

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

ESC INTERPRETATION NO. 272

TO: Employment Security Commission

FROM: Thomas H. Hodges, Jr., Chief Counsel

SUBJECT: Application of the Provision under N.C.G.S. § 96-14(1)
Relating to Separations Due to Disability or Other Health Reasons

Since the 2009 amendment of the statutory provision relating to separations due to disability or other health reasons under N.C.G.S. § 96-14(1), several questions have been received as to its applicability. In a question/answer format, this Interpretation provides guidance to those ESC employees who are authorized to raise and decide issues pursuant to G.S. § 96-15.

STATUTORY PROVISION:

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

QUESTION:

Who is "a member of the individual's "immediate family?"

ANSWER:

G.S. § 96-8(27) defines "immediate family" as follows:

"Immediate family" means an individual's wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather,

grandson, granddaughter, whether the relationship is a biological, step, half-, or in-law relationship.

QUESTION:

Does “is in the legally recognized custody” mean that the individual maintains “legal physical custody” of the minor child?

ANSWER:

No. The individual merely has to show that a legal relationship exists between the individual and the minor child and the individual provides care to the minor child.

QUESTION:

How broadly and/or liberally shall the terms “disability” and “disabled” be defined and applied?

ANSWER:

Because the purpose of this provision is to hold an employee not disqualified from receiving unemployment insurance benefits when he/she separates from employment because a necessity exists to provide care to a member of his/her immediate family, “disability” and “disabled” are broadly defined and must be applied liberally. That is, “disability” and “disabled” include any physical or mental disorder or impairment that impairs an individual’s ability to perform a major life activity. A major life activity includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. **Neither the physical nor mental disorder or impairment nor the resulting disability is required to be total or permanent.**

QUESTION:

Does “adequate . . . other health condition, . . . either medically diagnosed or otherwise shown by competent evidence,” apply to a parent who is not “aged”?

ANSWER:

Yes. This provision must be applied when an employee must separate from employment because a necessity exists to provide care, temporarily or permanently,

to any member of the employee's immediate family. The "other health condition" is not required to be permanent.

QUESTION:

Is an individual required to exhaust all available paid employment-related leave before leaving work under the above statutory provision to avoid being disqualified from receiving unemployment insurance benefits?

ANSWER:

Yes.

QUESTION:

Is an individual required to exhaust all available unpaid employment-related leave before leaving work under the above statutory provision to avoid being disqualified from receiving unemployment insurance benefits?

ANSWER:

Yes and No. Yes, if the individual would be able to return to work on or before the expiration of the available leave. No, if the individual conclusively shows that unpaid leave would be insufficient to cover the length of his/her required absence from work and the employer would not excuse absences beyond the unpaid leave expiration date or grant additional leave, and there is no other available and suitable work with the employer. As ton the latter, although the Commission encourages an individual to maintain an employment relationship whenever possible, it does not require an individual to act futilely.

QUESTION:

Should an individual be disqualified from receiving unemployment insurance benefits if he/she failed to give the employer notice of the disability or health condition "at a reasonable time prior to leaving" employment?

ANSWER:

Consistent with the ESC precedent decisions and North Carolina court cases addressing the existence of good cause for not providing notice of an absence from scheduled work when deciding whether an individual was discharged from work due to misconduct or substantial fault, Yes and No. Yes, the individual should be disqualified if the evidence establishes that it was possible for the individual to do so and he/she did not have good cause for not giving prior notice. No, the individual

should not be disqualified if he/she had good cause for not giving prior notice, but did provide notice as soon as reasonably possible. In determining the existence of good cause, the test to be applied is whether the individual has acted as a person of ordinary prudence under the existing circumstances.

SUMMARY:

If the information received from a claimant and employer established all the elements required under this statutory provision, subsequent adjudication should conclude that there was a non-disqualifying separation from employment. The employer's account will not be charged the benefits paid to the claimant.

Adopted as an official Interpretation by the Employment Security Commission on October 29, 2010.