

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 36

IN RE BRIGHT

(Adopted November 17, 2003)

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective July 20, 2003. Thereafter, the Employment Security Commission determined that the weekly benefit amount payable to the claimant was \$408.00 and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$10,608.00.

The claim was referred to an adjudicator on the issue of separation from last employment. Adjudicator Joe Manley issued a determination under Docket No. 4019-95 finding the claimant not eligible for benefits. The claimant filed an appeal from the determination and the matter came on to be heard by a Hearing Officer under Appeals Docket No. V-A-36848. The following individuals appeared at the hearing before the Hearing Officer: Yvonne L. Bright, the claimant. On September 10, 2003, Charlotte A. Dover, Hearing Officer, issued a decision finding the claimant not eligible to receive unemployment insurance benefits pursuant to G.S. §96-8(10)a. and b. The CLAIMANT has APPEALED.

FINDINGS OF FACT:

1. The claimant has filed continued claims for unemployment insurance benefits for the period July 20, 2003 through August 2, 2003. The claimant has registered for work with the Commission, has 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).
2. The claimant began working for the employer on or about October 1, 1995, and was continuing to work for the employer at the time of the hearing before the Hearing Officer.

3. During the weeks ending July 26 and August 2, 2003, the claimant was attached to the employer's payroll.
4. The claimant began working for the employer while engaged in full-time employment with International Paper Company, Inc., where she had worked since 1968. The claimant's full-time job was her primary employment.
5. The claimant has worked for the employer on a part-time basis. She customarily averages 12 hours per week, but was not guaranteed any set number of hours during employment. Her work hours have fluctuated depending on the needs of the employer's ESC business and the economy, which means that she has worked more than 12 hours per week when called in to help with inventory or to cover for other employees on vacation. There have been weeks, particularly since September 11, 2001, when she has worked less than 12 hours per week. The claimant understood from the employer that her reduced hours during those weeks were because of the economy.
6. The claimant continued to work for both the employer and for International Paper Company, Inc., until she was separated from the latter employment on March 28, 2002
7. The claimant received a "pay-out" package as a result of her separation from employment with International Paper Company, Inc.
8. The claimant continued to work for the employer on a part-time basis following her separation from International Paper Company, Inc., and filed a claim for unemployment insurance benefits effective July 20, 2003, after the funds that she received from her "pay-out" package from International Paper Company, Inc. were exhausted.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that for the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three

customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.

2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.

G.S. §96-8(10)a.

The Employment Security Law of North Carolina provides that, for benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).
2. Partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraphs c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

G.S. §96-8(10)b.

The Employment Security Law of North Carolina also 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 (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name.

G.S. §96-8(10)c.

CONCLUSIONS OF LAW:

In the present case, the Hearing Officer erred by concluding that the claimant was not unemployed within the meaning of the law. The work the claimant performed for the employer was in the nature of subsidiary work. It was secondary employment that the claimant continued to perform after the loss of her primary job. DIVISION OF EMPLOYMENT SECURITY, NC DEPARTMENT OF COMMERCE Interpretation No. 256, Supplement I, states that, “ [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.”

Paragraph C.3. of the interpretation, which deems that a person is not unemployed when the person continues to work part-time and waits 2 months or more after losing a full-time job before filing a claim for benefits, does not apply when the reason the person waited to file the claim was because he was receiving as a result of his separation from employment, and as set forth in G.S. §96-8(10)c., remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. The claimant, in the present case, waited to file her claim for benefits because she was in receipt of separation pay.

The Commission concludes from the competent evidence and the facts found therefrom that the claimant was part-totally-unemployed under G.S. §96-8(10)b.3. during the weeks ending July 26 and August 2, 2003. The Commission further concludes that the claimant’s separation from employment with International Paper Company, Inc., raises the issue of whether the claimant is disqualified from receiving unemployment insurance benefits under G.S. §96-14 et seq. based on her separation from last employment.

Based on the foregoing, the decision of the Hearing Officer must be reversed. Further, the claimant must be held eligible to receive unemployment insurance

benefits for the weeks ending July 26 and August 2, 2003. The issue of whether the claimant is disqualified from receiving benefits based on her separation from last employment with International Paper Company, Inc. is remanded to the Wilmington office of the Commission for fact finding and, if necessary, adjudication.

DECISION:

The decision of the Hearing Officer is **REVERSED**.

The claimant is **ELIGIBLE** to receive unemployment insurance benefits for the weeks ending July 16 and August 2, 2003, provided all other requirements of the law have been met.

The issue of whether the claimant is disqualified from receiving unemployment insurance benefits based on her separation from employment with International Paper Company, Inc., is **REMANDED** to the Wilmington office of the Commission for further proceedings consistent with this decision.