

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

2

SENATE BILL 429
Second Edition Engrossed 4/23/91

Short Title: Amend Unemployment Hearings.

(Public)

Sponsors: Senator Sands.

Referred to: Manufacturing and Labor.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE UNEMPLOYMENT INSURANCE LAW PERTAINING
3 TO HEARINGS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 96-15 reads as rewritten:

6 **"§ 96-15. Claims for benefits.**

7 (a) Filing. – Claims for benefits shall be made in accordance with such
8 regulations as the Commission may prescribe. Each employing unit shall post and
9 maintain in places readily accessible to individuals performing services for it printed
10 statements, concerning benefit rights, claims for benefits, and such other matters
11 relating to the administration of this Chapter as the Commission may direct. Each
12 employing unit shall supply to such individuals copies of such printed statements or
13 other materials relating to claims for benefits as the Commission may direct. Such
14 printed statements and other materials shall be supplied by the Commission to each
15 employing unit without cost to the employing unit.

16 (b) (1) Initial Determination. – A representative designated by the
17 Commission shall promptly examine the claim and shall determine
18 whether or not the claim is valid. If the claim is determined to be not
19 valid for any reason other than lack of base period earnings, the
20 claim shall be referred to an Adjudicator for a decision as to the
21 issues presented. If the claim is determined to be valid, a monetary
22 determination shall be issued showing the week with respect to when
23 benefits shall commence, the weekly benefit amount payable, and

1 the potential maximum duration thereof. The claimant shall be
2 furnished a copy of such monetary determination showing the
3 amount of wages paid him by each employer during his base period
4 and the employers by whom such wages were paid, his benefit year,
5 weekly benefit amount, and the maximum amount of benefits that
6 may be paid to him for unemployment during the benefit year. When
7 a claim is not valid due to lack of earnings in his base period, the
8 determination shall so designate. The claimant shall be allowed 10
9 days from the earlier of mailing or delivery of his monetary
10 determination to him within which to protest his monetary
11 determination and upon the filing of such protest, unless said protest
12 be satisfactorily resolved, the claim shall be referred to the Chief
13 Deputy Commissioner or his designee for a decision as to the issues
14 presented. All base period employers, as well as the most recent
15 employer of a claimant on a temporary layoff, shall be notified upon
16 the filing of a claim which establishes a benefit year.

17 At any time within one year from the date of the making of an
18 initial determination, the Commission on its own initiative may
19 reconsider such determination if it finds that an error in computation or
20 identity has occurred in connection therewith or that additional wages
21 pertinent to the claimant's benefit status have become available, or if
22 such determination of benefit status was made as a result of a
23 nondisclosure or misrepresentation of a material fact.

24 (2) Adjudication. – When a protest is made by the claimant to the initial or
25 monetary determination, or a question or issue is raised or presented as
26 to the eligibility of a claimant under G.S. 96-13, or whether any
27 disqualification should be imposed under G.S. 96-14, or benefits
28 denied or adjusted pursuant to G.S. 96-18, the matter shall be referred
29 to an adjudicator. The adjudicator may consider any matter, document
30 or statement deemed to be pertinent to the issues, including telephone
31 conversations, and after such consideration shall render a conclusion
32 as to the claimant's benefit entitlements. The adjudicator shall notify
33 the claimant and all other interested parties of the conclusion reached.
34 The conclusion of the adjudicator shall be deemed the final decision of
35 the Commission unless within 10 days after the date of notification or
36 mailing of the conclusion, whichever is earlier, a written appeal is filed
37 pursuant to such regulations as the Commission may adopt. The
38 Commission shall be deemed an interested party for such purposes and
39 may remove to itself or transfer to an ~~appeals referee~~ unemployment
40 insurance law judge the proceedings involving any claim pending
41 before an adjudicator.

42 (c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an ~~appeals~~
43 ~~referee~~ unemployment insurance law judge shall set a hearing in which the parties are
44 given reasonable opportunity to be heard. The conduct of hearings shall be governed by

1 suitable regulations established by the Commission. Such regulations need not conform
2 to common law or statutory rules of evidence or technical or formal rules of procedure
3 but shall provide for the conduct of hearings in such manner as to ascertain the
4 substantial rights of the parties. The hearings may be conducted by conference
5 telephone call or other similar means provided that if any party files with the
6 Commission prior written objection to the telephone procedure, that party will be
7 afforded an opportunity for an in-person hearing at such place in the State as the
8 Commission by regulation shall provide. ~~The appeals referee-unemployment insurance~~
9 law judge may affirm or modify the conclusion of the adjudicator or issue a new
10 decision in which findings of fact and conclusions of law will be set out or dismiss an
11 appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal
12 after having been duly notified of the appeals hearing. The evidence taken at the
13 hearings before the ~~appeals referee-unemployment insurance law judge~~ shall be recorded
14 and the decision of the ~~appeals referee-unemployment insurance law judge~~ shall be
15 deemed to be the final decision of the Commission unless within 10 days after the date
16 of notification or mailing of the decision, whichever is earlier a written appeal is filed
17 pursuant to such regulations as the Commission may adopt. No person may be
18 appointed as an ~~Appeals Referee-unless he-unemployment insurance law judge unless he~~
19 or she possesses the minimum qualifications necessary to be a staff attorney eligible for
20 designation by the Commission as a hearing officer under G.S. 96-4(m). No
21 unemployment insurance law judge may engage in the private practice of law as defined
22 in G.S. 84-2.1 while serving in office as unemployment insurance law judge; violation
23 of this prohibition shall be grounds for removal. Whenever an appeal is taken from a
24 decision of the ~~appeals referee-unemployment insurance law judge~~, the appealing party
25 shall submit a clear written statement containing the grounds for the appeal within the
26 time allowed by law for taking the appeal, and if such timely statement is not submitted,
27 ~~an appeals referee-the Chief Unemployment Insurance Law Judge~~ may dismiss the
28 appeal.

29 (c1) Unless required for disposition of an **ex parte** matter authorized by law, a
30 Commissioner, ~~appeals referee-unemployment insurance law judge~~, or employee
31 assigned to make a decision or to make findings of facts and conclusions of law in a
32 case shall not communicate, directly or indirectly, in connection with any issue of fact,
33 or question of law, with any person or party or his representative, except on notice and
34 opportunity for parties to participate.

35 (c2) Whenever a party is notified of an Adjudicator's, ~~Appeals Referee's~~,
36 Unemployment Insurance Law Judge's, or Deputy Commissioner's decision by mail,
37 G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the prescribed period
38 to file a written appeal.

39 (d) Repealed by Session Laws 1977, c. 727, s. 54.

40 (d1) No continuance shall be granted except upon application to the
41 Commissioner, the unemployment insurance law judge, or other authority assigned to
42 make the decision in the matter to be continued. A continuance may be granted only for
43 good cause shown and upon such terms and conditions as justice may require. Good
44 cause for granting a continuance shall include, but not be limited to, those instances

1 when a party to the proceeding, a witness, or counsel of record has an obligation of
2 service to the State, such as service as a member of the North Carolina General
3 Assembly, or an obligation to participate in a proceeding in a court of greater
4 jurisdiction.

5 (e) Review by the Commission. – The Commission or Deputy Commissioner
6 may on its own motion affirm, modify, or set aside any decision of an ~~appeals referee~~
7 unemployment insurance law judge on the basis of the evidence previously submitted in
8 such case, or direct the taking of additional evidence, or may permit any of the parties to
9 such decision to initiate further appeals before it, or may provide for group hearings in
10 such cases as the Commission or Deputy Commissioner may deem proper. The
11 Commission or Deputy Commissioner may remove to itself or transfer to another
12 ~~appeals referee~~ unemployment insurance law judge the proceedings on any claim
13 pending before an ~~appeals referee~~ unemployment insurance law judge. The Commission
14 shall promptly notify the interested parties of its findings and the decision. In all
15 Commission matters heard by a Deputy Commissioner, the decision of the Deputy
16 Commissioner shall constitute the decision of the Commission; except, the Commission
17 may remove unto itself, upon its own motion, any claim pending for rehearing and
18 redetermination, provided such removal is done prior to the expiration of appeal period
19 applicable to the decision of the Deputy Commissioner.

20 (f) Procedure. – The manner in which disputed claims shall be presented, the
21 reports thereon required from the claimant and from employers, and the conduct of
22 hearings and appeals shall be in accordance with regulations prescribed by the
23 Commission for determining the rights of the parties, whether or not such regulations
24 conform to common-law or statutory rules of evidence and other technical rules of
25 procedure. All testimony at any hearing before an ~~appeals referee~~ unemployment
26 insurance law judge upon a disputed claim shall be recorded unless the recording is
27 waived by all interested parties, but need not be transcribed unless the disputed claim is
28 further appealed and, one or more of the parties objects, under such regulations as the
29 Commission may prescribe, to being provided a copy of the tape recording of the
30 hearing. Any other provisions of this Chapter notwithstanding, any individual receiving
31 the transcript shall pay to the Commission such reasonable fee for the transcript as the
32 Commission may by regulation provide. The fee so prescribed by the Commission for a
33 party shall not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars
34 (\$65.00) per transcript. The Commission may by regulation provide for the fee to be
35 waived in such circumstances as it in its sole discretion deems appropriate but in the
36 case of an appeal in **forma pauperis** supported by such proofs as are required in G.S. 1-
37 110, the Commission shall waive the fee.

38 (g) Witness Fees. – Witnesses subpoenaed pursuant to this section shall be
39 allowed fees at a rate fixed by the Commission. Such fees and all expenses of
40 proceedings involving disputed claims shall be deemed a part of the expense of
41 administering this Chapter.

42 (h) Judicial Review. – Any decision of the Commission, in the absence of
43 judicial review as herein provided, shall become final 30 days after the date of
44 notification or mailing thereof, whichever is earlier. Judicial review shall be permitted

1 only after a party claiming to be aggrieved by the decision has exhausted his remedies
2 before the Commission as provided in this Chapter and has filed a petition for review in
3 the superior court of the county in which he resides or has his principal place of
4 business. The petition for review shall explicitly state what exceptions are taken to the
5 decision or procedure of the Commission and what relief the petitioner seeks. Within 10
6 days after the petition is filed with the court, the petitioner shall serve copies of the
7 petition by personal service or by certified mail, return receipt requested, upon the
8 Commission and upon all parties of record to the Commission proceedings. Names and
9 addresses of the parties shall be furnished to the petitioner by the Commission upon
10 request. The Commission shall be deemed to be a party to any judicial action involving
11 any of its decisions and may be represented in the judicial action by any qualified
12 attorney who has been designated by it for that purpose. Upon motion of the
13 Commission, the court shall dismiss any review for which the petition is untimely filed,
14 untimely or improperly served, or for which it otherwise fails to comply with the
15 requirements of this subsection. Any party to the Commission proceeding may become
16 a party to the review proceeding by notifying the court within 10 days after receipt of
17 the copy of the petition. Any person aggrieved may petition to become a party by filing
18 a motion to intervene as provided in G.S. 1A-1, Rule 24.

19 Within 45 days after receipt of the copy of the petition for review or within such
20 additional time as the court may allow, the Commission shall transmit to the reviewing
21 court the original or a certified copy of the entire record of the proceedings under
22 review. With the permission of the court the record may be shortened by stipulation of
23 all parties to the review proceedings. Any party unreasonably refusing to stipulate to
24 limit the record may be taxed by the court for such additional cost as is occasioned by
25 the refusal. The court may require or permit subsequent corrections or additions to the
26 record when deemed desirable.

27 (i) Review Proceedings. – If a timely petition for review has been filed and served as
28 provided in G.S. 96-15(h), the court may make party defendant any other party it deems
29 necessary or proper to a just and fair determination of the case. The Commission may,
30 in its discretion, certify to the reviewing court questions of law involved in any decision
31 by it. In any judicial proceeding under this section, the findings of fact by the
32 Commission, if there is any competent evidence to support them and in the absence of
33 fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions
34 of law. Such actions and the questions so certified shall be heard in a summary manner
35 and shall be given precedence over all civil cases. An appeal may be taken from the
36 judgment of the superior court, as provided in civil cases. The Commission shall have
37 the right to appeal to the appellate division from a decision or judgment of the superior
38 court and for such purpose shall be deemed to be an aggrieved party. No bond shall be
39 required of the Commission upon appeal. Upon the final determination of the case or
40 proceeding, the Commission shall enter an order in accordance with the determination.
41 When an appeal has been entered to any judgment, order, or decision of the court below,
42 no benefits shall be paid pending a final determination of the cause, except in those
43 cases in which the final decision of the Commission allowed benefits.

44 (j) Repealed by Session Laws 1985, c. 197, s. 9, effective July 1, 1985.

1 (k) Irrespective of any other provision of this Chapter, the Commission may
2 adopt minimum regulations necessary to provide for the payment of benefits to
3 individuals promptly when due as required by section 303(a)(1) of the Social Security
4 Act as amended."

5 Sec. 2. G.S. 96-4(t)(5) reads as rewritten:

6 "(5) Privileged Status of Letters and Reports and Other Information
7 Relating to Administration of this Chapter. – All letters, reports,
8 communication, or any other matters, either oral or written, including
9 any testimony at any hearing, from the employer or employee to each
10 other or to the Commission or any of its agents, representatives, or
11 employees, which letters, reports, or other communication shall have
12 been written, sent, delivered, or made in connection with the
13 requirements of the administration of this Chapter, shall be absolutely
14 privileged communication in any civil or criminal proceedings except
15 proceedings pursuant to or involving the administration of this Chapter
16 and except proceedings involving child support and only for the
17 purpose of establishing the payment and amount of unemployment
18 compensation benefits. Nothing in this subdivision shall be construed
19 to prohibit the Commission, upon written request and on a
20 reimbursable basis only, from disclosing information to any party to
21 the proceeding from the records of an adjudication or proceeding
22 before an unemployment insurance law judge, deputy commissioner,
23 or other hearing officer by whatever name called, compiled for the
24 purpose of resolving issues raised pursuant to the Employment
25 Security Law."

26 Sec. 3. This act is effective upon ratification.