

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 802

Manufacturing and Labor Committee Substitute Adopted 4/26/93

Short Title: ESC/Technical Changes.

(Public)

Sponsors:

Referred to:

April 12, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE
3 EMPLOYMENT SECURITY LAWS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 96-4(t)(5) reads as rewritten:

6 "(5) Privileged Status of Letters and Reports and Other Information
7 Relating to Administration of this Chapter. – All letters, reports,
8 communication, or any other matters, either oral or written, including
9 any testimony at any hearing, from the employer or employee to each
10 other or to the Commission or any of its agents, representatives, or
11 employees, which letters, reports, or other communication shall have
12 been written, sent, delivered, or made in connection with the
13 requirements of the administration of this Chapter, shall be absolutely
14 privileged communication in any civil or criminal proceedings except
15 proceedings pursuant to or involving the administration of this Chapter
16 and except proceedings involving child support and only for the
17 purpose of establishing the payment and amount of unemployment
18 compensation benefits. Nothing in this subdivision shall be construed
19 to prohibit the Commission, upon written request and on a
20 reimbursable basis only, from disclosing information to any party to the
21 proceeding from the records of an adjudication or a proceeding before an
22 appeals referee, deputy commissioner, or other hearing officer by

1 whatever name called, compiled for the purpose of resolving issues
2 raised pursuant to the Employment Security Law."

3 Sec. 2. G.S. 96-14 is amended by adding the following new subsections to

4 read:

5 "(1D) For the purposes of this Chapter, any claimant leaving work to
6 accompany the claimant's spouse to a new place of residence where
7 that spouse has secured work in a location that is too far removed for
8 the claimant reasonably to continue his or her work shall serve a time
9 certain disqualification for benefits for a period of five weeks
10 beginning the first day of the first week after the disqualifying act
11 occurs with respect to which week an individual files a claim for
12 benefits.

13 (1E) For the duration of an individual's unemployment, beginning with the
14 first day of the first week after the disqualifying act occurs with
15 respect to which week an individual files a claim for benefits, if it is
16 determined by the Commission that such individual is, at the time such
17 claim is filed, unemployed because the individual, without good cause
18 attributable to the employer, refused to return to work for a former
19 employer when recalled within four weeks from a layoff, or when
20 recalled in any week in which the work search requirements under
21 G.S. 96-13 have been waived. As used in this subsection, the term
22 'layoff' means a temporary separation from work due to no work
23 available for the individual at the time of separation from work and the
24 individual is retained on the employer's payroll and is a continuing
25 employee subject to recall by the employer."

26 Sec. 3. G.S. 96-14(10) reads as rewritten:

27 "(10) Any employee disqualified for the duration of his unemployment due
28 to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that
29 permanent disqualification removed if he meets the following three
30 conditions:

- 31 a. Returns to work for at least five weeks and is paid cumulative
- 32 wages of at least 10 times his weekly benefit amount;
- 33 b. Subsequently becomes unemployed through no fault of his
- 34 own; and
- 35 c. Meets the availability requirements of the law.

36 Any time certain disqualification imposed by the provisions of
37 ~~subsection (2A) may subsections (1), (1D), and (2A) shall be~~
38 removed by serving the disqualification imposed as provided by
39 this subsection.

40 Provided for good cause shown the Commission in its
41 discretion may as to any permanent disqualification provided in
42 this Chapter reduce the disqualification period to a time certain
43 but not less than five weeks. ~~For purposes of this subdivision~~
44 ~~good cause shall include a claimant's leaving work in order to~~

1 accompany the claimant's spouse to a new place of residence where
2 that spouse has secured work in a location which is too far removed
3 for the claimant to continue his or her work.—The maximum
4 amount of benefits due any individual whose permanent
5 disqualification is changed to a time certain shall be reduced by
6 an amount determined by multiplying the number of weeks of
7 disqualification by the weekly benefit amount.

8 Provided further, any permanent disqualification pursuant to
9 the provisions of (1), (2), (3), (4), or (6A) shall terminate two
10 years after the effective date of the beginning of said
11 disqualification."

12 Sec. 4. G.S. 96-15(b)(2) reads as rewritten:

13 "(2) Adjudication. – When a protest is made by the claimant to the initial or
14 monetary determination, or a question or issue is raised or presented as
15 to the eligibility of a claimant under G.S. 96-13, or whether any
16 disqualification should be imposed under G.S. 96-14, or benefits
17 denied or adjusted pursuant to G.S. 96-18, the matter shall be referred
18 to an adjudicator. The adjudicator may consider any matter, document
19 or statement deemed to be pertinent to the issues, including telephone
20 conversations, and after such consideration shall render a conclusion
21 as to the claimant's benefit entitlements. The adjudicator shall notify
22 the claimant and all other interested parties of the conclusion reached.
23 The conclusion of the adjudicator shall be deemed the final decision of
24 the Commission unless within 10 working days after the date of
25 notification or mailing of the conclusion, whichever is earlier, a
26 written appeal is filed pursuant to such regulations as the Commission
27 may adopt. The Commission shall be deemed an interested party for
28 such purposes and may remove to itself or transfer to an appeals
29 referee the proceedings involving any claim pending before an
30 adjudicator.

31 Provided, any interested employer shall be allowed 10 working
32 days from the earlier of mailing or delivery of the notice of the filing
33 of a claim against the employer's account to protest the claim and have
34 the claim referred to an adjudicator for a decision on the question or
35 issue raised. Provided further, no question or issue may be raised or
36 presented by the Commission as to the eligibility of a claimant under
37 G.S. 96-13, or whether any disqualification should be imposed under
38 G.S. 96-14, after 20 working days from the first day of the first week
39 after the question or issue occurs with respect to which week an
40 individual filed a claim for benefits. None of the provisions of this
41 subsection shall have the force and effect nor shall the same be
42 construed or interested as repealing any of the provisions of G.S. 96-
43 18."

44 Sec. 5. G.S. 96-15(c) reads as rewritten:

1 "(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals
2 referee shall set a hearing in which the parties are given reasonable opportunity to be
3 heard. The conduct of hearings shall be governed by suitable regulations established by
4 the Commission. Such regulations need not conform to common law or statutory rules
5 of evidence or technical or formal rules of procedure but shall provide for the conduct
6 of hearings in such manner as to ascertain the substantial rights of the parties. The
7 hearings may be conducted by conference telephone call or other similar means
8 provided that if any party files with the Commission prior written objection to the
9 telephone procedure, that party will be afforded an opportunity for an in-person hearing
10 at such place in the State as the Commission by regulation shall provide. The appeals
11 referee may affirm or modify the conclusion of the adjudicator or issue a new decision
12 in which findings of fact and conclusions of law will be set out or dismiss an appeal
13 when the appellant fails to appear at the appeals hearing to prosecute the appeal after
14 having been duly notified of the appeals hearing. The evidence taken at the hearings
15 before the appeals referee shall be recorded and the decision of the appeals referee shall
16 be deemed to be the final decision of the Commission unless within 10 days after the
17 date of notification or mailing of the decision, whichever is earlier a written appeal is
18 filed pursuant to such regulations as the Commission may adopt. No person may be
19 appointed as an appeals referee unless he or she possesses the minimum qualifications
20 necessary to be a staff attorney eligible for designation by the Commission as a hearing
21 officer under G.S. 96-4(m). No appeals referee in full-time permanent status may
22 engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as
23 appeals referee; violation of this prohibition shall be grounds for removal. Whenever an
24 appeal is taken from a decision of the appeals referee, the appealing party shall submit a
25 clear written statement containing the grounds for the appeal within the time allowed by
26 law for taking the appeal, and if such timely statement is not submitted, an appeals
27 referee may dismiss the appeal."

28 Sec. 6. Section 2 of Chapter 409 of the 1991 Session Laws reads as rewritten:

29 "Sec 2. This act becomes effective October 1, ~~1991, 1991.~~ and expires on June 30,
30 ~~1993.~~"

31 Sec. 7. G.S. 96-18(g)(3) is amended by adding the following new subsection
32 to read:

33 "f. Overpayments to deceased claimants shall not be collected from
34 the estate of the claimant and shall be removed as a debt of the
35 deceased claimant from the records of the Commission."

36 Sec. 8. This act is effective upon ratification.