

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 343
SENATE BILL 802

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE
EMPLOYMENT SECURITY LAWS.

The General Assembly of North Carolina enacts:

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

"(5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. – All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the Commission or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits. Nothing in this subdivision shall be construed to prohibit the Commission, upon written request and on a reimbursable basis only, from disclosing information to ~~any party to the proceeding~~ from the records of ~~an adjudication or a proceeding~~ before an appeals referee, deputy commissioner, or other hearing officer by whatever name called, compiled for the purpose of resolving issues raised pursuant to the Employment Security Law."

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

"(1D) For the purposes of this Chapter, 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.

(1E) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with

respect to which week an individual files a claim for benefits, if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because the individual, 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 separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer."

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

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

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

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

Provided for good cause shown the Commission in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. ~~For purposes of this subdivision good cause shall include a claimant's leaving work in order to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location which is too far removed for the claimant to continue his or her work.~~ The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

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

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

"(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits

denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Commission unless within 10 working days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to such regulations as the Commission may adopt. The Commission shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

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

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

"(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable regulations established by the Commission. Such regulations need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Commission prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Commission by regulation shall provide. The appeals referee may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Commission unless within 10 days after the

date of notification or mailing of the decision, whichever is earlier a written appeal is filed pursuant to such regulations as the Commission may adopt. No person may be appointed as an appeals referee unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Commission as a hearing officer under G.S. 96-4(m). No appeals referee in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals referee, the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, an appeals referee may dismiss the appeal."

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

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

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

"f. The Commission may in its discretion decline to collect overpayments to claimants if the claimant has deceased after the payment was made. In such a case the Commission may remove the debt of the deceased claimant from its records."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives