

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 1

IN RE TALBERT
(Adopted December 17, 1982)

FINDINGS OF FACT:

1. The claimant last worked for Charlotte Machine Company on July 30, 1982. From August 1, 1982 until August 28, 1982, the 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) as of the time the Adjudicator issued a determination. The employer appealed the Adjudicator's determination, and an evidentiary hearing was held by Charles E. Monteith, Jr., Appeals Referee, under Docket No. XI-UI-74483, who held that the claimant was disqualified for unemployment benefits. The claimant filed a timely appeal to the Commission.
2. The claimant left this job under the following circumstances: He reported to work on August 1, 1982. He informed his supervisor that he needed to check on some matters at the employment office. Claimant then left and did not return until the following week and then only to pick up his tool box.
3. Claimant was hired as a machinist/welder. He began work for Charlotte Machine Company on July 29, 1982 and last worked on July 30, 1982. In the course of his work claimant was required to lift items which he considered heavy and which he believed caused him to have pain in his back. Claimant stated that he had a pre-existing back problem at the time he began his employment on July 29, 1982, but he failed to indicate such on his employment application. The employer would not have hired the claimant for the job had he known about the claimant's pre-existing back problem because the job as a machinist/welder required lifting of various items of various weights.
4. At no time did the claimant indicate to the employer that he was having back pains until he returned the following week to pick up his tool box. Nor did the

claimant request a transfer to other work. Other than presenting receipts from doctors indicating that he had been treated for back problems, the claimant presented no medical evidence as to restrictions on the type of job claimant could perform.

5. When claimant left the job, continuing work was available for claimant there.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina was enacted by the General Assembly for the purpose of paying benefits to individuals who are unemployed due to no fault of their own and in order that such individuals might have some protection against the hazard of unemployment and to insure that such individuals might have the burden of unemployment lightened by the payment to them of benefits during periods of unemployment. The primary purpose of the Act is to provide some source of income during temporary periods of unemployment to individuals until such individuals are able to find work and again become employed. The Act never was intended to encourage idleness and the benefit payments never were intended to replace the income or take the place of wages provided by steady work. Nor were unemployment insurance benefits intended by the General Assembly to be sickness insurance. Because a person is unemployed does not within itself entitle such individual to become the recipient of unemployment insurance payments.

There are certain conditions set forth in the Act which every claimant must meet before he is entitled to receive benefits. These conditions are set forth in G.S. 96-13 and G.S. 96-14 and relate to the claimant's eligibility for benefits and to possible disqualification from receiving benefits for a period of time under certain circumstances.

G.S. 96-14(1) 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 voluntarily without good cause attributable to the employer. In order to disqualify an individual or claimant under this provision, it must be found that he (1) voluntarily left work and (2) such leaving was without good cause attributable to that individual's employer.

In ascertaining whether or not an employee voluntarily left his employment, the mental processes, constraining or compulsive forces or objective influences, or the freedom or lack of freedom from external compulsion or necessity which led up to the claimant's leaving work must be considered. As to the existence of "good cause

attributable to the employer," the Commission should in every case be - fully satisfied that, where an employee has left the employment, the reasons for so doing were of an impelling character which, in the opinion of the Commission, afforded ample and complete justification for the severance of his employment. This would exclude all fictitious or feigned reasons or excuses for failure to continue in the work and would comprehend only such causes as operated directly on the employee which made, in the opinion of the Commission, his continuance in the employment impossible, or attendant with such circumstances as to make it unreasonably burdensome for him to continue therein. ESC Interpretation No. 48, dated January 5, 1944.

The Commission has long recognized that illnesses of such character and nature as to disable an employee from continuing in the employment could be such a cause as to make it necessary for the employee to discontinue his work as long as this condition existed; i.e., compelling health reasons. Because such illnesses deprive the employee of freedom from external compulsion or necessary in deciding whether to continue in employment, the Commission has consistently held that a leaving of employment for compelling health reasons is an involuntary leaving and not a voluntary one covered under G.S. 96-14(1).

In order to sustain a determination that a leaving of employment was involuntary due to compelling health reasons, a claimant must (1) introduce competent testimony that at the time of leaving adequate health reasons existed to justify the leaving, (2) inform the employer of the health problem, (3) specifically request the employer to transfer him to a more suitable position, and (4) take the necessary minimal steps to preserve his employment such as requesting a leave of absence if appropriate and available. See Deiss v Unemployment Compensation Board of Review, 475 Pa. 547, 381 A.2d.132 (1977), Carroll v Board of Review, 9 Unemployment Insurance Reporter (CCH), 11,089 (1982).

The medical evidence introduced must support the claimant's contention that at the time of leaving his health precluded him from performing his assigned duties. See Coyle v Unemployment Compensation Board of Review, 56 Pa. Cmwlth. 170, 424 A.2d 588 (1981); Counts v Commissioner, 10 Unemployment Insurance Reporter (CCH) 8288 (1982).

In the case at hand, claimant has failed to meet his burden of proving either the 2nd, 3rd, or 4th requirements in order to establish an involuntary leaving for compelling health reasons. Although the medical evidence showed that adequate health reasons may have existed at the time of claimant's leaving, claimant failed to

inform his employer, request other suitable work or to even attempt to preserve his employment by taking the necessary minimal steps. It must, therefore, be concluded that claimant has failed to establish or prove an involuntary leaving of employment for compelling health reasons.

Furthermore, it is concluded that the record evidence and the facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for a voluntary 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 claimant must, therefore, be disqualified for benefits.

DECISION:

The claimant is disqualified for unemployment benefits beginning August 1, 1982, and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.