

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 6

IN RE HENDRICK & HUMPHRIES
(Adopted September 19, 1983)

This cause came on for consideration by the undersigned upon an appeal from decisions rendered by the Appeals Referee. The undersigned, having reviewed the evidence in the record, does hereby vacate the decisions of the Appeals Referee and remand the cause for a new hearing and decision.

At the hearing before the Appeals Referee, the employer had 19 pieces of material that, if spread out, would have covered an area at least the size of 12 bed sheets. These pieces of real evidence are important in this case. The issue before the Appeals Referee is whether or not the claimants properly cut this material. It would appear from a review of the transcribed testimony that a viewing of these 19 pieces of material laid out in order is necessary for a just determination in this matter.

This order is in no way meant to imply criticism of the parties. The undersigned notes that this would appear to be the first instance where he has seen or heard of evidence that was not possible to display in the limited areas of the local office. The Appeals Referee should, however, have explored the possibility of laying out this material in the parking lot of the local office. If such was not feasible, other areas should have been explored such as the employer's place of business, an armory, an auditorium, etc.

The undersigned realizes that the Appeals Referee is not given an adequate amount of time to handle this type of evidence during a normal scheduled hearing. On those rare occasions, when such problems as this occur, the Appeals Referee should continue the matter for a time and place certain, if possible. If not possible to set a time and place certain, the Appeals Referee should continue the matter until he can make further arrangements and then notify the parties.

In this case, the Appeals Referee should arrange to have the real evidence displayed in the parking lot of the local office or some other available area. The Appeals Referee should view the 19 pieces of cloth and describe into the record as

best he can what he observes. The employer witnesses and the claimant[s] should be given an opportunity to review his description and add any comments that they desire concerning his description and his observations.

"When real evidence (i.e., the object itself) is offered into evidence, it must be properly identified and offered." 6 N.C. Index 3d, Evidence Section 26. A review of the record seemed to indicate that the 19 pieces of cloth were offered, but the offered evidence was never ruled upon perhaps because of their nature. The Appeals Referee who acts as both judge and jury and is the trier of fact must make findings of fact based upon competent evidence. Anderson vs. Northwestern Motor Company, 233 N.C. 372, 64 S.E.2d 265 (1951); Moses vs. Bartholomew, 238 N.C. 714, 78 S.9.2d 923 (1953).

In many cases, he is called upon to do this by determining the credibility of the witnesses without the benefit of any real evidence. Here, where there is real evidence available, it is most important that it be accepted and used. An extraordinary amount of time should be scheduled for this hearing so that all parties will have an ample opportunity to conduct and complete this matter.