

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 256, SUPPLEMENT 1 REVISED

TO: Employment Security Commission of North Carolina

FROM: C. Coleman Billingsley, Jr., Chief Counsel

SUBJECT: Unemployment of Part-Time Claimants

Since the adoption of this Interpretation on April 19, 1982, there have been numerous questions raised. In general, the questions have been directed to whether the acceptance of part-time work by an individual already in claim status will render him/her ineligible based on this Interpretation. Also, subsequent to the issuance of Supplement 1 on November 29, 1982, there have been law changes. In order to clarify the Interpretation, this Supplement is being revised and adopted.

We are of the opinion that the material question to be answered in any of the examples posed by the many questions is whether the part-time work was intended by the individual to be his/her regular employment on a full-time or permanent basis or merely whether it was intended to be an acceptance of part-time work concurrent with or until full-time employment could be obtained. While this determination necessarily involves a question of the intent of the individual, that same determination is made every day by those who examine the eligibility of individuals for unemployment insurance benefits.

An individual who had been working part-time not concurrent with a full-time job for several months before filing a claim would have a great burden in order to show that his/her acceptance of the part-time employment for such a period was merely a stop-gap measure while he/she sought to obtain full-time work. For an individual already in claim status, the acceptance of part-time work would not render him/her ineligible merely because he/she had accepted it so long as he/she still was seeking full-time work and was willing and able to accept it. In those cases in which the individual chooses to work part-time when full-time work is available, the individual is not eligible or unemployed within the meaning of Chapter 96. In those cases in which the employer had changed the work to fewer hours, the determination as to the intent of the acceptance till is the controlling factor, although certainly this is less likely to indicate the ineligibility for "regular" employment. Following are some examples:

A. Ordinary Part-time Employment for an Individual Usually Employed Full-time

As contemplated in this paragraph, "ordinary" part-time employment is employment entered into by an otherwise unemployed claimant with the

full understanding that it is temporary, stop-gap work of less than the usual full-time hours for that type of job. The following rules of eligibility for part-time unemployment benefits apply:

1. The work must be part-time because the employer cannot furnish full-time work for the claimant. If the claimant is the one who elected to make the job a part-time one, the claimant is not eligible or unemployed.
2. A claimant, whose base period wages were from full-time work, must be able to work full-time, available for full-time work, and actively seeking full-time work each week with other employers. (With the passage of G. S. S96-13(a)(6), effective for claims with an effective date of June 22, 2003 or after, if a claimant's base period wages are predominately from part-time work, the claimant is seeking work under essentially the same conditions, and the claimant imposes no other restrictions and there is a reasonable demand for the part-time work, then the claimant is eligible and qualified for benefits.)
3. The number of hours worked in a part-time week is immaterial, as long as they are less than the full-time hours for that employer for the work being done. If otherwise eligible, earnings of less than the ineligible amount will be determining factor for payment.
4. If the part-time employment continues on a more or less routine basis as the weeks go by, the claimant's eligibility must be carefully examined after 10 weeks. If there is an indication that the claimant no longer meets the standards set out above, he/she shall be considered to be working full-time and not unemployed.
5. If a claimant quits or is discharged from part-time employment, there is a separation issue. However, if the claimant quits one part-time job for another part-time job with equal or greater earnings, then no separation issue should be raised.

B. Part-time Employment Caused by Reduced Work Schedules

This section has to do with the permanent employee whose hours have been reduced by the employer for the foreseeable future. Assuming such an individual remains a permanent employee and the reduction in regular hours is caused by lack of work, the individual will be partially unemployed and the employer must prepare Form NCUI 501 for each

week the person works less than the equivalent of 3 customary days under the former schedule (or 60% of the former hours).

1. An individual has been working a 5-day 40-hour week. Because of reduced business, the employer decides to reduce the work week to a 4-day 32-hour week for an indefinite period. Until and unless the work week is reduced permanently by the employer or the reduction is due to something other than lack of work, the 5-day 40-hour week will continue to be considered the customary week for this person.

*What is meant by “permanently”? All cases are different – use judgment and a reasonable approach.

2. There are industries (usually the out-of-doors type) whose customary work week may vary with the season. In some types of construction, the work day may be 10 hours from mid-spring to mid-fall to take advantage of the longer period of daylight, but reduced to 6 hours for the rest of the year when suitable temperatures and daylight are limited for outdoor work. In situations like this, it is perfectly reasonable and logical to approve the 2 different work schedules for the applicable periods for purposes of determining when 501's are to be prepared by the employer. This is not to say that a new “customary” work schedule can be established for 501 purposes every few weeks or months. It should be done only in situations similar to that described in this paragraph.
3. When an individual's hours of work are reduced because the individual requested the reduction, that person cannot be considered unemployed.
4. When an employer reduces a person's hours of work for a reason other than lack of work, there can be no fixed procedure. Each case must be handled individually in accordance with the basic principles set forth in Interpretation 256 and this Supplement. The factors set forth in G.S. § 96-14(1B) must be considered.

C. Last Employment

A claimant's last employer is the individual, company, firm, organization, partnership or whatever for whom he/she worked most recently before applying for benefits. A person who continues to work part-time in secondary employment after losing a primary job is

ordinarily part-totally unemployed because of the loss of the primary job. The primary employer must be considered the last employer. (See G.S. § 96-8 (24) and ESC Precedent Decision No. 36, In Re Bright, for its specific limitation to this Interpretation.)

1. Claimant lost a full-time job with R; still has a part-time job with S. He/she is part-totally unemployed. The last employer is R. If separation was for a disqualifying reason, the part-time work may be used to terminate the disqualification. If there is no disqualification, able and available may be an issue. “Part-time” non-charging can, if applicable be applied to S.
2. Same situation as “1” except that 3 weeks later S fires him/her. If the employment with S was a regularly held part-time job, separation would become an issue with respect to that job. If sporadic, there is no issue. (This is very definitely a matter of judgment) “Part-time” non-charging is applicable to S.
3. Same situation as “1”, except that claimant waits 2 months after losing job with R to file a claim, continuing to work part-time with S in the interim. The job with S is considered full-time, and the person is not unemployed unless the claimant delays filing due to the receipt of separation, vacation, or some other type pay.
4. Claimant worked part-time with S while going to school. Graduated (or left school), got full-time work with R, continued to work part-time with S. Lost job with R after 5 months, filed a claim; S is the only base period employer, continues to work with S. The last employer is R; employer S could be non-charged. (The intent of the law is to provide for relief of charges regardless of whether the primary full-time “occupation” during the base period was employment (as stated in the law), unemployment while seeking full-time work, or school.)
5. Claimant had a full-time job and a regular part-time job. Lost full-time job because of lack of work then, later in the same day, quit the part-time job. The last employer is the one who furnished the part-time job.
6. Claimant worked 2 full-time jobs. Lost one; kept the other. Claimant is not unemployed.
7. Claimant fired from a regular full-time job with R. Got temporary work with T for a few days which ended because of lack of work.

Filed a claim. Last employer was R pursuant to G.S. § 96-8 (24).
That the last employer is R is a rebuttable presumption.

In applying this Supplement and the Interpretation, the key is to determine whether the individual who is claiming benefits is unemployed within the words and spirit of Chapter 96, and whether the individual is fully able and available for part-time, full-time (if applicable), temporary and permanent work. Acceptance of part-time work while in claim status and while still seeking full-time work is, using common sense, much different from filing a claim after a period in which the status quo of a part-time work by itself had not changed substantially. In the former case, one would be unemployed, available and eligible; in the latter case, one would not be.

Adopted as an official Interpretation by the Commission on November 29, 1982.

Revision adopted as an official Interpretation by the Commission on April 1, 2004.