S])

experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

Based on the competent evidence in the record, it is concluded that the job offered claimant was suitable for claimant within the meaning of the law.

It is further concluded that claimant did not have good cause for failing to accept the suitable work.

DECISION:

Claimant is disqualified for unemployment benefits beginning and continuing until claimant qualifies for benefits in accordance with the Employment Security Law.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant failed without good cause to accept suitable work. G.S. 96-14(3)(ii).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. On , claimant was offered a job by , which is miles from claimant's residence.
4. A brief description of the job is as follows: .
5. Claimant failed to accept the job because .
6. Claimant is qualified by experience and training to perform the following types of work: . Claimant's prospects for obtaining work in his/her customary occupations in his/her area of residence are good/not good.

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 has failed without good cause to accept suitable work when offered him. G.S. 96-14(3)(ii).

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his

(IMPORTANT! SEE FOLLOWING PAGE[S])

APPEALS DECISION NO.

Page 2 of 2 Pages

experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

Based on the competent evidence in the record, it is concluded that the job that was offered was not suitable for claimant within the meaning of the law, in that .

DECISION:

Claimant is not disqualified for unemployment benefits.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following types of work: .
4. During the week(s) ending , claimant was physically able to perform most types of work for which he/she is qualified.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is able to work. G.S. 96-13(a)(3).

Claimant was able to perform most types of work for which claimant is normally qualified during the week(s) ending .

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

(IMPORTANT! SEE FOLLOWING PAGE[S])

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant is qualified by experience and training to perform the following types of work: .

4. During the week(s) ending , claimant was not physically able to perform most types of work for which he/she is qualified.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is able to work. G.S. 96-13(a)(3).

Due to poor health, claimant was unable to perform most types of work for which claimant is normally qualified during the week(s) ending .

(IMPORTANT! SEE FOLLOWING PAGE[S])

APPEALS DECISION NO.

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DECISION:

Claimant is not eligible to receive unemployment benefits for the week(s) ending and shall remain ineligible until all eligibility conditions under the law are met.

(IMPORTANT! SEE FOLLOWING PAGE[S])

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. On or about claimant filed for/received benefits under a State or federal law based on his/her temporary total or permanent total disability.

4. On or about claimant was determined not to be totally disabled.

5. Claimant's application for disability benefits was based on a partial rather than a total disability.

6. Claimant is able to perform the following types of work: .

7. .

8. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is able to work. G.S. 96-13(a)(3).

(IMPORTANT! SEE FOLLOWING PAGE[S])

No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence. G.S. 96-13(a)(4).

Claimant was able to perform most types of work for which claimant is normally qualified during the week(s) ending . The record reflects that claimant's application for disability benefits does not render claimant unable to work because it was not based on total disability.

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. On or about claimant filed for/received benefits under a State or federal law based on his/her temporary total or permanent total disability.
4. During the week(s) ending , claimant either received disability benefits or maintained a pending application for such benefits.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is able to work. G.S. 96-13(a)(3).

No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence. G.S. 96-13(a)(4).

(IMPORTANT! SEE FOLLOWING PAGE[S])

In the matter at hand, claimant either filed for or received total disability benefits during the weeks in question. As such, claimant cannot be deemed able to perform most types of work for which claimant is normally qualified during the week(s) ending .

DECISION:

Claimant is not eligible to receive unemployment benefits for the week(s) ending and shall remain ineligible until all eligibility conditions under the law are met.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant is qualified by experience and training to perform the following types of work: .

4. During the week(s) ending , claimant was available to perform most types of work for which he/she is qualified.

5. .

6. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

Claimant was available to perform most types of work for which claimant is normally qualified during the week(s) ending .

(IMPORTANT! SEE FOLLOWING PAGE[S])

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following types of work: .
4. During the week(s) ending , claimant was not available to perform most types of work for which he/she is qualified because .
5. .
6. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

Claimant was not available for most types of work for which claimant is normally qualified during the week(s) ending .

(IMPORTANT! SEE FOLLOWING PAGE[S])

APPEALS DECISION NO.

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DECISION:

Claimant is not eligible to receive unemployment benefits for the week(s) ending and shall remain ineligible until all eligibility conditions under the law are met.

(IMPORTANT! SEE FOLLOWING PAGE[S])

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant failed without good cause to accept suitable work. G.S. 96-14(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following types of jobs: .
4. During the week (s) ending , claimant was willing to accept work for which he/she was qualified to perform.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3). For purposes of the law, the words "available for work" mean "available for suitable work." In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

Based on the competent evidence in the record, it is concluded that claimant was willing to accept most of the work that was suitable for claimant during the week(s) ending .

(IMPORTANT! SEE FOLLOWING PAGE[S])

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant failed without good cause to accept suitable work. G.S. 96-14(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following types of jobs: .
4. Claimant was unwilling to accept such work during the week(s) ending .
5. Claimant was unwilling to accept such work because .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3). For purposes of the law, the words "available for work" mean "available for suitable work." In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965).

In determining whether or not any work is suitable for an individual, the Commission must consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospect for securing local work in his customary occupation, and the distance of the available work from his residence. G.S. 96-14(3).

(IMPORTANT! SEE FOLLOWING PAGE[S])

Based on the competent evidence in the record, it is concluded that claimant was unwilling to accept work that was suitable for claimant during the week(s) ending .

DECISION:

Claimant is not eligible to receive unemployment benefits for the week(s) ending and shall remain ineligible until all applicable conditions under the law are met.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following kinds of jobs: .
4. The majority of these jobs in claimant's area of residence are available during shift hours.
5. Claimant was available for work only during shift hours during the week(s) ending .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

In determining whether or not an individual is available for work within the meaning of the law, the issue is whether or not the restrictions which the claimant places on his employment serve to limit the work which a claimant can accept to such a degree that he is no longer genuinely attached to the labor force. In re Beatty, 286 N.C. 226, 210 S.E.2d 193 (1974).

In the matter at hand, claimant was genuinely attached to the labor force during the week(s) ending because . As such, claimant was available for work within the meaning of the law during said week(s).

(IMPORTANT! SEE FOLLOWING PAGE[S])

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following kinds of jobs: .
4. The majority of these jobs in claimant's area of residence are available during shift hours.
5. Claimant was available for work only during shift hours during the week(s) ending .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

In determining whether or not an individual is available for work within the meaning of the law, the issue is whether or not the restrictions which the claimant places on his employment serve to limit the work which a claimant can accept to such a degree that he is no longer genuinely attached to the labor force. In re Beatty, 286 N.C. 226, 210 S.E.2d 193 (1974).

(IMPORTANT! SEE FOLLOWING PAGE[S])

In the matter at hand, claimant was only available for shift work during the week(s) ending . The majority of the jobs in claimant's area of residence for which claimant is qualified are available during shift hours.

Claimant limited the work which claimant could accept to such a point that claimant was not genuinely attached to the labor force during the week(s) ending . As such, claimant was not available for work within the meaning of the law during said week(s).

DECISION:

Claimant is not eligible to receive unemployment benefits for the week(s) ending and shall remain ineligible until all eligibility conditions under the law are met.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following kinds of jobs: .
4. The prevailing rate of pay for the majority of these jobs in claimant's area of residence is \$.
5. Claimant would not accept a job for any less than \$ during the week(s) ending .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

In determining whether or not an individual is available for work within the meaning of the law, the issue is whether or not the restrictions which the claimant places on his employment serve to limit the work which a claimant can accept to such a degree that he is no longer genuinely attached to the labor force. In re Beatty, 286 N.C. 226, 210 S.E.2d 193 (1974).

In the matter at hand, claimant was genuinely attached to the labor force during the week(s) ending because . As such, claimant was available for work within the meaning of the law during the week(s) in question.

(IMPORTANT! SEE FOLLOWING PAGE[S])

APPEALS DECISION NO.

Page 2 of 2 Pages

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

(IMPORTANT! SEE FOLLOWING PAGE[S])

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. Claimant is qualified by experience and training to perform the following types of work: .

4. The prevailing rate of pay for the majority of these jobs in claimant's area of residence is \$.

5. Claimant would not accept a job for any less than \$ during the week(s) ending .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

In determining whether or not an individual is available for work within the meaning of the law, the issue is whether or not the restrictions which the claimant places on his employment serve to limit the work which a claimant can accept to such a degree that he is no longer genuinely attached to the labor force. In re Beatty, 286 N.C. 226, 210 S.E.2d 193 (1974).

(IMPORTANT! SEE FOLLOWING PAGE[S])

In the matter at hand, claimant was unwilling to accept work for any less than \$ during the week(s) ending . The prevailing rate of pay in claimant's area of residence for the majority of the jobs for which claimant is qualified is \$.

Claimant limited the work claimant could accept to such a point that claimant was not genuinely attached to the labor force during the week(s) ending . As such, claimant was not available for work within the meaning of the law during said week(s).

DECISION:

Claimant is not eligible to receive unemployment benefits for the week(s) ending and shall remain ineligible until all applicable conditions under the law are met.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant is qualified by experience and training to perform the following types of jobs: .
4. During the week (s) ending , claimant was willing to accept work which he/she was qualified to perform.
5. During the week(s) ending , claimant was registered at and attending an established school, or on vacation during or between successive terms of such school attendance, or on vacation between yearly terms of such school attendance.
6. Claimant attends school at in part/full time status. Claimant's school schedule consists of the following days/hours: .
7. Claimant is available to work shift(s).
8. Claimant was previously engaged in full-time employment concurrent with his/her school attendance.

(IMPORTANT! SEE FOLLOWING PAGE[S])

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. G.S. 96-13(a)(3).

For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. G.S. 96-13(a)(3).

In McNeil v. Employment Security Commission, the North Carolina Court of Appeals determined "...the Commission found petitioner was not 'available for work' because she was only available for second shift jobs. However, petitioner was available for only second shift jobs because of her school attendance. The statute forbids denial of unemployment benefits solely because of school enrollment and attendance...petitioner is not required to be available for work at all times." 89 NC App. 142, 365 S.E. 2d 306 (1988).

In the matter at hand, claimant's shift restriction was caused by school attendance. Since claimant had previously worked full-time while attending school, claimant may not be held ineligible due to the shift restriction.

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant's work search during the week(s) ending consisted of the following: .
4. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. No individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work. G.S. 96-13(a)(3).

ESC Regulation No. 10.25 defines actively seeking work as doing those things an unemployed person who wants to work would normally do. A prima facie showing of "actively seeking work," is established when during any benefit week for which a claim was filed, claimant sought work on at least two different days and made a total of at least two in-person job contacts.

Based on the above Findings of Fact, it is concluded that claimant was actively seeking work; therefore, claimant was available for work within the meaning of the law during the week(s) in question.

(IMPORTANT! SEE FOLLOWING PAGE[S])

APPEALS DECISION NO.

Page 2 of 2 Pages

DECISION:

Claimant is eligible to receive unemployment benefits for the week(s) ending .

(IMPORTANT! SEE FOLLOWING PAGE[S])

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant was able and available for work. G.S. 96-13(a)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. Claimant's work search during the week(s) ending consisted of the following: .
4. .
5. Claimant did not look for work during the week(s) ending because .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is available for work. No individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work. G.S. 96-13(a)(3).

ESC Regulation No. 10.25 defines actively seeking work as doing those things an unemployed person who wants to work would normally do. A prima facie showing of "actively seeking work," is established when during any benefit week for which a claim was filed, claimant sought work on at least two different days and made a total of at least two in-person job contacts.

(IMPORTANT! SEE FOLLOWING PAGE[S])

Based on the above Findings of Fact, it is concluded that claimant was not actively seeking work; therefore, claimant was not available for work within the meaning of the law during the week(s) in question.

DECISION:

Claimant is not eligible to receive unemployment benefits for the week(s) ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant has engaged in a systematic and sustained effort to find work during any week for which claimant has filed for extended benefits. G.S. 96-12.01(c)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.
2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .
3. During the claim week(s) under consideration the claimant filed for extended benefits.
4. During the week(s) ending , the claimant's search for work consisted of the following: .
5. .
6. .

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that with respect to such week he has furnished the Commission with tangible evidence that he has actively engaged in a systematic and sustained effort to find work. G.S. 96-12.01(c)(3).

(IMPORTANT! SEE FOLLOWING PAGE[S])

ESC Regulation 10.25(B) provides that systematic means conducted with thoroughness and with a plan to produce results, including broadening the plan when there are few openings in the claimant's customary occupation. "Sustained" is defined as a continual effort maintained at length throughout the week. Said regulation further provides that a prima facie showing of a "systematic and sustained effort to find work" has been established when the claimant sought work on at least three (3) different days and made a total of at least three (3) in-person job contacts during the week for which a claim for extended benefits has been filed.

It is concluded from the competent evidence in the record that the claimant actively engaged in a systematic and sustained effort to find work during the week(s) ending .

DECISION:

Claimant is therefore eligible for extended benefits for the week(s) ending .

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF:

APPEALS DECISION NO.

CLAIMANT

EMPLOYER

* * * * *

Claimant's S. S. No.

ISSUE:

Whether the claimant has engaged in a systematic and sustained effort to find work during any week for which claimant has filed for extended benefits. G.S. 96-12.01(c)(3).

FINDINGS OF FACT:

1. Claimant last worked for on as a . From until , 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). The claimant filed a New Initial Claim effective . The claimant's weekly benefit amount is \$. The claimant's maximum benefit amount is \$.

2. The Adjudicator issued a conclusion under Docket No. holding claimant . appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee for hearing on . Present for the hearing: .

3. During the claim week(s) under consideration the claimant filed for extended benefits.

4. During the week(s) ending , the claimant's search for work consisted of the following: .

5. .

6. .

MEMORANDUM OF LAW:

North Carolina Employment Security Law provides that an individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that with respect to such week he has furnished the Commission with tangible evidence that he has actively engaged in a systematic and sustained effort to find work. G.S. 96-12.01(c)(3). The law further provides that if an individual is found to be ineligible hereunder, he shall be ineligible beginning with the week in which he has failed to furnish the Commission with tangible evidence that he has actively engaged in

(IMPORTANT! SEE FOLLOWING PAGE[S])

a systematic and sustained effort to find work and such individual shall continue to be ineligible for extended benefits until he has been employed in each of four subsequent weeks and has earned remuneration equal to not less than four times his weekly benefit amount.

ESC Regulation 10.25(B) provides that systematic means conducted with thoroughness and with a plan to produce results, including broadening the plan when there are few openings in the claimant's customary occupation. "Sustained is defined as a continual effort maintained at length throughout the week. Said regulation further provides that a prima facie showing of a "systematic and sustained effort to find work" has been established when the claimant sought work on at least three (3) different days and made a total of at least three (3) in-person job contacts during the week for which a claim for extended benefits has been filed.

It is concluded from the competent evidence in the record that for the week(s) ending , the claimant did not actively engage in a systematic and sustained effort to find work.

DECISION:

Claimant is ineligible for extended benefits for the week(s) ending and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.