

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 3

IN RE CLARK
(Adopted March 11, 1983)

FINDINGS OF FACT:

1. The claimant last worked for this employer on June 11, 1982. From October 17, 1982 until October 23, 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 claimant appealed the Adjudicator's determination, and an evidentiary hearing was held by Charles M. Brown, Jr., Appeals Referee, under Docket No. XIII-UI- 78814, who held that the claimant was not disqualified for unemployment benefits. The employer filed a timely appeal to the Commission.
2. The claimant was discharged from this job because he was unable to report to work due to being incarcerated.
3. The claimant was convicted in Robeson County, North Carolina, of driving under the influence and driving while license permanently revoked. The claimant was sentenced to twelve (12) months in prison and served his sentence at the unit in Troy, North Carolina, which is approximately two hundred (200) miles from the claimant's former place of employment. The claimant was released after having served four (4) months of his sentence. The claimant was eligible for work release during his incarceration.
4. The employer held the claimant's job open for a period of time in hopes that the claimant would be transferred to a unit near the employer's place of business and could return to work on work release. The claimant was never transferred to a unit nearby his former place of work. The employer discharged the claimant and found a replacement for him, because the employer could not hold the claimant's job open indefinitely.

MEMORANDUM OF LAW:

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. The term "misconduct connected with work" is not a defined term in the Employment Security Law of North Carolina; however, in the case of *In re Collingsworth*, 17 N.C. App. 340, 194 S.E.2d 210 (1973), the North Carolina Court of Appeals quoted with approval the following definition:

[T]he term 'misconduct' (in connection with one's work) is limited to conduct evincing such wilful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

Yelverton v. Kemp Industries, 51 N.C. App. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

It is concluded from the facts at hand that the claimant did evince an intentional and substantial disregard of his employer's interests by his conduct which caused him to be incarcerated and, therefore, unable to report for work. The North Carolina Court of Appeals in Yelverton v. Kemp Furniture Industries, 51 N.C. App. 215, 275 S.E.2d 553 (1981), stated that the definition approved in Collingsworth permits the Commission to find misconduct and to deny benefits for conduct showing an intentional and substantial disregard of the employer's interests. The employer in the case at hand had a substantial interest in making sure that its operation ran smoothly and was fully manned. The employer had no obligation to the claimant to keep the claimant's job open indefinitely, particularly when the reason for the claimant's absence from work was due to his own legally inexcusable conduct. The claimant's conduct is clearly not within the conduct contemplated for the payment of benefits as described in G.S. 96-2, which sets out the public policy underlying the Employment Security Law. That section provides in part, that the funds collected under the Act are "to be used for the benefit of persons unemployed

through no fault of their own." Since the claimant was discharged due to being absent from work while incarcerated following a conviction under the Motor Vehicle Laws of North Carolina, it cannot be said that the claimant became unemployed through no fault of his own. See Collins v. B & G Pie Company, Incorporated, 59 N.C. App. 341, 296 S.E.2d 809 (1982), disc. rev. denied, 307 N.C. 469, 299 S.E.2d 221 (1983), which upheld a disqualification of a claimant who was discharged for being absent from work while incarcerated due to a violation of conditions of probation.

The claimant must, therefore, be disqualified for benefits for having been discharged from the job for misconduct connected with the work.

DECISION:

The claimant is disqualified for unemployment benefits beginning October 17, 1982, and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.