DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 11

IN RE TAYLOR
(Adopted May 15, 1984)

FINDINGS OF FACT:

1. The claimant last worked for the employer on May 31, 1983. From November 13, 1983 until November 19, 1983, the claimant has registered for work and continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. 96-15(a) as of the time the Adjudicator issued a determination. The claimant appealed the Adjudicator's determination, and an evidentiary hearing was held by John F. Pendergrass, Appeals Referee, under Docket No. IX-Ul-734, who held that the claimant was disqualified for unemployment benefits. The claimant filed a timely appeal to the Commission.

2. The claimant was initially employed as a cloth layer and worked approximately 40 hours per week.

3. Due to economic reasons, the claimant's hours were gradually reduced to around 25 hours per week.

4. The claimant believed that his financial condition did not make it feasible for him to work that number of hours. The claimant resigned his position in order to go into business for himself. At the time of the hearing, the claimant had not performed any services in his private business as a carpenter for several months.

5. The claimant could have supplemented his hours by performing other duties with the employer on a band lathe but failed to do so because he felt that job was not possible for him to perform because of his "nerves."

6. When the claimant left the job, continuing work was available for the claimant there.

MEMORANDUM OF LAW:

The Employment Security Law of North Carolina provides that an individual shall be disqualified for benefits for the duration of his unemployment if it is determined by the Commission that such individual is unemployed because he left work voluntarily without good cause attributable to the employer. G.S. 96-14(l).

In this case, the record evidence and facts found therefrom do not support a conclusion that the claimant has met the burden of showing good cause attributable to the employer for the voluntary leaving. In re Hodges, 49 N.C.A pp. 189, 270 S.E.2d 599 (1980); In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979).

A claimant's dissatisfaction with a reduction in working hours and the financial difficulty resulting from such a reduction does not constitute a reason, necessitous and compelling enough to justify his voluntary leaving. Owen v. Board of Review, 26 Pa. Cmwlth. 278, 363 A2d 852 (1976).

Where a claimant who traveled 60 miles round trip to and from work daily quit her job after the employer reduced her hours from 36 to 20 per week, she was subject to disqualification for terminating her employment without good cause notwithstanding her contention that she was no longer able to afford to travel the distance because of the reduction in hours and pay. The fact that she accepted a job a considerable distance from home did not constitute cause "attributable to the employer." Begay, N.M. Sup. Ct., CCH, N.M., par. 8211 (1984).

The Employment Security Law provides that an individual who is working less than three customary, scheduled, full-time days is eligible for partial unemployment benefits. N.C.G.S. 96-8(10); N.C.G.S. 96-12(c).

In enacting these statutes, the legislature has set forth the amount of reduced employment an individual would have to suffer prior to obtaining partial unemployment insurance benefits.

The claimant had ample opportunity to seek other employment or to attempt to perform his self- employment during his reduced hours. Resignation without prospects of other full-time employment or a strong prospect of sufficient income from self-employment is not the conduct of a reasonable and prudent person.

The claimant must, therefore, be disqualified for benefits.

DECISION:

The claimant is disqualified for unemployment benefits beginning November 13, 1983, and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.

Commentary:

The Employment Security Law was subsequently amended to provide that good cause attributable to the employer exists for leaving work if the employer unilaterally and permanently reduced a claimant's work hours more than 20% of the customary scheduled full-time work hours. Good cause does not exist if the reduction resulted from malfeasance, misfeasance or nonfeasance on the part of the claimant. G.S. §96-14(1b).