

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 255, SUPPLEMENT NO. 2

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Vacation Payments

The question has been raised whether receipt of vacation pay constitutes earnings for claims purposes when received. The answer is in the affirmative.

An Appeals Referee recently held that vacation pay received during a lay-off did not count as earnings since the vacation had been "saved" and could have been taken during some other time. The claimant filed for weeks ending June 30 and July 7, 1984. During the week ending June 30, 1984, the claimant requested and received three weeks of vacation pay. The three weeks of time away from work could be taken after he returned from layoff. The Appeals Referee held that those monies were not to be counted as earnings during the weeks ending June 30 and July 7, 1984, since the claimant was not permanently separated but only temporarily laid off. He misconstrued In Re Tyson, 253 N.C. 622, 117 S.E.2d 854 (1961), and did not apply Interpretation No. 255.

If a claimant receives vacation pay for a week claimed, that payment is to be considered earnings for that week. If the payment is for more than that week, it will be prorated. It is immaterial whether or not the claimant elected to receive the payment, already had taken vacation weeks with or without having received pay, was entitled to take vacation weeks in the future with or without pay or was temporarily or totally separated.

Adopted as an official Interpretation by the Commission on January 17, 1986.