

SPECIAL NOTICE TO CLAIMANTS:

If you were receiving or have previously received unemployment insurance benefits in connection with the underlying claim and the Higher Authority Decision rules you ineligible or disqualified for all or part of such benefits, you may now have an overpayment of benefits pursuant to N.C. Gen. Stat. § 96-18(g)(2). If an overpayment is created by a Higher Authority Decision, you will be mailed a separate Notice of Overpayment or Determination of Overpayment from the Division's Benefits Integrity/Benefit Payment Control Section. The Notice of Overpayment or Determination of Overpayment will specify, among other things, the amount of your overpayment, and any penalties that apply. The only way you may contest the overpayment is to file an appeal of the Higher Authority Decision with the superior court as provided in the Higher Authority Decision, and in accordance with North Carolina law. See N.C. Gen. Stat. §§ 96-15(h) and (i).

Levels of Appeals - Claims



DIVISION OF EMPLOYMENT SECURITY'S REGISTERED AGENT FOR SERVICE OF PROCESS:



NC DEPARTMENT
of COMMERCE
EMPLOYMENT SECURITY

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Published by the North Carolina
Department of Commerce



NC DEPARTMENT
of COMMERCE
EMPLOYMENT SECURITY

For more information
visit www.des.nc.gov
Form NCBOR 572-E
(Rev. 01/2025)

JUDICIAL REVIEW

APPEALING THE HIGHER AUTHORITY DECISION TO SUPERIOR COURT

This pamphlet contains important information about your rights under the Employment Security Law. It explains the process for filing an appeal to superior court after receiving a Higher Authority Decision from the Board of Review.

You must comply with all the requirements established by law.

For claims filed on or after June 30, 2013, claimants are subject to repayment of any overpayment of benefits resulting from any decision that is later reversed on appeal. N.C. Gen. Stat. § 96-18(g)(2).

The unemployment insurance program is administered by the North Carolina Department of Commerce, Division of Employment Security (DES).



NC DEPARTMENT
of COMMERCE
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For more "Frequently Asked Questions" (FAQs) about appeals, visit the DES website at www.des.nc.gov

Usted puede obtener una copia de este folleto en español en la oficina de l Departamento de Comercio, División del Desempleo de Carolina del Norte

How will I know which document I am appealing?

Each document has an identifying name and/or number. A document's identifying information is usually found near the top or bottom of the document. The docket number for the Higher Authority Decision issued by the North Carolina Department of Commerce, Board of Review ("Board") is located at the top right on the first page of the decision.

If I disagree with the Higher Authority Decision, can I take the case to court?

Yes. You may ask that a superior court judge review the Higher Authority Decision and record of the case. A request for superior court review is called a petition for judicial review. You will have a chance to attend a hearing before a judge. If you do not properly file or serve your petition, the Division of Employment Security ("Division") will file a motion to dismiss the petition, and the judge will hear arguments on the motion. If your petition is filed and served properly, the judge will review your petition, the evidence that was presented before the Board, and the Board's decision. The judge will be looking at (1) whether there was any competent evidence in the record before the Board to support its findings of fact, and (2) whether the facts support the conclusions of law and the Higher Authority Decision. See N.C. Gen. Stat. §§ 96-15(h) and (i).

How much time do I have to file an appeal in court?

You have 30 days from the mailing date of the Higher Authority Decision (HAD) to file a petition for judicial review with the superior court. The decision becomes final 30 days after the HAD mailing date unless a timely petition for judicial review is filed with the superior court. The date of mailing is found on the last page of the decision. See N.C. Gen. Stat. §§ 96-15 (h) and (i).

How do I file an appeal in court?

You must file an appeal from a Higher Authority Decision with the Clerk of Superior Court in the county in which you live, or in which you have your principal place of business. If you do not live or have your principal place of business in any North Carolina county, you must file your petition for judicial review in the Superior Court of Wake County, North Carolina, or with the Clerk of Superior Court of the North Carolina county in which the controversy arose. See N.C. Gen. Stat. § 96-15(h).

Am I required to have legal representation to file a petition for judicial review?

Maybe. Individuals can represent themselves in the superior court proceedings. Corporations must be represented in court by a licensed attorney. Representation in judicial proceedings, such as in the superior court, must comply with Chapter 84 of the North Carolina General Statutes and the North Carolina State Bar Rules. You can consult an attorney for legal advice.

Where can I find an attorney?

You may call the North Carolina Bar Association's Lawyer Referral Service at (919) 677-8574, Legal Aid of North Carolina toll-free at (866) 219-5262, or check your local telephone directory.

What should I say in my petition for judicial review?

The Board and the Division cannot tell you what to say in your petition for judicial review. You may consult an attorney for legal advice. The law requires that the petition for review explicitly state what exceptions are taken to the decision or procedure and what relief you are seeking. See N.C. Gen. Stat. § 96-15(h).

Do I have to provide a copy of my petition for judicial review to anyone other than the clerk of the superior court?

Yes. Within 10 days after filing your petition for judicial review, you must serve a copy, either in person, or by certified mail, return receipt requested, on the Division's registered agent for service of process listed in the Higher Authority Decision. See N.C. Gen. Stat. §1A-1, Rule 4(j)(4). You must also serve a copy of the petition, either in person, or by certified mail, return receipt requested, on all parties to the proceedings before the Board and the Division, within 10 days of filing the petition (usually to the claimant if you are the employer, or the employer if you are the claimant). See N.C. Gen. Stat. § 96-15(h).

Should I continue to file claims for benefits until all appeals have been decided?

Yes. If you are unemployed, you should continue to file your weekly certification until all appeals have been decided. Benefits will not be paid for weeks not claimed. See N.C. Gen. Stat. §§ 96-14.9 and 96-15(b)(2).

How can I get a copy of the Employment Security Law?

The Employment Security Law is found in Chapter 96 of the North Carolina General Statutes and in Title 4, Chapter 24 of the North Carolina Administrative Code. You can access a copy of the governing law on the DES website at <https://www.des.nc.gov>, the General Assembly's website at <https://www.ncleg.gov>, or the Office of Administrative Hearings' website at <https://www.oah.nc.gov>.



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