

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 30

IN RE GARRETT
(Adopted February 1, 2010)

This cause has come on before the undersigned Chairman of the Employment Security Commission pursuant to G.S. 96-15(e), to consider the EMPLOYER'S APPEAL from a decision by Appeals Referee J. Lynn Noland, under APPEALS DOCKET NO. XV-A-02156. Having reviewed the record in its entirety, the undersigned is of the opinion that the aforesaid decision must be vacated and remanded for a hearing de novo and to issue a new decision.

The tape recording of the November 6, 1995 hearing is blank

Every decision of an Appeals Referee shall contain the entire procedural history of the matter, including orders of continuance and remand. When a hearing is remanded, the findings of fact made by the Referee shall state the procedural posture of the case including the reason for the remand, the requirements of the remand order, and the parties appearing at each of the hearings when an additional hearing is ordered. Further, it is inappropriate and usually reversible error for the Appeals Referee to merely recite the previous findings. Certainly, the Appeals Referee can incorporate previous findings into the new decision in the interest of judicial economy, but additional findings must be made when ordered in accordance with the order of remand. It should be evident from an Appeals Referee's decision following an order of remand to take additional evidence and render a new decision that the Referee heard and considered the additional evidence and complied with the remand order.

IT IS NOW THEREFORE, ORDERED, ADJUDGED, AND DECREED that the decision of the Appeals Referee is SET ASIDE, and the cause is hereby REMANDED for further proceedings consistent with this decision. No overpayment is established of benefits paid pursuant to the decision of the Appeals Referee. G.S. 96-9(c)(2)b, last paragraph.

IT IS ALSO ORDERED that all interested parties shall be duly notified as to time and place for rehearing, and the Appeals Referee shall identify the new decision at the conclusion of the remanded hearing by using all previously assigned docket numbers.

IT IS ALSO ORDERED that all documents contained in the record transmitted to the Appeals Referee with this decision, including the appeal and all other correspondence or documents by whatever name or designation, shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record will be complete as required by law and ESC Regulation 14.18(C).

IT IS ALSO ORDERED that a decision in this matter shall be mailed within 30 days from the date of this decision, unless an extension is granted in writing by the Chief Appeals Referee and made part of the record.