

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 37

IN RE HEENAN

(Adopted November 16, 2005)

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective April 3, 2005. Thereafter, the Employment Security Commission determined that the weekly benefit amount payable to the claimant was \$426.00 and, during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$11,076.00.

The claim was referred to an adjudicator on the issue of separation from employment. Adjudicator Kaye Powell issued a determination under Docket No. 42476-O finding the claimant disqualified from receiving unemployment insurance benefits under N.C.G.S. S§96-14(1). The claimant filed an appeal from the determination and the matter came on to be heard and was heard by an Appeals Referee under Appeals Docket No. O-L-10115. When the matter came on to be heard, the following individuals appeared and/or presented testimony: Jack T. Heenan, the claimant; Bill Wise, witness for the claimant; Michael G. Okun, attorney for the claimant; Mike Annan, Hub Manager for Aircraft Maintenance, and Tim Conlon, Manager of Maintenance Administration, witnesses for US Airways, Incorporated (hereinafter "employer"); and Gregg Hogan, legal representative for the employer. On June 27, 2005, Joseph D. Pearlman, Appeals Referee, issued Appeals Decision No. O- L-10115 holding the claimant disqualified from receiving benefits under G.S. §96-14(1). The CLAIMANT APPEALED and requested oral arguments before the Commission.

With prior written notice mailed to the parties on July 19, 2005, the Full Commission conducted a proceeding on August 29, 2005, at which oral arguments on points of law were presented. Appearing and presenting oral arguments were Michael G. Okun, attorney for the claimant, and Gregg Hogan, legal representative for the employer. The Full Commission reviewed and considered the record on

appeal and any written and oral arguments presented; thereafter, the full Commission directed the issuance of the decision as set forth below.

FINDINGS OF FACT:

1. The claimant filed continued claims for unemployment insurance benefits for the period from April 3, 2005 through April 16, 2005. He registered for work with the Employment Security Commission (ESC), continued to report to an ESC office and made a claim for benefits in accordance with G.S. §96-15(a).
2. The claimant began working for the employer in September 1981. He last worked for the employer on or about March 27, 2005 as a line utility worker. The employer is involved in airline transportation. The claimant worked from 6:30 a.m. to 3:00 p.m. On a weekly basis, he commuted from his residence in Roanoke, Virginia to his job site in Charlotte, North Carolina.
3. Due to severe financial and economic conditions, the employer took action that adversely affected the terms under which the claimant was employed. By notice dated February 18, 2005, the employer informed the claimant that his position as a line utility worker had been abolished. The employer outsourced the claimant's job, which meant the claimant's job was eliminated from the employer's job classification structure. [The claimant was afforded an opportunity to exercise his seniority to obtain a base utility position at an hourly wage of \$14.75.] The employer contracted with another entity to perform the line utility work. Upon application of the employer, a federal bankruptcy court voided the claimant's union collective bargaining agreement. His pension plan was terminated on January 6, 2005. The holidays and vacation days in his benefit plan were reduced drastically. The reduction in the claimant's hourly wage from \$17.47 to \$14.75 became permanent after February 2005. [Under an order signed by a federal judge, the employer had been allowed to temporarily reduce the claimant's hourly wage in this manner from October 2004 until February 2005.]
4. As a direct result of the adverse actions as described in the foregoing paragraph, the claimant decided to terminate his continued employment with the employer. The claimant filing an application for inclusion in the employer's "Voluntary Separation Program" implemented this decision. The employer accepted the claimant's application because his separation would allow an individual with less seniority to continue his/her employment with the employer and reduce the number of individuals that the employer would

have to involuntarily layoff to meet its financial solvency goal. The claimant signed the General Release under this Program on March 23, 2005.

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 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 (s)he left work without good cause attributes to the employer. G.S. §96-14(1).

G.S. §96-14(1c) states:

Where an individual leaves work due solely to a unilateral and permanent reduction in his rate of pay of more than fifteen percent (15%), said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in pay shall not constitute good cause attributable to the employer for leaving work.

“Good cause’ has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, Incorporated, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). “Attributable to the employer” as used in G.S. §96-14(1) means produced, caused, created, or because of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979). The claimant has the burden of proving that (s)he is not disqualified for benefits under G.S. §96-14(1); G.S. §96-14(1A) In re Whicker, 56 N.C. App. 253, 287 S.E.2d 439 (1982). When this burden is not carried, G.S. §96-14(1) mandates that the claimant is held disqualified from receiving benefits.

CONCLUSIONS OF LAW:

In the present case, the competent and credible evidence contained in the hearing record supports the facts as found by the Commission. The Commission concludes from the competent and credible evidence and the facts found therefrom

that the claimant left work with good cause attributable to the employer. The Appeals Referee erred when he failed to distinguish between the decision to quit and how the decision was implemented. That is, the claimant's decision to quit his employment was made because of the adverse changes in his employment terms. The employer provided a method (the "Voluntary Separation Program") by which the claimant could communicate and implement his decision to quit. The permanent and unilateral reduction in the claimant's hourly wage, standing alone, met the definition of good cause attributable to the employer for leaving work as defined in G.S. §96-14(1c). In addition, all of the adverse actions, considered as a whole, met the general definition of good cause attributable to the employer for leaving work. The Appeals Referee again erred in only applying the statutory provision related to the permanent and unilateral reduction in the claimant's hourly wage.

Based on the foregoing, Appeals Decision No. O-L-10115 must be reversed. Furthermore, the claimant must be held not disqualified from receiving unemployment insurance benefits.

DECISION:

IT IS NOW THEREFORE, ORDERED, ADJUDGED AND DECREED that Appeals Decision No. O-L-10115 be, and the same is, **SET ASIDE**, and the claimant is **NOT DISQUALIFIED** from receiving unemployment insurance benefits.