



**North Carolina Department of Commerce
Division of Employment Security
Unemployment Insurance**



4547843

Determination

Original

MICHAEL T HARBUCK
130 ANDERSON RD
ROXBORO, NC 27573-4556

Mail Date: November 12, 2019
Decision Date: November 8, 2019
Issue ID: 1853538
Claim ID: 965028
Benefit Year Ends: October 10, 2020
RE: BOYD OLDS-
PONTIAC-BUICK-
GMC
Claimant ID: 11073976

Determination by Adjudicator

DETERMINATION:

Claimant is disqualified for benefits beginning 10/13/2019. The disqualification will continue until claimant qualifies for benefits as provided by the Employment Security Law.

REASONS:

Claimant last worked for BOYD OLDS-PONTIAC-BUICK-GMC. Claimant filed a claim effective 10/13/2019. Claimant was discharged due to damage to the employer's property.

CONCLUSIONS:

N.C. Gen. Stat. § 96-14.6(a) and (b) provide an individual shall be disqualified for benefits if it is determined by the Division he/she is unemployed for misconduct connected with the work. Misconduct connected with the work is defined as (1) conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee or (2) conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Based on the Law as applied to the facts of this case, it is concluded that the claimant was discharged for misconduct connected with the work.

Determination Date: November 8, 2019

Appeal Rights Expire: December 12, 2019

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Appeal Rights:

This determination will become final unless an appeal by the aggrieved party is filed on or before the Appeal Rights Expiration date. The appeal may be submitted on-line by logging into your portal at des.nc.gov; mailed to DES Appeals, Post Office Box 27967, Raleigh, NC 27611-7967; faxed to 919.857.1296 or emailed to des.public.appeals@nccommerce.com. For additional information refer to the enclosed Appeals and Hearing Pamphlet.

Important Notice:

If an overpayment is created by this determination, you will be mailed a separate notification of overpayment from DES's Benefits Integrity/Benefit Payment Control Section. This document will specify, among other things, the amount of the overpayment and any applicable penalties. Please note that the only way you may contest the overpayment is to appeal this determination and the resulting overpayment in accordance with North Carolina law and DES's rules. Please be aware that when a claimant receiving benefits has his/her claim reversed on appeal, the benefits received will be an overpayment subject to repayment to the Division. The Law requires all persons who have received benefits to which they are not entitled "for any reason" to be liable to repay the benefits received, including when decisions at any Division or Judicial level have been reversed on appeal. N.C. Gen. Stat. § 96-18(g)(2).

HOW TO APPEAL AN INITIAL DETERMINATION AND PARTICIPATE IN A HEARING

Form NCDES 568-E

This form contains important information about your rights under the Employment Security Law. This form explains the process for appealing an initial Adjudicator's determination regarding qualification or eligibility to receive unemployment insurance benefits. Lower authority appeals (Level 1) evidentiary hearings are conducted by Appeals Referees in the Division of Employment Security's (DES) Appeals Section.

For claims filed on or after June 30, 2013, claimants are subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal. N.C. Gen. Stat. § 96-18(g)(2).

For more "Frequently Asked Questions" (FAQs) about appeals, visit the DES website at des.nc.gov. Links to NC General Statutes, DES Administrative Rules (N.C. Admin. Code) and other authorities are available under the "Legal" tab.

Usted puede obtener una copia de este folleto en español en la oficina de l Departamento de Comercio, División del Desempleo de Carolina del Norte.

Where and how may I file an appeal?

Determinations are made in different work units of the North Carolina Department of Commerce, Division of Employment Security (DES), depending on the issue. Each determination has an address and instructions for filing an appeal. You must file your appeal at the address and according to the instructions included in the determination (by mail, fax, or email). See 04 N.C. Admin. Code 24C .0202. You can find a listing of addresses and contact information for the various DES work units in 04 N.C. Admin. Code 24A .0104.

By what date must my appeal be filed?

The determination will tell you the deadline for filing your appeal. The date listed in the document that you are appealing controls your deadline. If the appeal deadline falls on a weekend or a legal state holiday, the appeal period ends on the next work day. See N.C. Gen. Stat. § 96-15(c).

What should I say if I appeal a determination that is not in my favor?

DES cannot tell you what to say in your appeal or give you legal advice. However, your appeal must be in writing. There is no special form to file an appeal. You must state your desire to appeal and explain your reasons for disagreeing with the determination. Include the claimant's social security number, the docket number of the determination, and sign and date the appeal. If you are the employer, you must also include the name of your business and the name and title of the person filing the appeal on your behalf. See 04 N.C. Admin. Code 24C .0203.

What happens if I file an appeal from an initial determination?

DES will schedule a hearing on your appeal. A Notice of Hearing containing such information as the date, time, contact information for the designated Appeals Referee, and the issue to be decided will be sent to you. See 04 N.C. Admin. Code 24C .0204.

If I file an appeal, may I later withdraw my appeal?

Yes. You may request to withdraw your appeal in writing to the Appeals Referee before the Appeals Referee makes a decision in the case. You must include your name, the appeals docket number, state that you are voluntarily withdrawing your appeal and the reason for your request to withdraw. If the request is granted, a decision will be issued dismissing your appeal and stating that the previous determination is final. See 04 N.C. Admin. Code 24C .0214 and .0215.

Am I required to have legal representation to appeal an initial determination?

You may, but are not required to have legal representation in administrative hearings. Claimants or employers may file their own appeals and represent themselves (*pro se*) throughout the administrative appeal process, or have a legal representative represent them. Legal representatives should be obtained before the hearing. See 04 N.C. Admin. Code 24C .0301.

Who can be a legal representative?

A legal representative must be a licensed attorney, or a person supervised by a licensed attorney. Attorneys not licensed to practice law in North Carolina may only appear pursuant to 04 NCAC 24C .0303. See N.C. Gen. Stat. § 96-17(b) and Chapter 84 of the North Carolina General Statutes.

Where can I find an attorney?

You may call the North Carolina Bar Association's Lawyer Referral Service at 800.662.7660, Legal Aid of North Carolina toll-free at 866.219.5262, or check your local telephone directory.

Do I have to tell DES that I have a legal representative?

Pursuant to 04 N.C. Admin. Code 24C .0302(a), notices or certification of representation must be in writing and provided to the Appeals Referee to become part of the official hearing record. When you have a legal representative, all information required to be provided to you will only be sent to your legal representative, unless you give other instructions on the record during the hearing. *See* 04 N.C. Admin. Code 24C .0302(b).

As a claimant, what should I do if my mailing or email address has changed?

DES generally sends all correspondence to your last known address. Pursuant to 04 N.C. Admin. Code 24A .0102, you must immediately notify DES in writing (by mail, fax, or email) within 7 days after the effective date of any address change. If you have an appeal pending, you must also notify the section handling your appeal. "Last known address" means the most recent address that you provided to DES for its official records. DES updates addresses in its records with data from the United States Postal Service (USPS) National Change of Address (NCOA) data-base. If your last known address in DES's records match a taxpayer's name and previous mailing address in the NCOA database, the new address in the NCOA database is your last known address. *See* 04 N.C. Admin. Code 24A .0105(31).

As an employer, what should I do if my address or email address has changed?

Pursuant to 04 N.C. Admin. Code 24A .0102, you must immediately notify DES in writing (by mail, fax, or email) within 7 days after the effective date of the address change. Employers must send notice of a change in address: by mail to Tax Administration Section, ATTN: Address Change, Post Office Box 26504, Raleigh, North Carolina, 27611; fax to (919) 715-7194; or email to des.tax.customerservice@nccommerce.com. If you have an appeal pending, you must also notify the section handling your appeal.

What should I do if someone tells me to file an appeal in a way that is different from the information provided to me in the determination?

You are responsible for following the written instructions provided in your determination. Information contained in the Employment Security Law (Chapter 96 of the North Carolina General Statutes and Title 4, Chapter 24 of the North Carolina Administrative Code) cannot be overridden by something that you were told on the phone.

What should I do if I receive documents from DES that seem to conflict with each other?

Read each document carefully, and contact DES immediately. Contact numbers for DES will be provided with the documents, and can be found in 04 N.C. Admin. Code 24A .0104. Have the documents with you so that you can show or describe them to a representative. Do not assume that the most recent document cancels the information contained in an earlier correspondence. Keep notes of your contact with DES.

If my notice says that the hearing will be conducted by telephone conference call, how can I get an in-person hearing?

You may request an in-person hearing when the appeal is filed, or by filing a written request with the Appeals Referee listed in your hearing notice. In-person hearings are held at certain local Division of Workforce Solutions (DWS) or public employment offices throughout the state. *See* N.C. Gen. Stat. § 96-15(c) and 04 N.C. Admin. Code 24C .0206.

What will happen at the hearing?

The Appeals Referee will preside over the hearing, identify each person present, and explain the purpose of the hearing. In addition to asking questions, the Appeals Referee will also identify and admit evidence, and rule on motions and objections. You and your witnesses will be allowed to testify, offer evidence, and ask questions about any testimony or evidence offered by the other party. You will have a chance to summarize your case at the end of the hearing. The appeals hearing is usually the only opportunity you will have to submit all your evidence and testimony about what happened in your case.

If I cannot appear at the hearing as scheduled, can I get the date and/or time changed?

Maybe. To reschedule a hearing, you must contact the Appeals Referee and give the specific reasons for the request. You must show a legally sufficient reason for wanting to reschedule the hearing. Be prepared to provide documentation to support your reasons. The request will either be granted or denied. Some reasons why the Appeals Referee may grant a request to reschedule include a party's illness, death in the immediate family, the need for a translator, jury duty, and active military duty. If there is no response to your request by the hearing date, you must be prepared to go forward with the hearing. *See* 04 N.C. Admin. Code 24C .0105 and 04 N.C. Admin. Code 24C .0207.

What will happen if I do not appear at the hearing?

If you appealed the determination, your appeal will be dismissed. If you are not the appealing party, and you do not appear, the hearing will be held without you. The Appeals Referee will make a decision based on the evidence given by the party attending the hearing. *See* N.C. Gen. Stat. § 96-15(c) and 04 N.C. Admin. Code 24C .0209(b). You should attend the hearing even if the determination was in your favor.

How do I participate in a telephone hearing?

The Appeals Referee will call you to begin the hearing. If you are late for a telephone hearing, you may not be able to join the hearing after the hearing begins. If the Appeals Referee is unable to reach the appealing party by phone within 10 minutes from the start time of the hearing, the appeal may be dismissed. If the Appeals Referee is unable to reach a non-appealing party within 10 minutes from the start of the hearing, the hearing may proceed without them. You are responsible for making sure the Appeals Referee has the correct telephone number for you and your witness. If you are using a mobile or cellular telephone for your hearing, it is your responsibility to make sure your phone is working and that you are in an area with clear signal reception. If you are using a land line, it is your responsibility to make sure your telephone is working and the line is not in use. Failure to appear for or participate in the hearing as a result of problems with your telephone or your telephone number may result in your evidence not being considered, or the dismissal of your appeal. *See* 04 N.C. Admin. Code 24C .0205.

How do I participate in an in-person hearing?

Be on time for your hearing. If the appealing party is more than 10 minutes late for an in-person hearing, the appeals referee may dismiss the appeal and allow the other participants to leave. If the non-appealing party is more than 10 minutes late, the hearing may proceed without them. *See* 04 N.C. Admin. Code 24C .0206.

What should I do to prepare for the hearing?

Read the hearing notice carefully. Read all documents that came with the hearing notice to know what has been said about the case. This will help you decide which witnesses should testify in the hearing. Gather all documents, recordings, and other evidence that support your case. If the hearing will be held by phone, you must provide copies of your evidence to the Appeals Referee and to each party before the hearing date. For in-person hearings, make enough copies to give to each party and the Appeals Referee. If you do not provide copies to the other party and the Appeals Referee, the Appeals Referee may not take that evidence into consideration when making a decision in the case. Choose your witnesses and arrange for them to be available for the hearing. Eyewitness and first-hand testimony is always the best evidence. First-hand testimony includes witnesses who themselves smelled, felt, saw, or heard what was said or done. If there is a recording of alleged conduct, the recording is the best evidence, not a witness's testimony about what he or she saw or heard on a recording that is not offered as evidence. If there is an allegation that a party signed documents or submitted something in writing that you believe is relevant to the case, you can submit this evidence, but you must provide a copy of the documents to the Appeals Referee and the other party. For telephone hearings, provide your witnesses' names and phone numbers by contacting the Appeals Referee, or by completing and returning the Telephone Hearing Questionnaire that came with your hearing notice. *See* 04 N.C. Admin. Code 24C .0209.

What evidence should I present at the hearing?

Eyewitness and first-hand testimony is always the best evidence. First-hand testimony includes witnesses who themselves smelled, felt, saw, or heard what was said or done. If there is a recording of alleged conduct, the recording is the best evidence, not a witness's testimony about what he or she saw or heard on a recording that is not offered as evidence. If there is an allegation that a party signed documents or submitted something in writing that you believe is relevant to the case, you may submit this evidence, but you must provide a copy of the documents to the Appeals Referee and the other party.

If I ask a witness to testify voluntarily in the hearing, or to provide documents or recordings that are relevant to my case, and the witness refuses, how can the witness be made to comply?

You should contact the Appeals Referee listed in your hearing notice and request that a subpoena be issued for the witness and/or other evidence. Subpoena requests must be in writing and comply with 04 N.C. Admin. Code 24C .0401.

Are there special requirements for cases involving separation from employment caused by the results of drug or alcohol testing?

Yes. There must be evidence to prove or disprove any test and its results. Evidence should also include work rules and/or policies. The Controlled Substance Examination Regulation Act (CSERA), N.C. Gen. Stat. 95 §§ 230-235, requires that tests comply with its procedural requirements, unless the test was administered by the U.S. Department of Transportation or Nuclear Regulatory Commission. An employer must establish: (1) that an employee tested positive for a controlled sub-stance; (2) the chain of custody of the drug-testing sample; (3) the reliability of the controlled substance examination; and (4) exactly how the employee violated the employer's policy. Instead of live testimony from a laboratory representative at a hearing, an affidavit from the lab's authorized representative may be presented to prove controlled substance examination results, chain of custody and compliance with applicable testing and retesting required by law. A positive result from a controlled sub-stance examination constitutes misconduct connected with work if an employer shows compliance with CSERA. Similarly, an employee's refusal to comply with a reasonable and properly implemented drug testing policy, without good cause, constitutes misconduct. The results of a controlled substance examination and compliance with statutory or regulatory procedural requirements may be deemed proven if the claimant admits or stipulates to them during the hearing, or by affidavit. *See* N.C. Gen. Stat. § 96-14.6 and 04 N.C. Admin. Code 24C .0211.

Should I continue to file claims for benefits until all appeals have been decided?

Yes. If you are unemployed, you should continue to file your weekly certification until all appeals have been decided. Benefits will not be paid for weeks not claimed. *See* N.C. Gen. Stat. §§ 96-14.9 and 96-15(b)(2).

Where can I find answers if I have questions before the hearing?

You may visit the “Frequently Asked Questions” section of the DES website at des.nc.gov, or contact the Appeals Referee listed in your hearing notice. The Appeals Referee cannot discuss the facts of the case, your side of the story, or what the outcome of the case may be. Each party must be present for discussions about the facts of the case. The Appeals Referee is only allowed to answer questions about hearing procedures.

Note: Pursuant to 04 N.C. Admin. Code 24C .0209, the Appeals Referee cannot discuss the case with any party or witness after the hearing is over. *See* N.C. Gen Stat. § 96-15(c1).

Where can I get a copy of the Employment Security Law?

Chapter 96 of the North Carolina General Statutes and in Title 4, Chapter 24 of the North Carolina Administrative Code. You can access a copy of the governing law on the DES website at des.nc.gov, General Assembly’s website at www.ncga.state.nc.us, or the Office of Administrative Hearings website at www.oah.state.nc.us/rules

CONTACT INFORMATION:

If the determination that you are appealing lists the name and number of a different DES work unit, contact that unit before trying to get information from the Appeals Section.

**Appeals Section, Division of Employment Security
Post Office Box 27967, Raleigh, North Carolina 27611-7967
Phone (919) 707-1060 Fax (919) 857-1296
Email: des.public.appeals@nccommerce.com**

Levels of Appeal – Unemployment Insurance Claims



**HOW TO APPEAL AN INITIAL DETERMINATION AND PARTICIPATE IN A HEARING
Form NCDES 568-E**

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- **IMPORTANT!** This document(s) contains important information about your unemployment compensation. Call 1.888.737.0259 or visit our website at des.nc.gov for free translation assistance. This document may contain important information about your Benefits or Appeal Rights that may require your response for appealing decisions within 10 days for lower authority and 30 days for higher and judicial authorities.
- **¡IMPORTANTE!** Este(os) documento(s) contiene(n) información importante sobre su compensación por desempleo. Llame al 1.888.737.0259 o visite nuestro sitio web en des.nc.gov para obtener asistencia gratuita con la traducción. Este documento puede contener información importante sobre sus beneficios o su derecho de apelación, la cual podría requerir su respuesta para las decisiones de apelación en un plazo de 10 días para las autoridades de menor nivel y de 30 días para las autoridades de mayor nivel y judiciales.
- **重要提示!** 此文件包含关于您的失业补助的重要信息。请致电 1.888.737.0259 或访问我们的网站 des.nc.gov 获取免费的 翻译协助。此文件可能包含与您的利益或上诉权有关的重要信息，可能要求您就上诉决议在 10 天内对下级机关作出回应，在 30 天内对上级机关和司法机关作出回应。
- **QUAN TRỌNG!** Các tài liệu này chứa thông tin quan trọng về tiền bồi thường thất nghiệp của bạn. Hãy gọi tới số 1.888.737.0259 hoặc truy cập trang web theo địa chỉ des.nc.gov để được trợ giúp dịch thuật miễn phí. Tài liệu này có thể chứa thông tin quan trọng về các Phúc Lợi hoặc Quyền Khiếu Nại của bạn, có thể yêu cầu bạn phải trả lời nếu muốn khiếu nại quyết định trong vòng 10 ngày đối với cơ quan có thẩm quyền cấp dưới và 30 ngày đối với cơ quan có thẩm quyền cấp trên và cơ quan tư pháp.
- **IMPORTANT !** Ce(s) document(s) contient/contiennent des informations importantes concernant votre allocation de chômage. Téléphonnez au 1.888.737.0259 ou rendez-vous sur notre site Web à des.nc.gov pour obtenir gratuitement de l'aide en traduction. Ce document peut contenir des informations importantes sur vos allocations ou sur votre droit de faire appel, qui peuvent, en cas de décisions d'appel, nécessiter votre réponse dans les 10 jours pour les autorités administratives de niveau inférieur et dans les 30 jours pour les autorités judiciaires et les autorités administratives de niveau supérieur.

The North Carolina Department of Commerce, Division of Employment Security and Division of Workforce Solutions comply with applicable Federal civil rights laws and do not discriminate on the basis of race, color, national origin, age, disability, or sex. We do not exclude people or treat them differently because of race, color, national origin, age, disability, or sex. The Department of Commerce, Division of Employment Security and Division of Workforce Solutions Interpreter Services are available to help you.

We provide free aids and services to people with disabilities to communicate effectively with us, such as:

- Qualified American Sign Language (ASL) interpreters,
- Written information in other formats (large print, audio, accessible electronic formats, other formats).
- Free language services to people whose primary language is not English including qualified interpreters and information written in other languages

If you need these services, contact our Interpreter Services at 1.888.737.0259.

If you believe our agency failed to provide the aforementioned services to you or discriminated against you in another way on the basis of race, color, national origin, age (40 or older), disability, genetic information, religion, sex or political affiliation, you can file a grievance by contacting our Legal Services Section using the following methods: by email: grievance@nccommerce.com; by phone: 1.888.737.0259; or by mail: Legal Services Section, Post Office Box 25903, Raleigh, NC 27611-5903.

You can also file a civil rights complaint with the U.S. Department of Labor, Office for Civil Rights through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at: U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave NW, Washington DC 20210, Phone: 1.866.487.2365.

Complaint forms are available at des.nc.gov.