

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 14

IN RE GORDON
(Adopted July 17, 1984)

FINDINGS OF FACT:

1. The claimant last worked for the employer on January 26, 1984. From February 19, 1984 until February 25, 1984, 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 Jo Ann Weaver, Appeals Referee, under Docket No. II-UI-5253 JTPA, who held that the claimant was disqualified for unemployment benefits. The claimant filed a timely appeal to the Commission.
2. The claimant met with an Employment Interviewer in the Greenville Local Job Service Office on or about February 23, 1984. Claimant was enrolled in a Job Training Partnership Act Dislocated Workers Program.
3. During the conference, claimant was informed of the program class sessions scheduled to begin the following week and asked whether she could attend them. The classes were to be conducted from 2:00 p.m. to 5:00 p.m. The interviewer was unable to answer claimant's questions as to whether the attendance at these classes was mandatory and whether non-attendance would have any effect on her receipt of unemployment insurance benefits.
4. The claimant made the interviewer aware that it would be difficult for her to attend a class session lasting from 2:00 to 5:00. She gave two (2) reasons for this position: (a) the length of the sessions, and (b) problems with child care for her grandchildren.
5. Claimant did not attend the JTPA class sessions and the matter was referred for adjudication.

MEMORANDUM OF LAW:

The Job Training Partnership Act (hereinafter JTPA) was enacted in October 1982. The purpose of the Act is

. . . to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment. 29 U.S.C.A., Sec. 1501.

Under Subchapter II of this Act - Employment and Training Assistance for Dislocated Workers - the U.S. Secretary of Labor is authorized and required to make available (to state agencies) certain designated funds "for the purpose of providing training, retraining, job search search assistance, placement . . . to individuals who are affected by mass layoffs . . . or who reside in areas of high unemployment" 29 U.S.C.A., Sec. 1651(c). (Emphasis added).

Federal law (26 U.S.C.A., Sec. 3304(a)(8)) provides that a claimant shall not be denied unemployment insurance compensation based upon availability for work, active search for work, or refusal to accept work, when he/she is participating in training which has been approved by a state employment service agency. Under JTPA (29 U.S.C.A., Sec. 1652(d)), a claimant's acceptance of training pursuant to a JTPA plan is deemed to be acceptance of training with the approval of the state agency within the meaning of any provision of federal law (or consistent state law) relating to unemployment benefits.

The Commission's approval of training for a specific claimant carries with it a determination that (1) reasonable employment opportunities for which the claimant is fitted by training and experience do not exist in the locality or are severely curtailed, (2) the training relates to an occupation or skill for which there are expected to be reasonable opportunities for employment, and (3) the claimant has the required qualification and the aptitude to successfully complete the training course.

Under N.C.G.S. 96-13(a)(3), a claimant attending a vocational school or training program that has been approved by the Commission is not required to actually meet the benefit eligibility conditions of being available for work, actively seeking work and accepting an offer of suitable work. Such individual is deemed to be available for work within the meaning of the law.

Statutorily, participation in Commission approved training is the only situation in which a claimant for unemployment insurance benefits is specifically exempted from the requirements of being available for work, actively seeking work and accepting an offer of suitable work. ESC Regulation No. 10.25 sets forth the only other situations where suspension of benefit eligibility conditions may apply - temporary layoffs and exhaustion of all potential opportunities for suitable work. However, the full exemption or suspension applicable to individuals in Commission approved training is not applicable to claimants-in 'these particular situations.

JTPA did not usurp state law governing a claimant's eligibility or qualification to receive unemployment compensation when he/she has failed to comply with the guidelines of the approved training program. A claimant's failure to adhere to the guidelines made known to him/her could result in the loss of his/her exemption and/or an imposition of an indefinite disqualification for unemployment insurance benefits. G.S. 96-14(4) provides that an individual shall be indefinitely disqualified from receiving unemployment insurance benefits if the Commission determines that

- a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the Commission (Emphasis added);
- b. Such individual has discontinued his training course without good cause; or
- c. If the individual is separated from his training course or vocational school due to misconduct.

It is clear from the foregoing discussion that the treatment of claimants participating in Commission approved training programs is extraordinary. Consequently, Commission personnel must strictly comply with the procedure for awarding exemptions and specifically make the claimant aware of what is required when he/she enrolls in a training program.

Sections of the N.C. Employment Security Law imposing disqualification for benefits must be strictly construed in favor of the claimant and should not be enlarged by implication. In re Watson, 273 N.C. 629, 161 S.E.2d 1 (1968); In re Scaringelli, 39 N.C. App. 648, 251 S.E.2d 728 (1979). Ergo, if a claimant is to be disqualified for failure to attend a training program, it must be first shown that he/she was directed by the Commission to attend the program. "(D)irected" is not defined

within Chapter 96 but the plain meaning derived from its usage within subsection 96-14(4) is "ordered; commanded; instructed."

In the present case, during a conference with claimant on or about February 23, 1984, a Commission interviewer enrolled claimant in a JTPA Dislocated Workers Program that pursuant to federal law constituted claimant's acceptance of a training program approved by the Commission. As a part of this program, class sessions for program participants were to be conducted the following week. The interviewer did not, at any time during this conference, "direct, order, command, or instruct" claimant to attend said sessions. Claimant was informed of these sessions in such language as to cause a reasonable person to believe that attendance was optional. Further, the interviewer expressed a lack of knowledge as to whether non-attendance would adversely affect claimant's receipt of unemployment insurance benefits; therefore, it cannot be said that claimant should have known that she was being directed to attend the class sessions or possibly be subject to a disqualification for benefits for failure, without good cause, to attend.

The undersigned has no alternative but to find that claimant has not failed "to attend a training program when so directed by the Commission." Since no showing has been made that claimant was even directed to attend a training program as required by G.S. 96-14(4)a, the undersigned does not find it necessary to reach the issue of whether claimant had good cause for non-attendance.

It is, therefore, concluded that claimant is not disqualified from receiving benefits because the evidence fails to prove that claimant failed to attend a training program when so directed by the Commission.