STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 19-00964

vs.

Referee Decision No. 0035566040-04

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the claimant's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision that held the claimant, a "qualifying patient" for medical marijuana, disqualified from receiving reemployment assistance benefits on the grounds that she was discharged from employment for testing positive for marijuana on a random drug test, which the referee concluded was misconduct connected with work. §443.101(1)(a), Fla. Stat. Because we conclude the claimant lacked the requisite level of fault contemplated under the reemployment assistance law to support a determination of misconduct, we reverse.

I.
The Referee's Decision under Appeal

The referee's decision contains the following findings of fact:

> The claimant worked for the employer, a recycling company, from December 11, 2017, until March 6, 2019, as a customer service representative. The employer has an established drug and alcohol policy, which the claimant received at the time of hire, which specifically prohibits the use of medical marijuana.[1] The claimant began taking medical marijuana in June 2018. She was given a

[1] The employer's policy provides, "[A]ll employees are prohibited by the Company from using '*medical marijuana*,' all hemp products, synthetic marijuana (such as K-2, Spice, herbal smoking blends), 'look-alike drugs,' designer drugs, or other illegal controlled substances *at any time*." (Emphasis added).

> random drug test on March 6, 2019. After the test, the claimant informed her safety manager that she was taking medical marijuana and had a medical marijuana card. The claimant was discharged for violating the employer's zero tolerance drug policy.

On these facts, the referee concluded the claimant was discharged for misconduct connected with work as defined under Section 443.036(29)(e)1., Florida Statutes ("A violation of an employer's rule . . ."). In so holding, the referee explained that he considered, but found unpersuasive, the claimant's evidence that she was lawfully using medical marijuana:

> Consideration has been given to the claimant's argument that her use of marijuana was for medical use. However, the employer's policy specifically addresses the [use] of marijuana for medical use and prohibits it. Further, no law has been enacted which holds employees not disqualified for violating the employer's drug free policy when the use is for prescribed medical purposes.

Thus, the referee held the claimant disqualified from receipt of benefits pursuant to Section 443.101(1)(a), Florida Statutes. This appeal followed.

II.
Issue

The broad issue before the Commission is whether the employer discharged the claimant for misconduct connected with work. §443.101(1)(a), Fla. Stat. However, the more specific issue before us is whether the claimant, who is legally permitted to use medical marijuana by the State of Florida, has committed misconduct by testing positive for marijuana on a drug test, where the employer's drug and alcohol testing policy prohibits medical marijuana. This specific issue is one of first impression.

III.
Analysis

A. Legalization of Medical Marijuana in the State of Florida

To evaluate and provide context to the misconduct issue, it is first necessary to briefly discuss the current legal landscape regarding medical marijuana in Florida.

After the passage of 2016 Amendment 2, medical marijuana use became lawful for "qualifying patients" with a "debilitating medical condition." *See In re Advisory Op. to Att'y Gen re Use of Medical Marijuana for Debilitating Medical Conditions*, 181 So. 3d 471, 476 (Fla. 2015) (citing ballot summary for Amendment 2). In 2017, Amendment 2 was made effective as Article X, Section 29, Florida Constitution ("Medical marijuana production, possession, and use"), and the Florida Legislature adopted an implementing statute for the Amendment, under Section 381.986, Florida Statutes ("Medical use of marijuana").

Under Florida law, a "qualifying patient" means a patient who has a valid certification from a Florida physician to use medical marijuana for the treatment of a "debilitating medical condition." Art. X, §29(b)(10), Fla. Const. *See also* §381.986(1)(l), Fla. Stat. A "'Debilitating Medical Condition' means cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), posttraumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." Art. X, §29(b)(1), Fla. Const.; §381.986(1)(o)2., Fla. Stat.

The implementing statute addresses several employment issues, though not the one directly at hand. For instance, the statute expressly denies the creation of a "cause of action against an employer for wrongful discharge or discrimination"; provides that employers are not required to accommodate an employee's use of medical marijuana in the workplace; specifies that the implementing statute "does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy"; and does not allow reimbursement for medical marijuana under Florida workers' compensation law. §381.986(15), Fla. Stat. This last point is notable because it could be read to imply that the legislature did not intend to carve an exception for medical marijuana in Florida's workers' compensation drug-free workplace program (§440.102, Fla. Stat.), comparable to that of a "prescription medication." *See* §440.102(1)(l) & (3)(a)4., Fla Stat.; Fla. Admin. Code R. 59A-24.008(1)(b)8.

While we consider the misconduct issue against this backdrop, our decision ultimately turns on the plain language of the definition of misconduct, the administrative interpretation of which inheres with the Commission. §443.012(3), Fla. Stat.

B. Fault and Misconduct under the Reemployment Assistance Law

Workers who are discharged for misconduct connected with work are disqualified from receiving reemployment assistance benefits. §443.101(1)(a), Fla. Stat. The employer has the burden to establish misconduct. *See, e.g., Mid-Fla. Freezer Warehouses, Ltd. v. Unemployment Appeals Commission,* 41 So. 3d 1014, 1020 (Fla. 5th DCA 2010); *Sears, Roebuck & Co. v. Unemployment Appeals Commission*, 463 So. 2d 465 (Fla. 2d DCA 1985).

As provided in Section 443.036(29), Florida Statutes, misconduct "includes":

> (a) Conduct demonstrating a conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; or theft of employer property or property of a customer or invitee of the employer.
>
> (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
>
> (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
>
> (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

> (e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:
>
> a. He or she did not know, and could not reasonably know, of the rule's requirements;
>
> b. The rule is not lawful or not reasonably related to the job environment and performance; or
>
> c. The rule is not fairly or consistently enforced.
>
> 2. Such conduct may include, but is not limited to, Committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The Commission has recognized that this statute presumes some degree of legally recognizable fault on the part of the claimant. *See* R.A.A.C. Order No. 14-01818, p. 4 (Oct. 29, 2019).[2] This conclusion is supported by the statute's plain language. *See Green v. State*, 604 So. 2d 471, 473 (Fla. 1992) ("One of the most fundamental tenets of statutory construction requires that we give statutory language its plain and ordinary meaning, unless the words are defined in the statute or by the clear intent of the legislature. If necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary") (internal citations omitted).

It is notable the statute provides only what misconduct *includes*, not what it *means*. §443.036(29), Fla. Stat. This language is in stark contrast to nearly all the other terms defined in Section 443.036, Florida Statutes. *See, e.g.,* §443.036(1), Fla. Stat. ("'Able to work' means . . ."); §443.036(2), Fla. Stat. ("'Agricultural labor' means . . ."). Because the legislature stopped short of fully defining misconduct in Chapter 443, we conclude the legislature did not intend for Section 443.036(29) to entirely supplant the common definition of misconduct.

As to the common definition, the dictionary defines "misconduct" as "mismanagement," "intentional wrongdoing," or "improper behavior." *See Merriam-Webster Online Dictionary*.[3] Tellingly, these terms all require some bad act, behavior, or omission. Indeed, the requisite level of fault is specified in the statute's individual subparagraphs. That is, subparagraph (a) requires a "conscious disregard" of an employer's interests and "deliberate violation" of the reasonable expectations that it has of its employees; subparagraph (b) requires negligence "to a

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[2] Available at http://www.floridajobs.org/finalorders/raac_finalorders/14-01818.pdf.

[3] Available at https://www.merriam-webster.com/dictionary. (Last accessed Oct. 24, 2019).

degree or occurrence that manifests culpability or wrongful intent"; subparagraph (c) requires a "deliberate violation of a known rule" or at least one unapproved absence following a written warning; and subparagraph (d) requires a "deliberate violation" of a standard or regulation of the state. §443.036(29), Fla. Stat.

While subparagraph (e)1. does not contain an express specific mental state component like the other subparagraphs, it is not a strict liability provision. This is first apparent from the legislature's use of the term "violation." That is, "violation" is defined as "the act of violating." *See Merriam-Webster Online Dictionary*. And "violate" means to "break" or "disregard." *Id.* Synonyms of "violate" include: "breach," "contravene," "infringe," and "transgress." *Id.* "Disregard," in turn, means "to pay no attention to." *Id*. Synonyms of "disregard" include: "despise," "scorn," and "flout." *Id.* Again, all these definitions contemplate some degree of fault or disobedience from the violator. For this reason, the Commission has held that a policy that merely requires the occurrence of an event without regard to any fault on the part of the claimant does not constitute a rule. R.A.A.C. Order No. 14-02200, p. 3 (Oct. 2, 2014).[4]

Recognizing the contrasting language of subparagraph (e)1. as compared to the other subparagraphs, the Commission has held that an employer need not establish an *intentional* or *deliberate* rule violation to meet its prima facie case of misconduct as in the other subparagraphs because the statute contains no such requirement. *See* R.A.A.C. 14-06636, p. 8 (June 1, 2015).[5] Nonetheless, the provision has affirmative defenses, and the Commission has considered, in appropriate circumstances, a claimant's lack of intent in determining the applicability of the provision's "not-fairly-enforced" defense. *Id.*; R.A.A.C. Order No. 15-02076 (Sept. 25, 2015).[6]

1. The Claimant Lacked the Requisite Level of Fault to Support a Conclusion of Misconduct.

On March 16, 2019, the employer discharged the claimant pursuant to its Alcohol and Substance Abuse Policy after the claimant tested positive for marijuana on a random drug test. Under these facts, subparagraphs (a) and (e)1. of Section 443.036(29), Florida Statutes, are relevant to our analysis of whether the claimant committed misconduct connected with work.

[4] Available at http://www.floridajobs.org/finalorders/raac_finalorders/14-02200.pdf.
[5] Available at http://www.floridajobs.org/finalorders/raac_finalorders/14-06636.pdf.
[6] Available at http://www.floridajobs.org/finalorders/raac_finalorders/15-02076.pdf.

The claimant testified that her positive drug test resulted from medical marijuana use. In support of her defense, the claimant provided a copy of her Medical Marijuana Use Registry identification card, showing an expiration date of June 19, 2019, which was entered into the evidentiary record. *See* Fla. Admin. Code R. 64-4.011(1) (providing that all patients are required to have a valid Medical Marijuana Use Registry identification card to obtain marijuana). *See also* Fla. Admin. Code R. 64.4.011(5) (a patient's medical marijuana card "shall expire one (1) year after the date of the physician's order"). We conclude this evidence is sufficient to establish, as a factual matter, that, at the time of the test, the claimant was registered as a "qualifying patient" in the State of Florida to use medical marijuana. *See* §381.986(12)(e)2., Fla. Stat. (providing that proof of a valid Medical Marijuana Use Registry identification card is sufficient to shield an individual from conviction of unlawful possession if the card was valid at the time of the arrest).

The claimant's certification to use medical marijuana, however, did not help her under the employer's policy, as it broadly prohibits medical marijuana use "at any time." Thus, the claimant was in a position where, in order to comply with the employer's policy, she necessarily had to forgo a regimen of healthcare approved and authorized by her physician to treat a "debilitating medical condition." The claimant's being placed between "a rock and a hard place" in this regard underscores that her medical marijuana use, outside the workplace, did not stem from any improper action and negates a conclusion that her use was in "conscious disregard" of the employer's interests and a "deliberate violation" of the reasonable expectations of her, as provided in subparagraph (a).

However, there are several factors, any one of which, if established, could elevate a claimant's culpability under these circumstances to support a conclusion of misconduct. The first factor is whether the employer's rule prohibiting the use of medical marijuana was mandated under state or federal law. *See* R.A.A.C. Order No. 19-01295 (Oct. 4, 2019) (considering whether a claimant, who was also a qualifying patient, was covered under the DOT drug and alcohol testing program, which expressly provides that medical marijuana under a state law is not a valid medical explanation for a transportation employee's positive drug test result). In the absence of a governmental mandate, another factor to be considered is whether the claimant was otherwise performing or expected to perform job duties that were considered safety-sensitive or among a special risk category. Courts have recognized that the heightened need for drug-free personnel in these positions justifies the imposition of suspicion-less drug-testing notwithstanding Fourth Amendment rights.

Skinner v. Railway Labor Executives' Assn., 489 U.S. 602 (1989); *Treasury Employees v. Von Raab,* 489 U.S. 656 (1989); *Friedenberg v. Sch. Bd. Of Palm Beach Cty*., 911 F.3d 1084 (11th Cir. 2018). A third factor is whether the claimant showed any signs of impairment or drug use at work or other circumstances giving rise to reasonable suspicion of impairment or drug use at work.

None of these factors was established in this case. As to the first factor, there is no governmental mandate prohibiting medical marijuana use by an employee in the claimant's position as a customer service representative working for this type of employer, nor does the employer allege one exists. Moreover, in the capacity of a customer service representative, the claimant did not, and was not expected to, perform safety-sensitive or high-risk functions. Instead, her job duties entailed answering incoming calls and making outgoing calls to, among other things, assist customers with opening new accounts. While the employer can indeed reasonably expect the claimant to be alert and responsive in performing these duties, the employer did not allege the claimant ever showed any signs of impairment at work nor was the drug test based on reasonable suspicion. And the claimant's positive drug test alone does not establish impairment at work. *See* R.A.A.C. Order No. 16-02324, p. 5-6 (Dec. 30, 2016) (explaining positive test results for marijuana can occur for several days after usage).[7]

With respect to subparagraph (e)1., a strong argument can be made that the claimant's valid use of medical marijuana did not constitute a legally cognizable "violation" of the employer's policy as that term is contemplated under subparagraph (e)1.[8] We need not address that issue, however, because we conclude under these facts that the claimant negated any showing of a rule violation by establishing an affirmative defense under the statute.

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[7] Available at https://www.floridajobs.org/finalorders/raac_finalorders/16-02324.pdf.

[8] At the hearing, the claimant testified that she was unaware of the employer's rule prohibiting medical marijuana. Regarding this testimony, we acknowledge that generally an employee's failure to familiarize herself with an employer's rule does not preclude misconduct under subparagraph (e)1. unless the employee can show that she could not reasonably have known of the rule's requirements. *See Critical Intervention Srvcs. v. Reemployment Assistance Appeals Commission*, 106 So. 3d 63 (Fla. 1st DCA 2013) (citing predecessor of current §443.036(29)(e)1.b.). The claimant did not establish this defense below, nor does our decision turn on it. The claimant acknowledged that had she been aware of the rule, she would have placed her job before her health. The issue in this case is ultimately whether the law of misconduct requires her to make this choice under the facts of this case.

2. The Claimant Established the "Not Fairly Enforced" Defense to Disqualification.

As noted, the Commission has previously held that considerations of a claimant's diminished level of culpability, such as a negligent or inadvertent rule violation, are appropriate in analyzing whether the not-fairly-enforced defense is applicable. In inadvertent rule violation cases, the Commission has weighed the claimant's degree of fault in the circumstances of the violation against the nature and purpose of the employer's rule and the employer's interests in enforcing the rule. *See* R.A.A.C. 16-03433, p. 8 (Aug. 24, 2017) (and cases cited therein).[9] Among the factors we have considered in this analysis is whether the employer's rule was mandated by federal or state law, which we have held elevates the rule's significance. *See* R.A.A.C. Order No. 13-04567 (Aug. 7, 2013) (rejecting a claimant's unfair enforcement defense under subparagraph (e)1. where the claimant placed himself in grave danger and, in doing so, violated the employer's safety rule that was mandated by OSHA).[10] *Compare with* R.A.A.C. Order No. 15-02076, *supra* (a claimant's showing that he inadvertently submitted a credit application for a customer who changed her mind after initially authorizing a credit application established the not-fairly-enforced defense). Moreover, in another context, we have considered mitigating circumstances for a violation of a rule. *See* R.A.A.C. Order No. 13-05983 (Dec. 2, 2013) (the claimant's showing that her actions were in response to provocation established the not-fairly-enforced defense).[11]

Here, the employer's ban of off-duty medical marijuana use by employees working in an office position capacity, such as the claimant, was not governmentally mandated, and the record is devoid of any evidence that the claimant was ever expected to perform a job duty that could be characterized as safety-sensitive or high-risk. *Compare with* R.A.A.C. Order No. 13-04567 at p. 3 ("[b]ecause this energy control procedure is mandatory, because the employer is subject to OSHA sanctions if it is not adopted and enforced, and, most importantly, because it is designed to save the life and limbs of employees and avoid the accompanying losses to the employer, the Commission gives a high degree of deference to the employer's enforcement of this rule"). On the other hand, as established in the previous subsection of this order, the claimant lacked any culpability whatsoever, where she was using medical marijuana during off-duty hours to treat a debilitating medical illness per her doctor's certification, and the employer has not asserted any allegation that she was using or impaired on duty.

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[9] Available at http://www.floridajobs.org/finalorders/raac_finalorders/16-03433.pdf.
[10] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-04567.pdf.
[11] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-05983.pdf.

Weighing these factors, we find that disqualification of the claimant, under the circumstances of this case, amounts to unfair enforcement of the employer's policy. To be sure, as we have previously explained, this ruling does not mean that the Commission has concluded the employer acted unfairly by *discharging* the claimant, which it may have felt was necessary in this situation and, indeed, was wholly permissible under Section 381.986, Florida Statutes. *See* R.A.A.C. Order No. 13-05983 at p. 4.[12] Instead, we hold that *disqualification* from receipt of benefits constitutes unfair enforcement of the employer's policy under subparagraph (e)1. *Accord Powell v. Unemployment Appeals Commission*, 886 So. 2d 420 (Fla. 1st DCA 2004) (whether the employer is justified in discharging the claimant and whether the claimant's discharge is for misconduct sufficient to deny benefits are distinct matters).

[12] The Commission has no jurisdiction over the issue of whether discharges are for just cause, as opposed to determining whether disqualifying misconduct exists, and thus we refrain from rendering legal opinions as to the former issue.

IV.
Conclusion

The employer did not meet its burden to establish the claimant's discharge was for misconduct connected with work. Consequently, the referee's decision disqualifying the claimant from reemployment assistance benefits is reversed. If otherwise eligible, the claimant is entitled to benefits.[13]

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Thomas D. Epsky, Member
Joseph D. Finnegan, Member

This is to certify that on 11/4/2019, the above order was filed in the office of the Clerk of the Reemployment Assistance Appeals Commission, and a copy mailed to the last known address of each interested party.
By: Benjamin Bonnell
Deputy Clerk

[13] Had we affirmed the disqualification in this case, a colorable constitutional issue would arise as to whether the disqualification penalty in Section 443.101(1)(a), Florida Statutes, can be applied to a "qualifying patient." That issue lies in Article X, §29(a)(1), Fla. Const., which provides immunity to a qualifying patient from "civil liability or *sanctions* under Florida law." (Emphasis added). Precedent exists suggesting that denial of benefits constitutes a "sanction" within the meaning of the law. *See Braska v. Challenge Mfg. Co.*, 861 N.W. 2d 289 (Mich. Ct. App. 2014) (holding the denial of benefits constitutes a "penalty" under the immunity provision of Michigan's medical marijuana law). *See generally Alabama v. North Carolina,* 560 U.S. 330, 340-41 (2010) (discussing the common meaning of "sanction"' and noting that it could mean a range of things, including the withholding of benefits). Even if this issue were ripe for consideration, the Commission lacks authority to consider it. *Fla. Dep't of Bus. Reg. v. Ruff*, 592 So. 2d 668 (Fla. 1992).

DEPARTMENT OF ECONOMIC OPPORTUNITY
REEMPLOYMENT ASSISTANCE PROGRAM
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Docket No.0035 5660 40-04 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellee ***EMPLOYER/Appellant***

APPEARANCES:

Claimant

Employer

DECISION OF APPEALS REFEREE

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved: SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

c

Findings of Fact: The claimant worked for the employer, a recycling company, from December 11, 2017, until March 6, 2019, as a customer service representative. The employer has an established drug and alcohol policy, which the claimant received at the time of hire, which specifically prohibits the use of medical marijuana. The claimant began taking medical marijuana in June 2018. She was given a random drug test on March 6, 2019. After the test, the claimant informed her safety manager that she was taking medical marijuana and had a medical marijuana card. The claimant was discharged for violating the employer's zero tolerance drug policy.

Conclusions of Law: Under Florida's Reemployment Assistance law, misconduct connected with work, irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, wilful damage to an employer's property that results in damage of more than $50; theft of employer property or property of a customer or invitee of the employer.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:

a. He or she did not know, and could not reasonably know, of the rule's requirements;

b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The record reflects the claimant is discharged. The burden of proving misconduct is on the employer. Lewis v. Unemployment Appeals Commission, 498 So.2d 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of

competent substantial evidence. De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 483 So.2d 413 (Fla. 1986). It was shown the claimant was discharged for violating the employer's zero tolerance drug policy. The testimony on record reveals the claimant was aware of the employer's policy. Consideration has been given to the claimant's argument that her use of marijuana was for medical use. However, the employer's policy specifically addresses the us of marijuana for medical use and prohibits it. Further, no law has been enacted which holds employees not disqualified for violating the employer's drug free policy when the use is for prescribed medical purposes. Therefore, the claimant was discharged for misconduct under subparagraph (e) and is disqualified for reemployment assistance benefits.

Decision: The determination dated April 4, 2019, is REVERSED. The claimant is disqualified from March 3, 2019, plus five weeks and until she earns $4675.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the department and set forth in a separate overpayment determination, unless specified in this decision. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on May 14, 2019.

D. PARKER
Appeals Referee

By: Antonia L Spivey

ANTONIA SPIVEY (WATSON), Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.004, filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Department and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at connect.myflorida.com or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); **https://raaciap.floridajobs.org.** If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and the last five digits of the claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la distribución/fecha de envìo marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.004, el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante rembolsar esos beneficios. La cantidad específica de cualquier sobrepago [pago excesivo de beneficios] será calculada por la Agencia y establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden.

Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); **https://raaciap.floridajobs.org**. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [*docket number*] y los últimos cinco dígitos del número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitif sòf si ou depoze yon apèl nan yon delè 20 jou apre dat distribisyon/postaj. Si 20yèm jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.004, depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Faks: 850-488-2123); https://raaciap.floridajobs.org. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesaje lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.
