

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTEROFFICE COMMUNICATION

TO: Holders of ESC Interpretation Manual

FROM: Harry E. Payne, Jr., Chairman

SUBJECT: ESC Interpretation No. 271

DATE: December 14, 2005

In accordance with ESC Interpretation No. 252, the attached ESC Interpretation No. 271 has been adopted as an ESC official interpretation and shall be distributed to all holders of the ESC Interpretation Manual. Also attached is new page 7 for the current index.

Any questions about this ESC Interpretation should be directed to the office of the Acting Chief Counsel at (919) 733-4636.

Attachments.

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

ESC INTERPRETATION NO. 271

TO: Employment Security Commission

FROM: David L. Clegg, Acting Chief Counsel

SUBJECT: Raising Separation from Employment Issues: Reduction in Force Plan – Separation Determined by Employer

QUESTION:

If an employee offers to be included in his/her employer's established reduction-in-force plan (1) that extended to employees with high-level of seniority an opportunity to be separated from employment due to lack of available work in order for the employer to avoid separating other employees with less seniority, (2) under which the employer expressly retained the right to accept or reject the offer, and (3) under which the employee could not revoke the offer after it was accepted by the employer, (a) who determines if a separation from employment will occur, and (b) must ESC raise and adjudicate a separation from employment issue when the employer accepts the offer of the employee and he/she subsequently files a claim for unemployment insurance benefits?

ANSWER:

(a) Employer; (b) No.

DISCUSSION:

The Commission stated in ESC Precedent No. 15, *In re Vaughn* (1984) that we must look at whose, the employer's or the employee's, "act effected the" separation from employment. Under N.C.G.S. § 96-14, an issue of separation from employment is raised and adjudicated only if the employee became unemployed through his/her own fault or that of his/her employer.

In the question as presented, under the employer's reduction-in-force plan, the employer expressly and specifically retained the right to accept or reject the offer made by the employee. The offering employee's separation from employment was not automatic or conclusively determined because she/he offered to be included in the employer's reduction-in-force plan. The "act that effected" the employee's separation from employment had to be the employer's decision to accept the employee's offer, which precluded the employee from revoking the offer. Thus, under the employer's

reduction-in-force plan if the employer accepted the employee's offer the employee would be separated from employment due to a lack of available work because the remaining work was only available to employees with less seniority.

SUMMARY:

Unemployment due to a lack of available work does not establish an issue of separation from employment that must be raised and adjudicated under G.S. S96-14. If the information received from a claimant and employer established similar circumstances as described herein, no issue of separation from employment should be raised. If the issue is raised, inadvertently or as a result of incomplete information received, subsequent adjudication should conclude that there was no at-fault separation from employment.

Adopted as an official Interpretation by the Employment Security Commission on November 16, 2005.

