

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 20

IN RE LANIER
(Adopted July 31, 1987)

This cause came on for consideration by the undersigned upon the CLAIMANT'S APPEAL from the decision rendered by the Appeals Referee. The undersigned, having reviewed the evidence in the record, does hereby VACATE the decision of the Appeals Referee and REMAND the cause for a new hearing and decision.

This matter is remanded so that a new Appeals Referee's hearing can be conducted in accordance with Chapter 8B of the North Carolina General Statutes, Interpreters for Deaf Persons. This Chapter provides that when a deaf person is a party to or a witness in an administrative proceeding before any department of the state, the appointing authority conducting the proceeding shall appoint a qualified interpreter to interpret proceedings to the deaf person and to interpret the deaf person's testimony. The law further provides that a deaf person who is entitled to the services of an interpreter under Chapter 8B may waive these services; however, a waiver must be approved in writing by the person's attorney or if the person is not represented by an attorney, the approval must be made in writing by the appointing authority. Before acting, an interpreter shall take an oath or affirmation that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will convey the statements of the person in the English language to the best of his skill and judgment. In light of the above-requirements of 8B of the General Statutes of North Carolina, the hearing in this matter shall be conducted in the following manner:

1. The Appeals Referee shall arrange for the appointment of an interpreter pursuant to the provisions of Chapter 8B. If the claimant wishes to have his own interpreter and does not wish to use the services of an interpreter appointed under Chapter 8B, then the Appeals Referee shall approve in writing the claimant's waiver.

2. Before acting, the interpreter shall be administered an oath or affirmation in accordance with Chapter 8B. At the first hearing in this matter, the claimant's interpreter was identified, and it was indicated on the record that the "parties had been sworn." The record was silent as to whether the claimant's interpreter had been sworn or taken an oath of any kind.
3. The Appeals Referee must very carefully control the hearing particularly if it appears that the interpreter chosen by the claimant will also act as a witness for the claimant. At the first hearing before the Appeals Referee, the claimant's interpreter's statements could not clearly be identified as interpretation of the claimant's statements or her own testimony regarding the claimant's separation. It is not acceptable for the interpreter to speak on behalf of the claimant or as a representative of the claimant if her function is actually to interpret statements made by the claimant. If the interpreter wishes to act as a witness, it must be differentiated when she is so doing.
4. The statements of the employer witnesses must be interpreted to the claimant or it must be otherwise established that the claimant is cognizant of what the employer witnesses are saying. In this way, the claimant can then formulate questions for cross-examination of the employer witnesses. The Appeals Referee must allow the claimant and the employer the opportunity for cross-examination.
5. If the claimant does not waive the appointment of an interpreter under Chapter 8B, the interpreter shall be compensated according to the provisions of the law.