

ROY COOPER  
*Governor*  
ANTHONY M. COPELAND  
*Secretary*  
THERESA B. STEPHENSON  
*Chair*



5160540

**North Carolina Department of Commerce  
Board of Review**

Mail Date: 01/31/2020

MICHAEL T HARBUCK  
130 Anderson Rd  
Roxboro, NC 27573-4556

STATE OF NORTH CAROLINA  
BOARD OF REVIEW



5160540

IN THE MATTER OF:

Higher Authority Decision No. 20-HA-000114

Boyd Olds-Pontiac-Buick-GMC  
Crossroads Ford Inc.  
Post Office Box 2069  
Wake Forest, NC 27588

Michael Harbuck  
130 Anderson Road  
Roxboro, NC 27573

Employer

Claimant

Pursuant to N.C. Gen. Stat. § 96-15(e), this cause came before the Board of Review ("Board") to consider the **Employer's appeal** from a decision by Appeals Referee Arlen Percival under Appeals Docket No. 19-LA-018505. The record evidence has been reviewed in its entirety.

As the ultimate fact-finder in cases involving contested claims for unemployment insurance benefits, the Board concludes that the facts found by the Appeals Referee were based on competent evidence and adopts them as its own with the following modification: In FINDING OF FACT 4, Add as the concluding sentence:

The claimant signed a document acknowledging receipt of the employer's policies on December 12, 2018.

The Board declines to adopt the conclusions of law made by the Appeals Referee because the Appeals Referee did not properly and correctly apply the Employment Security Law (N.C. Gen. Stat. § 96-1 et seq.) to the facts as found and modified, and the resultant decision was not in accordance with the law and fact. That is, the hearing record shows that the claimant disregarded the employer's safety rules by operating the golf cart inside the employer's building at a high rate of speed and was thereby distracted by a co-worker which resulted in claimant damaging the employer's property. The Board concludes that the claimant's conduct evinced negligence of such degree which manifested an intentional and substantial disregard of the employer's interest and the claimant's duties and obligations to the employer to operate the cart in a safe manner. The Board also concludes that the claimant's discharge was for misconduct connected with the work to disqualify claimant from the receipt of unemployment insurance benefits.

The decision of the Appeals Referee is **REVERSED**.

The claimant is **DISQUALIFIED** for unemployment insurance benefits beginning October 13, 2019.

Board of Review members Fred F. Steen, II and Andrew C. Brock participated in this appeal and concur with this decision.

This the 31st Day of January, 2020.



## BOARD OF REVIEW

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Theresa B. Stephenson  
Chair

**NOTE:** This Higher Authority Decision will become final thirty (30) days after mailing unless a petition for judicial review is filed with the superior court as indicated below. The date of mailing is found on the last page of this decision. Although the Board does not impart legal advice, please read the pages entitled *Judicial Review: Appealing the Higher Authority Decision to the Superior Court* for guidance on how to appeal a Higher Authority Decision. The pamphlet is available in the public employment offices throughout the State, and on the Division of Employment Security's website. You may also visit the *Frequently Asked Questions* section on the Division of Employment Security's website at [des.nc.gov](http://des.nc.gov), and consult an attorney of your choosing.

### **APPEAL RIGHTS FOR JUDICIAL REVIEW**

Appeals from this Higher Authority Decision must be filed with the Clerk of Superior Court by the petitioner in the county in which he or she resides, or in which the petitioner has its principal place of business. If a party does not reside in any county or have a principal place of business in any county in North Carolina, appeals must be filed with the Clerk of Superior Court of Wake County, North Carolina *or* with the Clerk of Superior Court of the North Carolina county in which the controversy arose.

This Higher Authority Decision will become final thirty (30) days after mailing unless a timely petition for judicial review is filed with the superior court pursuant to N.C. Gen. Stat. §§ 96-15(h) and (i).

Copies of any Petition for Judicial Review filed with the Clerk of Superior Court must be served upon the Division of Employment Security ("Division") and upon all parties of record to the proceedings within ten (10) days of the filing of the petition. Copies of the petition must be served by personal service or by certified mail, return receipt requested. Petitions for superior court review must be served on and addressed to the registered agent for service of process for the Division:

R. Glen Peterson  
Chief Counsel  
North Carolina Department of Commerce  
Division of Employment Security  
**Mailing Address:** Post Office Box 25903, Raleigh, NC 27611-5903  
**Physical Address:** 700 Wade Avenue, Raleigh, NC 27605-1154

**NOTE:** If you are served with a Petition for Judicial Review by another party, you will not be a party to the judicial review proceedings unless you: (1) notify the superior court within ten (10) days after you



receive the petition that you want to become a party to the proceedings, or (2) file a motion to intervene as provided in N.C. Gen. Stat. § 1A-1, Rule 24.

**NOTICE TO ALL INTERESTED PARTIES**

A legal representative as defined in 04 N.C. Admin. Code 24A .0105(34) (including individuals from a third-party company serving as an employer's unemployment insurance administrator) must be a licensed attorney, or a person supervised by a licensed attorney in accordance with N.C. Gen. Stat. Ch. 84 and § 96-17(b). Notices and/or certification of attorney supervision must be in writing pursuant to 04 N.C. Admin. Code 24F .0204 and 04 N.C. Admin. Code 24F .0311. **Legal representation in judicial proceedings must comply with N.C. Gen. Stat. Ch. 84.**

Pursuant to 04 N.C. Admin. Code 24F .0204, when a party has a legal representative, all documents or information required to be provided to the party will only be sent to the legal representative. Any information provided to a party's legal representative will have the same force and effect as if it had been sent directly to the party.

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

**SPECIAL NOTICE TO CLAIMANTS:** If you were receiving or have previously received unemployment insurance benefits in connection with the underlying claim and this Higher Authority Decision rules you ineligible or disqualified for all or part of such benefits, you may now have an overpayment of benefits pursuant to N.C. Gen. Stat. § 96-18(g)(2). If an overpayment is created by this Higher Authority Decision, you will be mailed a separate Notice of Overpayment or Determination of Overpayment from the Division's Benefits Integrity/Benefit Payment Control Section. The Notice of Overpayment or Determination of Overpayment will specify, among other things, the amount of your overpayment and any penalties that apply.

Appeal Filed: January 3, 2020

Decision Mailed: 01/31/2020

# JUDICIAL REVIEW



## APPEALING THE HIGHER AUTHORITY DECISION TO SUPERIOR COURT

This pamphlet contains important information about your rights under the Employment Security Law. It explains the process for filing an appeal to superior court after receiving a Higher Authority Decision from the Board of Review. You must comply with all the requirements established by law.

**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).**

### **How will I know which document I am appealing?**

Each document has an identifying name and/or number. A document's identifying information is usually found near the top of the document, or at the bottom of the document. The docket number for the Higher Authority Decision issued by the North Carolina Department of Commerce, Board of Review ("Board") is located at the top right on the first page of the decision.

### **If I disagree with the Higher Authority Decision, can I take the case to court?**

Yes. You may ask that a superior court judge review the Higher Authority Decision and record of the case. A request for superior court review is called a petition for judicial review. You will have a chance to attend a hearing before a judge. If you do not properly file and serve your petition, the Division will file a motion to dismiss the petition, and the judge will hear arguments on the motion. If your petition is properly filed and served, and meets all legal requirements, the judge will review your petition, the evidence that was before the Board, and the Board's decision. The judge will be looking at (1) whether there was any competent evidence in the record before the Board to support its findings of fact, and (2) whether the facts support the conclusions of law and the Higher Authority Decision. *See* N.C. Gen. Stat. §§ 96-15(h) and (i).

### **How much time do I have to file an appeal in court?**

You have thirty (30) days from the date that the Higher Authority Decision is issued to file a petition for judicial review with the superior court. The decision will become final unless a timely petition for judicial review is filed with the superior court. The date that the Higher Authority Decision was issued is found on the last page of the decision. *See* N.C. Gen. Stat. §§ 96-15(h) and (i).

### **How do I file an appeal in court?**

You must file an appeal from a Higher Authority Decision with the Clerk of Superior Court in the county in which you live, or in which you have your principal place of business. If you do not live or have your principal place of business in any North Carolina county, you must file your petition for judicial review in the Superior Court of Wake County, North Carolina *or* with the Clerk of Superior Court of the North Carolina county in which the controversy arose. *See* N.C. Gen. Stat. § 96-15(h).

### **Am I required to have legal representation to file a petition for judicial review?**

Maybe. Claimants can generally represent themselves in the superior court proceedings. Corporations must be represented in court by a licensed attorney. Representation in judicial proceedings, such as in the superior court, must comply with Chapter 84 of the North Carolina General Statutes and the North Carolina State Bar Rules. You should consult an attorney for legal advice.

### **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.

### **What should I say in my petition for judicial review?**

The Board and the Division of Employment Security cannot tell you what to say in your petition for judicial review. You may consult an attorney for legal advice. The law requires that the petition for review explicitly state your exceptions to the Board's decision or procedure and the relief that you seek from the court. *See* N.C. Gen. Stat. § 96-15(h).

### **Do I have to provide a copy of my petition for judicial review to anyone other than the clerk of the superior court?**

Yes. Within ten (10) days after filing your petition for judicial review, you must serve a copy, either in person, or by certified mail, return receipt requested, on the Division of Employment Security's registered agent for service of process listed in the Higher Authority Decision. *See* N.C. Gen. Stat. § 1A-1, Rule 4(j)(4). You must also serve a copy of the petition either in person, or by certified mail, return receipt requested on all parties to the proceedings before the Board and the Division within ten (10) days of filing the petition (usually the claimant if you are the employer, or the employer if you are the claimant). *See* N.C. Gen. Stat. § 96-15(h).

**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).

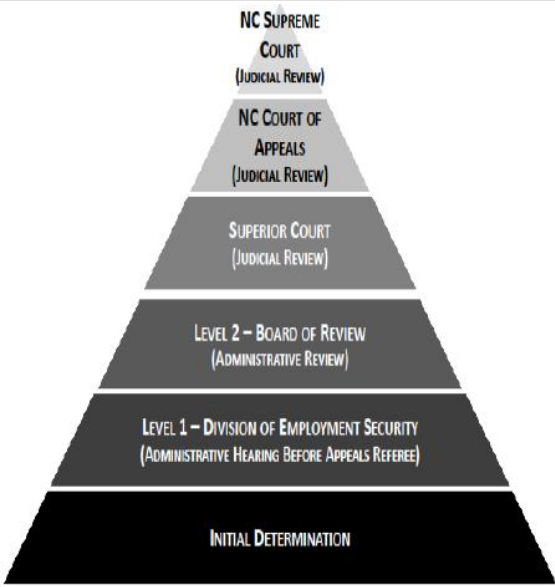
**Where can I get a copy of the Employment Security Law?**

The Employment Security Law is found in 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](http://des.nc.gov), the Office of Administrative Hearings website at [www.oah.state.nc.us/rules](http://www.oah.state.nc.us/rules), or at <http://reports.oah.state.nc.us/ncac.asp>.

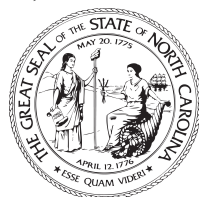
**SPECIAL NOTICE TO CLAIMANTS:**

If you were receiving or have previously received unemployment insurance benefits in connection with the underlying claim and the Higher Authority Decision rules you ineligible or disqualified for all or part of such benefits, you may now have an overpayment of benefits pursuant to N.C. Gen. Stat. § 96-18(g)(2). If an overpayment is created by a Higher Authority Decision, you will be mailed a separate Notice of Overpayment or Determination of Overpayment from the Division's Benefit Payment Control Section. The Notice of Overpayment or Determination of Overpayment will specify, among other things, the amount of your overpayment and any penalties that apply. Please note that the only way you may contest the overpayment is to file an appeal of the Higher Authority Decision with the superior court as provided in the Higher Authority Decision, and in accordance with North Carolina law. See N.C. Gen. Stat. §§ 96-15(h) and (i)

The unemployment insurance program in North Carolina is administered by the North Carolina Department of Commerce, Division of Employment Security (DES).

DIVISION OF EMPLOYMENT SECURITY'S REGISTERED AGENT FOR SERVICE OF PROCESS	LEVELS OF APPEALS - CLAIMS
<p style="text-align: center;">R. Glen Peterson Chief Counsel North Carolina Department of Commerce Division of Employment Security</p> <p style="text-align: center;"><b>Mailing Address:</b> Post Office Box 25903 Raleigh, NC 27611-5903</p> <p style="text-align: center;"><b>Physical Address:</b> 700 Wade Avenue Raleigh, NC 27605-1154</p>	

For more "Frequently Asked Questions" (FAQs) about appeals, visit the DES website at [des.nc.gov](http://des.nc.gov).



*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 .*

## Accessibility and Nondiscrimination Notice

- **IMPORTANT!** This document(s) contains important information about your unemployment compensation. Call 1.888.737.0259 or visit our website at [des.nc.gov](http://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](http://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](http://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](http://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. Téléphonez au 1.888.737.0259 ou rendez-vous sur notre site Web à [des.nc.gov](http://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](mailto: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](http://des.nc.gov).