

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 205

TO: R. Fuller Martin, Director

FROM: D. G. Ball, Chief Counsel

RE: Interpretation of Section 96-15(b)(2) of the Employment Security Law of North Carolina and Sections 1-593 and 103-4 of the General Statutes – Effect of Legal Holidays upon Appeal Period – Interpretation No. 161

We have received a request for an interpretation concerning the computation of time in cases where an appeal is filed late and the last day of the appeal period is a holiday. Reference in the memorandums which we have received has been made to Sections 103-4 and 103-5 of the General Statutes. Section 103-5 is not the provision applicable to computation of time with respect to the filing of appeals under the Employment Security Law. The question is raised primarily with respect to appeals before the Claims Deputy, and for that reason we are referring to Section 96-15 (b) (2) relating to such appeals. It is as follows:

“* * * Unless the claimant or any such interested party, within five calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith, and for the purpose of this subsection the Commission shall be deemed an interested party: Provided, however, that on claims filed outside of this state, the claimant or such interested party, shall have ten calendar days from the date of mailing such notification to his last known address in which to file notice of appeal. * * *”

It is to be noted that the time within which the appeal is to be made is provided in the statute; therefore, in our opinion, General Statutes, Chapter I, Section 593, is applicable in computing the time within which the appeal shall be filed. This section reads as follows:

“The time within which an act is to be done, as provided by law, shall be computed by excluding the first and including the last day. If the last day is Saturday, Sunday or a legal holiday, it must be excluded.”
(Underscoring ours.)

Applying this section to appeals from decisions of the Claims Deputy, it is apparent that the day upon which the decision is mailed to the parties is to be excluded in

counting the number of days which have elapsed in the period allowed from the appeal as set forth in the law. If the last day of the period falls on Saturday, Sunday, or is a legal holiday, then it must also be excluded in the computation of the time as well as the first day. This means that an appeal filed on the next day following a Saturday, Sunday, or a legal holiday would be within the time allowed by the statute, provided the Saturday, Sunday, or legal holiday is the last day of the period provided in the statute for filing the appeal.

No difficulty is involved when the last day of the period for filing appeals falls on Saturday or Sunday. There is, however, some difficulty in determining when to permit the filing on the day following a legal holiday for the reason that there is some confusion as to what is meant by a legal holiday. In our opinion the statute in Section 103-4 specifically sets forth those days which are to be considered legal holidays in this state, and we are of the opinion that these are the days which are to be considered as legal holidays in applying Section 1-593 which has been quoted hereinbefore. Under Section 103-4 it is provided as follows:

- “(a) The following are declared to be legal public holidays:
- (1) New Year’s Day, January 1;
 - (2) Robert E. Lee’s birthday, January 19;
 - (3) Washington’s birthday, the third Monday in February;
 - (4) Anniversary of signing of Halifax Resolves, April 12;
 - (5) Confederate Memorial Day, May 10 (supplied – See proviso following (15).)
 - (6) Anniversary of Mecklenburg Declaration of Independence, May 20;
 - (7) Memorial Day, the last Monday in May (supplied – See proviso following (15).)
 - (8) Easter Monday (supplied – See proviso following (15).)
 - (9) Independence Day, July 4;
 - (10) Labor Day, first Monday in September;
 - (11) Columbus Day, the second Monday in October;
 - (12) Veteran’s Day, the fourth Monday in October;
 - (13) Tuesday after the first Monday in November in years in which a general election is held;
 - (14) Thanksgiving Day, the fourth Thursday in November;
 - (15) Christmas Day, December 25.

“Provided that Easter Monday and Memorial Day, the last Monday in May, shall be a holiday for all state and national banks only.

- “(b) Whenever any public holiday shall fall upon Sunday, the Monday following shall be a public holiday.”

It is our opinion, therefore, that we should consider any appeals as having been made within the time permitted by the statute if such appeals are made on the day following any of the above-specified days when any of such days is the last day of the period allowed for the filing of the appeal. If the last day within which the appeal is to be made falls on a Saturday, it follows that the next day, Sunday, is also excluded from the computation and that if the appeal is postmarked on the following Monday, it would be within the time permitted by the statute. If the particular Monday is a legal holiday, the appeal, if postmarked on Tuesday, would be within the time permitted by the statute. As to Easter Monday and Memorial Day, the last Monday in May, however, these days shall be considered as legal holidays only in those cases in which state and national banks are involved in the filing of late appeals since the statute specifically provides that as to these particular days they shall be holidays only for all state and national banks.

Adopted as an official Interpretation of the Commission on February 2, 1971.
Cancels and replaces Interpretation No. 161, adopted July 12, 1960.