DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 33

IN RE FALLIN
(Adopted April 30, 1997)

This cause has come on before the undersigned pursuant to N.C.G.S. §96-15(e), to consider the EMPLOYER'S APPEAL from a DECISION by Appeals Referee Betsy Loytty under APPEALS DOCKET NO. IV-A-16898. Having reviewed the record in its entirety, the undersigned is of the opinion that the aforesaid decision must be vacated and remanded to take additional evidence and to issue a new decision.

The claimant and the employer shall be provided with a copy of the transcript of the hearing not later than the date the Appeals Referee mails notice of the remanded hearing.

The record in this case is deficient. While not clear, it appears that the claimant secured employment at $8.00 per hour with a client of Mid-Carolina Temporary Services, Inc. and the client sent the claimant to Mid-Carolina and used Mid-Carolina as a payroll service. Claimant began work for the client of the employer on October 24, 1996 and claimant's last day of work was November 18, 1996. The client was apparently a company called Aquatics though that is not clear from the record. Apparently on November 22, 1996, claimant was offered an assignment by the employer starting at $5.96 per hour in the shipping department of a client. Claimant refused that assignment and filed an Additional Initial Claim (AIC) on November 26, 1996 effective November 17, 1996. The terms and conditions of claimant's employment with the employer are not known. Any requirements placed on claimant by the employer and made known to the claimant are not known. The specifics as to how claimant became an employee of this employer are not known.

The issues cited in the Notice of Hearing before the Appeals Referee were whether or not claimant failed without good cause to apply for available suitable work or failed without good cause to accept available suitable work under G.S. §96-14(3)(i) or (ii). The case is properly decided under G.S. §96-14(l). Temporary personnel service employers (equivalent to private personnel service employers as

defined in G.S. §95-47.1) are treated as any other employer under the Employment Security Law. An employee of a temporary personnel service employer whose assignment has ended and who is offered another assignment prior to filing a New Initial Claim (NIC) or an Additional Initial Claim (AIC) for unemployment insurance benefits who does not accept the assignment and files a claim shall be treated as a quit under G.S. §96-14(l). Whether or not claimant quit with good cause attributable to the employer shall depend on whether or not the new assignment is suitable work. In determining whether or not the new assignment is suitable work, Precedent Decision No. 19, In re Tyndall, shall be applied.

An individual employed by a temporary personnel service employer who files a NIC or AIC for unemployment insurance benefits after an assignment has ended or after he is not permitted to return to an assignment and prior to an offer of another assignment shall not be considered separated from employment under G.S. §96-14(l), (2), (2A) or (2B), but shall be deemed unemployed in accordance with G.S. §96-8(10)a. and b., unless the claimant has been discharged. If claimant has been discharged, then claimant's qualifications to receive benefits shall be determined in accordance with G.S. §96-14(2), (2A) or (2B).

For any week when a claimant is receiving benefits under G.S. §96-8(10)a. or b. and fails to work all the work her/his temporary personnel service employer has made available to the claimant, the claimant's eligibility to receive benefits shall be decided under G.S. §96-13(a).

When a separated individual in claims status refuses an offer of work or an assignment by the temporary personnel service employer or any employer, the refusal shall be decided under G.S. §96-14(3). In a case decided under G.S. §96-14(3), once an employer or the Commission, whichever is appropriate, shows that offered work is suitable work, then the claimant has the burden of showing that he failed to accept the work with good cause.

In a case involving a temporary personnel service employer, as in a case involving any other employer, if a claimant quits work, the claimant has the burden of showing that he/she quit with good cause attributable to the employer. In a case where a claimant is discharged, the employer has the burden of showing that the claimant was discharged for a disqualifying reason. In deciding a case under G.S. §96-14(l), (2), (2A), (2B) or (3), such items as a written agreement between the employer and the employee, written instructions to the employee, the application for employment, and/or oral agreements or oral instructions are relevant and pertinent evidence.

Every decision of an Appeals Referee shall contain the entire procedural history of the matter, including orders of continuance and remand. When a hearing is remanded, the findings of fact made by the Referee shall state the procedural posture of the case including the reason for the remand, the requirements of the remand order, and the parties appearing at each of the hearings when an additional hearing is ordered. Further, it is inappropriate and usually reversible error for the Appeals Referee to merely recite the previous findings. Certainly, the Appeals Referee can incorporate previous findings into the new decision in the interest of judicial economy, but additional findings must be made when ordered in accordance with the order of remand. It should be evident from an Appeals Referee's decision following an order of remand to take additional evidence and render a new decision that the Referee heard and considered the additional evidence and complied with the remand order.

IT IS NOW THEREFORE, ORDERED, ADJUDGED, AND DECREED that the decision of the Appeals Referee is **SET ASIDE,** and the cause is hereby **REMANDED** for further proceedings consistent with this decision. No overpayment is established of benefits paid pursuant to the decision of the Appeals Referee. G.S. §96-9(c)(2)b, last paragraph.

IT IS ALSO ORDERED that all interested parties shall be duly notified as to time and place for rehearing, and the Appeals Referee shall identify the new decision at the conclusion of the remanded hearing by using all previously assigned docket numbers.

IT IS ALSO ORDERED that all documents contained in the record transmitted to the Appeals Referee with this decision, including the appeal and all other correspondence or documents by whatever name or designation, shall be marked as exhibits and entered into the record by the Appeals Referee on remand in order that the record will be complete as required by law and ESC Regulation 14.19.

IT IS ALSO ORDERED that a decision in this matter shall be mailed within 30 days from the date the remanded record is received by the Appeals Department, unless an extension is granted in writing by the Chief Appeals Referee and made part of the record.