DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 2

IN RE SPRINGER
(Adopted January 13, 1983)

FINDINGS OF FACT:

1. The claimant last worked for N. C. Lutheran Homes, Incorporated on March 17, 1982. From June 6, 1982 until June 12, 1982, 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 employer appealed the Adjudicator's determination, and an evidentiary hearing was held by Charles Monteith, Jr., Appeals Referee, under Docket No. XI-Ul-70079, who held that the claimant was not disqualified for unemployment benefits. The employer filed a timely appeal to the Commission. Pursuant to the employer's request, a Commission hearing to consider arguments on points of law was held on September 2, 1982. Appearing for the hearing were D. Russell Myers, Jr. and John B. Whidden, V, for the employer.

2. The claimant left this job of her own choice. She had been employed since July 1980, as a restorative assistant. On March 17, 1982, she was injured on the job and became unable to work. She subsequently was placed on a medical leave of absence until released by her doctor to return to work. She was released by her doctor to return on June 2, 1982.

3. Between the claimant's last day of work on March 17, 1982 and June 2, 1982, another person had been hired as restorative assistant, and the work she had done through March 17, 1982 was not available for her. Pursuant to the employer's reasonable leave of absence policy, on June 2, 1982, she was offered the work it had available, on-call nurse assistant. This work would have paid $3.74 per hour, it would have required her to work when needed, and it was not a permanent position. Pursuant to the employer's unwritten policy, she would have had priority for any permanent work which would become available.

4. The claimant did not accept the employer's offer of continuing, available work because it was on-call, non-permanent, and paid $.81 less per hour (18%) than her former permanent, full-time work as restorative assistant had paid, $4.55 per hour. She, instead, filed a claim for unemployment insurance benefits.

5. 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).

An individual who voluntarily leaves work has the burden of showing good cause attributable to the employer for the voluntary leaving. Unless that burden is met, the individual is disqualified. In re Hodges, 49 N.C. App. 189, 270 S.E.2d 599 (1980); In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644
(1979).

In this case, the claimant has shown she voluntarily left due to a[n] 18% reduction in pay and because of the change in work from permanent, full-time to non-permanent, on-call. Considering the provisions in G.S. 96-12(c) for partial weekly unemployment insurance benefits, the change in hours and duration is not good cause because a remedy exists in Chapter 96 of the General Statutes, the Employment Security Law.

As to the reduction in pay, the undersigned concludes that 18% is a substantial decrease and is good cause attributable to the employer for her voluntary leaving. Our Supreme Court has held that a job which was offered to continue the employment relationship was unsuitable when it paid 28% less than the previous job and that good cause attributable to the employer exists for the voluntary leaving. In re Troutman, 264 N.C. 289, 141 S.E.2d 613 (1965). In accord, see Bunny's Waffle Shop v. Cal. Emp. Comm., 24 Cal.2d 735, 151 P.2d 224 (1944), where a 25% reduction was good cause; Maitland v. California, California Court of Appeals, First Dist., Div. Two No. 52896, March 3, 1982, wherein an 8% reduction was not good cause.

The Commission considers that a substantial reduction in pay can be good cause attributable to the employer under North Carolina law and that 15% or more generally is substantial, provided the reduction was for reasons other than the claimant's causation. A demotion due to malfeasance, misfeasance, or nonfeasance which results in a substantial reduction in pay only would be good cause attributable to the employer if the employer had acted arbitrarily or capriciously.

It is concluded the claimant did voluntary leave but with good cause attributable to the employer and is not disqualified.

It is noted that had the claimant refused the same offer after a reasonable period, she might have been subject to disqualification under G.S. 96-14(3) since after a reasonable period, the same work offered could become suitable.

DECISION:

The claimant is not disqualified for unemployment benefits.

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 rate of pay more than 15% 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(1c).