

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA  
RALEIGH, NORTH CAROLINA

**INTERPRETATION NO. 163**

TO: R. F. Martin, Director

FROM: R. B. Overton, Attorney

RE: Interpretation of the Employment Security Law of North Carolina - Section 96-12(b), Wages Used in Computing Weekly Benefit Amount; Section 96-8(18), Base Period; Section 96-8(10)a, Total Unemployment; Section 96-8(13), Wages; Effect of Payment of Wages Retroactively for Base Period Purposes and Effect of Such Payments upon the Eligibility of a Claimant for Benefits with Respect to the Week for Which Such Retroactive Wages Were Paid

In your memorandum of July 11, 1960, you advised that in certain instances payments are made (1) under ruling of the National Labor Relations Board to require an employer to conform to the Fair Labor Standards Act of 1938, such as back pay awards, minimum wages, and overtime compensation, and (2) retroactive payments made under supplemental benefit payment plans executed by bargaining agents and employers. You inquired whether such payments should be processed for base period purposes on the basis of when the wages were actually paid or when the wages were earned. You further inquired as to whether such payments made with respect to given weeks would affect the eligibility of a claimant who had been paid benefits by the Employment Security Commission for such weeks.

The answer to the first of the above questions, we think, is contained in Section 96-12(b) which reads as follows:

“(b) Each eligible individual whose benefit year begins on and after the first day of the month immediately following June 10, 1957, and who is totally unemployed in any week as defined by § 96-8(10)a. shall be paid benefits with respect to such week or weeks at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to employment: \* \* \*.”

You will note that this particular section specifically provides that an individual shall be paid benefits as outlined, based upon wages paid during his base period, and nothing is said concerning payment of benefits based upon wages earned during the base period.

We wish to call to your attention one exception to the above ruling; that is contained in Section 96-8(13)a which sets forth what shall be included as wages. The pertinent proviso of that section reads as follows:

“\* \* \* Provided, if the remuneration of an individual is not based upon a fixed period or duration of time or if the individual’s wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual’s right to unemployment benefits only shall be determined in such manner as may be authorized regulations be prescribed. Such regulations shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals: \* \* \*”

The history of this proviso goes back to the 1947 Legislature when the maritime provisions of our law were enacted. At that time it was felt that a seaman who had been on a prolonged cruise of eight to nine months and who received all of his pay for services on such cruise upon his return to his home port should have such wages apportioned to the period of his services so that he could draw unemployment insurance benefits based thereon rather than holding him strictly to the other provisions of the law in which case he would only be entitled to draw benefits based upon the earnings as reported in the quarter in which they were paid.

You will recall that prior to 1941 contributions were payable upon wages payable for services in a given quarter and that the 1941 Legislature amended the law to provide that contributions should be payable upon wages paid in a given quarter, irrespective of the quarter in which such wages were earned. Our answer, therefore, to your first inquiry as to the effect of retroactive payment of awards as set forth above upon benefit years established prior to the payment of such awards is that such payments can only apply to any benefit year based upon the quarters in which the payments are actually made and not with respect to the quarters in which such payments were earned.

The second question is what effect would such payments have upon the eligibility of a claimant who had been paid benefits during a benefit year and who subsequently was paid such payments covering the weeks of the benefit year with respect to which unemployment insurance benefits had been made.

This question, we think, is answered by Section 96-8(10)a or b, as the case may be, which is the definition of total and partial unemployment. Under this section an individual is deemed to be totally unemployed in any week with respect to which no wages are payable to him and during which he performs no services. An individual is deemed to be partially unemployed in any week in which because of lack of work he worked less than sixty percent of this customary hours of the industry or plant in

which he was employed and with respect to which the wages payable to him are less than his weekly benefit amount, etc.

It is our conclusion that under the statute we would be compelled to set up an overpayment against an individual who had been paid unemployment insurance benefits for a given week and who later was paid under a National Labor Relations Board ruling or who later was paid supplemental benefits with respect to the benefit week for which he had been paid unemployment insurance benefits.

Summarizing, you would not recompute a monetary determination based upon retroactive payment or supplemental benefits. However, you would recalculate any benefit that might be due to an individual who had been paid benefits and who subsequently was paid such retroactive payments or supplemental benefits with respect to the same week.

Adopted as an official Interpretation of the Commission on July 19, 1960.