

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 12

IN RE SCHOFIELD
(Adopted May 15, 1984)

FINDINGS OF FACT:

1. The claimant last worked for the employer on December 23, 1983. From January 15, 1984 until January 21, 1984, 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 claimant appealed the Adjudicator's determination, and an evidentiary hearing was held by Jo Ann Weaver, Appeals Referee, under Docket No. II-UI-3475, who held that the claimant was not disqualified for unemployment benefits. The employer filed a timely appeal to the Commission.
2. On or about December 20, 1983, the claimant mailed a letter of resignation to the president of the employer who was located in Port Orange, Florida. The letter was mailed from the claimant's place of work in Goldsboro, North Carolina.
3. On December 22, 1983, claimant had a conversation with the president during which the matter that caused claimant's resignation was settled. Specifically, claimant disagreed with the new policy on commissions (effective January 1, 1984) that would have replaced the old policy of paying branch managers 2% of sales. The new policy was modified to eliminate claimant's objections to it. The modified policy provided that effective January 1, 1984, claimant was to be paid a minimum of 2% of sales or 25% of the net profit, whichever was greater.
4. Claimant expressed satisfaction with the compromised arrangement. Under this modification of the new commission policy, claimant would not have received less money than what he had received during the period that only the

2% commission on sales policy was applicable. Claimant's weekly salary of \$500 was not affected by either the new or compromised policy change.

5. During the December 22nd telephone conversation, claimant did not inform the president that he had written and/or mailed his letter of resignation on December 20th. Further, claimant at no time during the conversation informed the president that he no longer desired for his resignation to be accepted by the employer. Claimant was of the opinion that the president received his letter of resignation on December 23rd.
6. By Western Union telex (dated December 23rd), the president advised the individual who had been named acting branch manager that the claimant had tendered his resignation and that such resignation had been accepted by the employer. The acting manager was instructed to inform the claimant of the acceptance and the desire that he vacate the premises immediately. The acting manager complied with these instructions.
7. At the time claimant submitted his resignation, he was a branch manager receiving a weekly salary of \$500.00. On a monthly basis, he was paid 2% commission on sales.
8. Claimant's resignation was to be effective January 13, 1984. The employer, however, accepted claimant's resignation effective December 23rd, approximately three weeks prior to the date set by claimant. Claimant's resignation was accepted prior to January 13th because certain statements contained in claimant's letter of resignation failed to assure the employer that claimant, as branch manager, would act in the best interest of the employer during the notice period.
9. As a result of his separation from employment, claimant was paid \$1,975.00 for accrued vacation and sick leave. Such payment was equivalent to approximately four weeks of salary or wages at the rate of \$500.00 per week.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina 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. G.S. 96-14(1).

N.C.G.S. 96-14(2) provides that an individual shall be disqualified for benefits for the duration of the 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 was discharged for misconduct connected with the work. G.S. 96-14(2).

The Employment Security Law further provides that no individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has received, or will receive as a result of his separation from employment, remuneration in the form of accrued vacation, terminal leave pay, or wages by whatever name. G.S. 96-8(10)c.

In the case at hand, claimant, on December 20, 1983, mailed a letter of resignation to the company president who was located in Florida. During a telephone conversation with the company president on December 22nd, claimant reached a satisfactory resolution as to the matter which had caused him to formulate and mail the resignation. Claimant, however, neither informed the company president that he had written or forwarded a letter of resignation nor that he wished or desired to withdraw his resignation. A reasonable person, under similar circumstances and desirous of continuing in employment, would have, at the minimum, made the employer aware of the resignation and that he no longer desired for it to be accepted.

The record is absent any evidence to the effect that claimant did not have the opportunity to discuss his resignation with the company president on December 22nd. Under the circumstances, the employer acted properly in accepting claimant's resignation and, in the absence of any evidence that claimant conveyed to the employer that he did not intend for his resignation to be accepted, it is found that it was the intent of the claimant to quit his job at the time the resignation was received and accepted by the employer. The employer neither requested nor coerced claimant to submit his resignation; consequently, it was a voluntary resignation and not an involuntary one which would constitute a discharge.

The record evidence clearly reveals that the payment of accrued vacation and sick leave to claimant was made as a result of his separation from employment. The accrued vacation and sick leave pay covered claimant's weekly salary for at least 3 weeks after he submitted his resignation, the same number of weeks which was contained in his notice. It is found that although claimant did not actually perform work, he was paid remuneration or wages for his entire notice period in the form of accrued vacation and sick leave pay and, therefore, was still employed within the

meaning of the law. Since claimant did not become unemployed until after his notice period had expired, it cannot be said that claimant became unemployed because his employer refused to allow him to work his notice.

The remaining question is whether claimant had good cause attributable to the employer for voluntarily leaving his job. At the time claimant posted his letter of resignation, he may have had good cause for terminating his own employment. After reaching a satisfactory compromise as to the policy on commissions, claimant's reason for allowing his resignation to stand was not "a reason for rejecting work that would be deemed by reasonable men and women as valid and not indicative of an unwillingness to work." Sellers v. National Spinning Co., Inc. and ESC, 614 N.C. App. 567, 307 S.E.2d 774, dis. rev. denied, 309 N.C. 464 (1983). The record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for the 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 January 15, 1984, and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.