

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 27

IN RE MCHENRY
(Adopted April 8, 1993)

STATEMENT OF THE CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective May 31, 1992. Thereafter, the Commission determined that the weekly benefit amount payable to the claimant was \$215.00, and during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$5,590.00. The claim was referred to an ADJUDICATOR on the issue of SEPARATION FROM LAST EMPLOYMENT. The Adjudicator, Denise Sampson, issued a determination under DOCKET NO. 19347 on June 24, 1992 finding the claimant NOT ELIGIBLE for benefits pursuant to N.C. Gen. Stat. § 96-13(a). The CLAIMANT filed an APPEAL from the ADJUDICATOR'S determination and the matter came on to be heard by an APPEALS REFEREE under APPEALS DOCKET NO. V-A-14423R. The following individuals appeared in the hearing before the Appeals Referee: Lucile McHenry, claimant; Joe Mantione, representative for claimant; Larry Smith, witness for the claimant; and Susan Williams, witness for the employer. On October 22, 1992, Janice Paul, Appeals Referee, issued a decision finding the CLAIMANT DISQUALIFIED to receive benefits pursuant to N.C. Gen. Stat. § 96-14. The CLAIMANT APPEALED.

FINDINGS OF FACT:

1. At the time the Claims Adjudicator issued a determination in this matter, the claimant had filed continued claims for unemployment insurance benefits for the period May 31, 1992 through June 6, 1992. The claimant has registered for work with the Commission, has continued to report to an employment office of the Commission and has made a claim for benefits in accordance with N.C. Gen. Stat. 96-15(a).

2. The claimant last worked for US Air, Incorporated on May 25, 1992. The claimant was last employed as a flight attendant.
3. The claimant left this job because she could not perform her work duties as she was placed on mandatory maternity leave as of June 25, 1992. The employer placed her on this maternity leave because of an agreement between her union, the Association of Flight Attendants, and it, providing for no active flight duty after the 27th week of pregnancy until 45 days after giving birth. The employer had no other work available for her and had been given reasonable notice by her of her status.
4. Beginning on May 25, 1992, the claimant was unemployed due to her pregnancy.
5. Beginning on May 25, 1992, claimant's pregnancy was an adequate disability or health condition that was the sole and exclusive reason for claimant's leaving work.
6. The record does not show there has been any issue raised concerning the claimant's ability to work in positions other than flight attendant.

MEMORANDUM OF LAW:

Pursuant to G.S. § 96-14(1)(a. and b.), the claimant fully complied with any and all of the necessary conditions to make her both eligible and qualified for receiving unemployment benefit due to leaving work due to an adequate disability or health condition.

The Employment Security Law of North Carolina further provides:

An individual shall be disqualified for benefits . . . (f)or the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

N.C. Gen. Stat. § 96-14(1).

"Good cause" has been interpreted by the courts to mean a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work. Sellers v. National Spinning Company, 64 N.C. App. 567, 307 S.E.2d 774 (1983), disc. rev. denied, 310 N.C. 153, 311 S.E.2d 293 (1984); In re Clark, 47 N.C. App. 163, 266 S.E.2d 854 (1980). "Attributable to the employer" as used in N.C. Gen. Stat. § 96-14(l) means produced, caused, created, or as a result of actions by the employer. Sellers, 64 N.C. App. 567; In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (1979); N.C. Gen. Stat. § 96-14(l). Claimant has the burden of proving that he is not disqualified for benefits. N.C. Gen. Stat. § 96-14(lA).

The Employment Security Law further provides at G.S. 96-14(l) that where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, his leaving shall be considered an involuntary leaving for health reasons if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition, whether medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty-five percent (85%) of the individual's regular wage, whichever is greater; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Prior to its enactment into law, the concept of involuntary leaving due to health reasons had been recognized by our courts. Milliken and Company v. Griffin, 65 N.C. App. 492, 309 S.E.2d 733 (1983), rev. denied, 311 N.C. 402, 311 S.E.2d 373 (1983); and Hoke v. Brinlaw Manufacturing Company, 73 N.C. App. 553, 327 S.E.2d 254 (1985). Each case of this nature must be decided on its own peculiar facts, and the claimant's actions should be assessed in light of the reasonable person standard. Hoke, 73 N.C. App. at 559. The claimant's testimony concerning the advice of a medical authority need not be substantiated by a doctor's sworn testimony or affidavit. Hoke, 73 N.C. App. at 559; Milliken, 65 N.C. App. at 495. Johnson v. U.S. Textiles Corp., 105 N.C. App. 680, 414 S.E.2d 374 (1992).

The payment of benefits is fully according to law and is further in compliance with the currently applicable Employment Security Commission Official Interpretation No. 261 on the Subject of Leaves of Absence which states in specific pertinent part:

Nothing contained herein shall be interpreted to conflict with federal and State statutes; specifically, with 26 U.S.C. Section 3304(a)(12) providing that unemployment benefits may not be denied solely on the basis of pregnancy or termination of pregnancy.

The Appeals Referee's conclusion of law in Appeals Decision No. V-A-14423R denying benefits to the claimant was contrary to law and to the reasoning of Interpretation No. 261. The Appeals Referee is charged with the responsibility to apply and implement the policy of law as set forth in Interpretation and 26 U.S.C. 3304(a)(12), as amended.

It is concluded from the competent evidence in the record and the facts found therefrom that the claimant has met her burden under the subsection to show she is not disqualified. The General Assembly recognized that leaving work due to disability or health condition was generally not due to fault on the part of the claimant or employer, providing therefore for payment of benefits to those still able and available for substantial, full-time work, and also providing protection for the employers who had not caused such disability or health condition.

The claimant is, therefore, not disqualified for unemployment insurance benefits due to her separation from work, and, pursuant to N.C. Gen. Stat. § 96-9(c)(2)(b)(vi), this decision also allows non-charging of the employer's account.

The employer is entitled to have its account fully non-charged for any and all benefits payable to the claimant by virtue of her leaving due to health reasons pursuant to the employer account non-charging authority of N.C. Gen. Stat. § 96-9(c)(2)(b)(vi).

DECISION:

IT IS NOW THEREFORE, ORDERED, ADJUDGED, AND DECREED that the decision entered by the Appeals Referee is **REVERSED** and the Claimant is **NOT DISQUALIFIED** from receiving unemployment insurance benefits beginning May 31, 1992 in accordance with her claims record, provided she has met all benefit eligibility conditions, and the employer's account is non-charged.