STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-06541

vs.

Referee Decision No. 13-47410U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of an appeal of the decision of a reemployment assistance appeals referee pursuant to Section 443.151(4)(c), Florida Statutes. The referee's decision stated that a request for review should specify any and all allegations of error with respect to the referee's decision, and that allegations of error not specifically set forth in the request for review may be considered waived.

Upon appeal of an examiner's determination, a referee schedules a hearing. Parties are advised prior to the hearing that the hearing is their only opportunity to present all of their evidence in support of their case. The appeals referee has responsibility to develop the hearing record, weigh the evidence, resolve conflicts in the evidence, and render a decision supported by competent and substantial evidence. Section 443.151(4)(b)5., Florida Statutes, provides that any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding Section 120.57(1)(c), Florida Statutes, hearsay evidence may support a finding of fact if the party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing and the appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record. A decision of an appeals referee cannot be overturned by the Commission if the referee's material findings are supported by competent and substantial evidence and the decision comports with the legal standards established by the Florida Legislature. The Commission cannot reweigh the evidence or consider additional evidence that a party could have reasonably been expected to present to the referee during the hearing. Additionally, it is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. Absent extraordinary circumstances, the Commission cannot substitute its judgment and overturn a referee's conflict resolution.

Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes no legal basis exists to reopen or supplement the record by the acceptance of any additional evidence sent to the Commission or to remand the case for further proceedings.

The referee made the following findings of fact:

> The claimant worked as a firefighter for a city municipality from January 31, 2005 through April 18, 2013. The claimant filed a lawsuit against her employer and a trial proceeded during the months of February [2012], and March [2012]. During the trial, on February 22, [2012], the claimant contacted a co-worker, a firefighter, and told him that a lieutenant who was to testify during the trial better "say the right thing while he's on the stand or else things will come to light about inappropriate advances or sexual advances." The firefighter reported the claimant's remarks to a supervisor, the head fire chief. The firefighter was called to the witness stand during the trial and testified regarding the conversation he had with the claimant regarding the lieutenant and inappropriate sexual advances. On April 10, 2013, the employer notified the claimant of its intention of termination. On April 17, a predetermination hearing was held for the claimant to state her case to maintain her employment. On April 18, the employer emailed and sent by postal mail a written decision to terminate the claimant's employment. The decision to terminate the claimant's employment was made by the head fire chief and the employee relations director.

As noted above, the referee's finding that the trial occurred in February and March 2013 is corrected to reflect the trial occurred in February and March 2012. Modification of the above findings, however, does not affect the legal correctness of the referee's ultimate decision.

On appeal to the Commission, the claimant argues that she was discharged from her position in retaliation for filing a sexual harassment lawsuit against her former employer. By contrast, the referee concluded the claimant was discharged from her employment for threatening to bring further allegations against the employer or its witnesses if the employer's witnesses did not testify during her civil trial in a way that was favorable to the claimant. Effectively, the referee concluded the claimant was discharged for witness tampering during the pendency of her civil proceeding. Consequently, an evaluation of this case requires a three-step analysis: first, whether the employer established the claimant engaged in witness tampering; second, whether the alleged witness tampering, rather than claimant's filing a lawsuit, was the cause of her termination; and finally, whether the claimant's alleged witness tampering, if it was the cause of her termination, constitutes misconduct as the term is defined in section 443.036(30), Florida Statutes.

Before examining whether there was competent, substantial evidence supporting the referee's findings, the Commission must consider the argument raised by the employer below, which was not addressed by the referee, that the claimant was barred from arguing that she did not engage in witness tampering during the course of her civil trial. Whether the claimant engaged in witness tampering was fully addressed by United States District Judge Marcia G. Cooke, of the Southern District of Florida, in that court's March 26, 2013 "Omnibus Order Regarding Defendant's Post-Trial Motions," which was entered as an exhibit during the reemployment assistance appeals hearing. *See Smart v. City of Miami Beach, Florida*, 933 F. Supp. 2d 1366 (S.D. Fla. 2013) (published version).

After adducing evidence regarding the issue of witness tampering the District Court held "[t]he evidence overwhelmingly demonstrates that [the claimant] and her mother attempted to prevent and/or alter the testimony of two witnesses: [the firefighter] and [the lieutenant]." *Id*. at 1380. The court found as follows:

> The record reveals that [the claimant] attempted to intimidate [the lieutenant] into testifying favorably for her by threatening, through [the firefighter], to testify that [the lieutenant] made inappropriate sexual advances toward her and that he had "come on to her." Also, [the claimant] tampered with [the firefighter] directly. Once [the claimant] learned that [the firefighter] was going to be called to testify regarding the threats made to [the

> lieutenant], via [the firefighter], [the claimant] tried to telephone [the firefighter] herself during a brief recess in the trial proceedings. When the break in trial concluded without having reached [the firefighter], [the claimant] engaged [her mother] to place the call to [the firefighter]. [The claimant's mother] began calling [the firefighter] only 11 minutes after the [claimant] unsuccessfully tried to reach him.

Id. The court went on to make several findings regarding the conduct of the claimant's mother, most importantly noting that the claimant's mother informed the firefighter that the claimant asked her to contact him. The court held that the "facts clearly demonstrate that [the claimant] and [her mother], in bad faith, sought to disrupt and undermine the proceedings by manipulating [the firefighter] into failing to appear for trial and to have [the firefighter] coerce [the lieutenant] into testifying favorably for the plaintiff." *Id*. at 1381.

The claimant's counsel relied upon several cases to support his argument that the claimant could not be collaterally estopped from arguing during her reemployment assistance appeals hearing that she did not engage in witness tampering during her civil trial against the employer. All of the decisions cited within the brief supplied to the referee by the claimant's counsel pertain to the application of the doctrine of collateral estoppel in proceedings held by differing administrative agencies. *See Glidden v. Florida Unemployment Appeals Commission*, 917 So. 2d 1035 (Fla. 1st DCA 2006) (estoppel by judgment is inapplicable when the originating proceeding is before the Public Employee Relations Commission and the subsequent proceeding is before an unemployment appeals referee); *Newberry v. Florida Dept. of Law Enforcement*, 585 So. 2d 500 (Fla. 3d DCA 1991) (collateral estoppel is inapplicable when the originating proceeding is before a hearing office appointed by a school board and the subsequent proceeding is before the Criminal Justice Standards and Training Commission); *Walley v. Florida Game & Fresh Water Fish Commission*, 501 So. 2d 671 (Fla. 1st DCA 1987) (collateral estoppel is inapplicable when the originating proceeding is before the Criminal Justice Standards and Training Commission and the subsequent proceeding is before the Career Service Commission); *Florida Dept. of Health & Rehabilitative Serv. v. Vernon*, 379 So. 2d 683 (Fla. 2d DCA 1980) (collateral estoppel is inapplicable when the originating proceeding is before the Unemployment Appeals Commission and the subsequent proceeding is before the Career Service Commission). The Commission notes that the doctrine of collateral estoppel is not typically applied in Florida when two governmental agencies resolve the same set of facts for different administrative purposes. Because this case involves the application of *judicial* collateral estoppel, rather than *administrative* collateral

estoppel, the authorities cited by the claimant's counsel are inapplicable. Furthermore, the factual issue at stake, whether the claimant tampered with witnesses, is identical in both cases. Therefore, the Commission finds the arguments supplied by the employer in support of the application of collateral estoppel to be more persuasive in this case.

"Because the first judgment was rendered by a federal court, federal principles of collateral estoppel apply." *Amador v. Florida Board of Regents*, 830 So. 2d 120, 122 (Fla. 3d DCA 2002) (citing *Hochstadt v. Orange Broadcast*, 588 So. 2d 51, 52 (Fla. 3d DCA 1991)). As explained within *Mobley v. BP Oil Co.*, 630 So. 2d 207 (Fla. 3d DCA 1993):

> 1) the issue at stake is identical to the one involved in the prior litigation; 2) the issue has been actually litigated in the prior suit; 3) the determination of the issue in the prior litigation was a critical and necessary part of the judgment in the action;[1] and, 4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue in the early proceeding.

630 So. 2d at 209. In *R.D.J. Enterprises, Inc. v. Mega Bank*, 600 So. 2d 1229 (Fla. 3d DCA 1992) the court further explained:

> Any right, fact or matter in issue and directly adjudicated, where necessarily involved in the determination of an action before a competent court in which a judgment or decree has been rendered upon the merits is conclusively settled by the judgment therein and cannot again be litigated by the same parties and their privies, whether the claim, demand, purpose or subject matter of the two suits is the same or not.

600 So. 2d at 1232. While the claimant is correct that the federal district court order did not consider the issue of misconduct as defined in the reemployment assistance law, the factual findings of the federal court regarding the claimant's witness tampering are binding.

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[1] The fact that the motion for a new trial was granted as a contingency, in case the Judge's order granting judgment as a matter of law was vacated or reversed, does not diminish the legal weight of the portion of the order which grants a new trial based upon the claimant's witness tampering. Federal Rule of Civil Procedure 50(c) requires the trial court, where a party makes a post-trial motion for judgment as a matter of law and a contingent motion for new trial, to rule on the contingent motion in the interest of judicial economy. Thus, there is no question that the ruling on the contingent motion for new trial was a "critical and necessary" part of the trial court's order.

The referee did not address the collateral estoppel argument. Instead, the referee independently made factual findings, based on the same testimony offered at trial, and likewise concluded that claimant engaged in witness tampering. We conclude, as did District Judge Cooke, that the record contains ample competent, substantial evidence to support the finding that the claimant attempted to influence the testimony of the employer's employees during a trial in which the employer was the defendant.

The claimant contended during closing argument at the appeal hearing, and contends in her appeal to the Commission, that the employer fired her for the protected activity of filing a lawsuit rather than witness tampering. The evidence she offers to support this assertion, other than the mere fact that she was terminated after filing a lawsuit and testifying at trial, was that she was not terminated until over a year after her trial, and that she received positive performance evaluations in the interim. Although the referee did not explicitly address this argument, the referee's conclusion that she was terminated for misconduct necessarily rejects this contention. Because the issue of causation was properly submitted to the referee, and competent, substantial evidence supports the referee's findings, the Commission may only reverse if the referee's decision is not "in accord with the essential requirements of the law." Fla. Admin. Code. R. 73B-22.002(3).

Our review shows that the referee's decision was consistent with relevant precedent under Title VII. Where parties have taken actions protected under Title VII, but have also engaged in clearly unprotected conduct in conjunction with the protected activities, courts have routinely rejected claims of retaliation. In some instances, courts have held that supporting protected activities by engaging in unprotected activities removes the employee from the protection of Title VII's anti-retaliation provision: "under some circumstances, an employee's conduct in gathering or attempting to gather evidence to support his charge may be so excessive and so deliberately calculated to inflict needless economic hardship on the employer that the employee loses the protection of [42 U.S.C. §2000e-3(a)], just as other legitimate civil rights activities lose the protection of [42 U.S.C. §2000e-3(a)] when they progress to deliberate and unlawful conduct against the employer." *Hochstadt v. Worcester Foundation for Experimental Biology*, 545 F.2d 222, 231-32 (1st Cir. 1976) (citing *EEOC v. Kallir, Philips, Ross, Inc.*, 401 F. Supp. 66 (S.D.N.Y. 1975)).

More commonly, courts allow the trier of fact to determine whether the unprotected conduct, rather than the protected conduct, motivated the employer's action. *Whatley v. Metropolitan Atlanta Rapid Transit Authority*, 632 F.2d 1325, 1328-29 (5th Cir. 1980). In such cases, where the employer has presented evidence that it discharged the employee for misconduct, rather than for protected activity, the employee must offer probative evidence of pretext to avoid judgment as a matter of law.

The claimant did not introduce sufficiently probative evidence to establish that the employer's act of discharging the claimant was on account of her having opposed, complained of, or sought remedies for, unlawful workplace discrimination. *See* 42 U.S.C. §2000e-3. It is clear that the claimant engaged in a protected activity, the filing of a lawsuit, and that she suffered an adverse job action, her discharge. The record, however, lacks proof that there was a causal connection between the two events. *See Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001). "Recently the Supreme Court announced that Title VII retaliation claims require proof that the desire to retaliate was the 'but-for' cause of the challenged employment action." *Fuller v. Edward B. Stimson Co., Inc.*, 971 F. Supp. 2d 1146 (S.D. Fla. 2013) (citing *University of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517 (2013)).

In this case, the claimant did not offer sufficient evidence of pretext to support a finding in its favor, much less to compel the referee to reject the employer's stated grounds. The filing of a civil rights lawsuit, or initiation of the preliminary steps of such an action, does not insulate an employee from the logical repercussions of inappropriate conduct at the workplace, towards their employer or towards their co-workers. No reasonable inference can be made that the claimant's engagement in a protected activity was the "but-for" causation of her termination. To the contrary, the record indicates that but-for the claimant's witness tampering the employer would have retained her services. The fact that the employer waited until the District Court rendered a decision on the claimant's actions during the trial before taking an adverse job action does not show pretext. Similarly, the fact that the employer evaluated the claimant's job performance during that time *solely* on her job performance, without penalizing her for the witness tampering the employer believed she engaged in, only demonstrates prudence on the part of the employer, rather than malice. This evidence supports, rather than undermines, the employer's contentions, because if the employer had wanted to retaliate against the claimant for filing a lawsuit and testifying in it, the employer did not need to wait over a year

after the trial to do so. With the issue of whether the claimant engaged in witness tampering properly submitted to the trial judge, the employer was entirely reasonable in waiting until the District Court had rendered a decision before determining whether claimant had engaged in misconduct during the trial and taking disciplinary action accordingly.

The Eighth Circuit Court of Appeals addressed a similar scenario in *Brown v. City of Jacksonville*, 711 F.3d 883 (8th Cir. 2013). The employer in that case discharged the plaintiff after she engaged in a protected activity, the filing of a complaint with the Equal Employment Opportunity Commission. The court found that the plaintiff inappropriately pressured two employees to provide confidential information about the investigation. 711 F.3d at 893-94. The court affirmed summary judgment in the employer's favor on the claimant's retaliation claim noting:

> Title VII is a shield to protect employees from retaliation for exercising their right to challenge discriminatory treatment by filing EEOC complaints and charges. It is not a cudgel to be wielded by underperforming and unprofessional employees to prevent justified, non-discriminatory employment termination.

Id. Ultimately, the referee's decision reflects he too did not believe the claimant was discharged for engaging in a protected activity.

Finally, the Commission addresses the issue of whether the claimant's witness tampering constitutes misconduct under the reemployment assistance law. The referee correctly determined that the claimant's conduct constituted misconduct within the meaning of subparagraph (a) of the statutory definition of misconduct, as conduct "demonstrating conscious disregard of an employer's interest" and as a "deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee." The Commission notes that while the claimant's actions during the federal civil trial were not actions "at the workplace or during work hours," the 2011 version of the reemployment assistance law, applicable to this case, does not require misconduct to occur on the job.

The Commission notes that the claimant had representation during the appeals hearing. Section 443.041(2)(a), Florida Statutes, provides that a representative for any individual claiming benefits in any proceeding before the Department of Economic Opportunity shall not receive a fee for such services unless the amount of the fee is approved by the Department. The issue of whether the claimant's representative was charging the claimant a fee for his representation

during the appeals hearing was not addressed by the appeals referee. Therefore, the claimant's representative is not entitled to any fees for his representation of the claimant before the Office of Appeals until such time as he requests such a fee from the appeals referee and said fee request is approved by the appeals referee.

The referee's decision is affirmed. The claimant is disqualified from receipt of benefits. The claimant has been overpaid $550 in benefits.

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

12/23/2013 ,

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: Kady Thomas
Deputy Clerk

DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
MSC 344 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

IMPORTANT:	For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
IMPORTANTE:	Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
ENPÒTAN:	Pou yon intèpret asisté ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tàn, paské tàn limité pou ou ranpli apèl la.

Docket No. **2013-47410U** Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant **EMPLOYER/Appellee**

APPEARANCES: CLAIMANT & EMPLOYER LOCAL OFFICE #: 3677-0

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); 443.036(30), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

OVERPAYMENT: Whether the claimant received benefits to which the claimant was not entitled, and if so, whether those benefits are subject to being recovered or recouped by the Department, pursuant to Section 443.151(6); 443.071(7),443.1115; 443.1117, Florida Statutes and 20 CFR 615.8.

Findings of Facts: The claimant worked as a firefighter for a city municipality from January 31, 2005, through April 18, 2013. The claimant filed a lawsuit against her employer and a trial proceeded during the months of February 2013, and March 2013. During the trial, on February 22, 2013, the claimant contacted a co-worker, a firefighter, and told him that a lieutenant who was to testify during the trial better "say the right thing while he's on the stand or else things will come to light about inappropriate advances or sexual advances." The firefighter reported the claimant's remarks to his supervisor, the head fire chief. The firefighter was called to the witness stand during the trial and testified regarding the conversation he had with the claimant regarding the lieutenant and inappropriate sexual advances. On April 10, 2013, the employer notified the claimant of its intention of termination. On April 17, 2013, a predetermination hearing was held for the claimant to state her case to maintain her employment. On April 18, the employer emailed and sent by postal mail a written decision to terminate the claimant's employment. The decision to terminate the claimant's employment was made by the head fire chief and the employee relations director.

The claimant's weekly benefit amount was established as $275. The claimant received benefits totaling $550 for the weeks ending May 4, 2013, through May 11, 2013.

Conclusion of Law: As of June 27, 2011, the Reemployment Assistance Law of Florida defines misconduct connected with work as, 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.

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

1. He or she did not know, and could not reasonably know, of the rules requirements;
2. The rule is not lawful or not reasonably related to the job environment and performance; or
3. The rule is not fairly or consistently enforced.

The record reflects that the claimant was terminated. The record shows the employer's witness, the firefighter the claimant spoke on the phone on February 22, 2012, did not attend the hearing. The employer was unable to provide first-hand testimony regarding the conversation between the claimant and the witness. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

1. The party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing; and
2. The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and

probative and that the interests of justice are best served by its admission into evidence.

While the witness did not attend the hearing, the employer submitted a series of documents for the hearing. The record shows these documents are transcripts of the witness's testimony regarding his conversation with the claimant on February 22, 2012, in the court proceeding in which occurred between February and March of 2012. The record shows the claimant received the documents prior to the hearing. The referee finds the documents to be trustworthy and probative. Accordingly, the employer's hearsay evidence is able to support a finding of fact.

The employer was able to provide competent, substantial evidence that the claimant told a firefighter, who she knew was friends with a witness who was going to testify the following day, that the witness better "say the right thing while he's on the stand or else things will come to light about inappropriate advances or sexual advances." At that point, the employer established prima facie evidence of misconduct. When an employer establishes prima facie evidence of misconduct, the burden shifts to the employee to come forward with proof of the propriety of that conduct. *Alterman Transport Lines, Inc. v. Unemployment Appeals Commission*, 410 So.2d 568 (Fla. 1st DCA 1982). The burden of proof in an employee discharge matter is initially upon the employer to prove misconduct. See *Donnell v. University Community Hosp.*, 705 So. 2d 1031 (Fla. 2d DCA 1998). When the employer meets that initial burden, the employee is required to demonstrate the propriety of his/her actions. See *Sheriff of Monroe County v. Unemployment Appeals Commission*, 490 So. 2d 961 (Fla. 3d DCA 1986). When questioned in the hearing, the claimant denied making those statements. The courts have held that direct evidence of intent is rare and must be proven through the surrounding circumstances. When considering the circumstances of the instant case, the referee can reasonably infer the claimant intentionally threatened to bring charges against the employer if the employer's witness did not testify in a way that

was favorable to the claimant. The claimant's actions constitute a conscious violation of the employer's interests and a deliberate violation of the standards of behavior the employer has the right to expect of an employee.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The Reemployment Assistance Appeals Commission set forth factors to be considered in resolving credibility questions. These include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the employer to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments. Since the claimant is held disqualified during weeks when benefits were received, the claimant is overpaid.

Decision: The determination dated May 22, 2013, is AFFIRMED. The claimant is disqualified for the receipt of benefits from April 14, 2013, through April 13, 2020, and until she earns $4,675. The claimant is overpaid.

Decision: The determination dated May 22, 2013, is AFFIRMED.

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 mailed to the last known address of each interested party on July 9, 2013.

MATTHEW YAGER
Appeals Referee

By: Robyn L Deak
ROBYN L. DEAK, 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 mailing 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 below 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 https://iap.floridajobs.org/ or by writing to the address at the top of this decision. The date the confirmation number is generated will be the filing date of a request for reopening on the Appeals 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 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.

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 fecha 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 https://iap.floridajobs.org/ o escribiendo a la dirección en la parte superior de esta decisión. La fecha en que se genera el número de confirmación será la fecha de registro de una solicitud de reapertura realizada en el Sitio Web de la Oficina de Apelaciones.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Desempleo; 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 el 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.

ENPÒTAN – DWA DAPÈL: Desizyon sa a ap definitif sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20^{yèm} 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, https://iap.floridajobs.org/ oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat yo pwodui nimewo konfimasyon an se va dat yo prezante demann nan pou reouvri kòz la sou Sitwèb Apèl la.

Yon pati ki te asiste seyans la epi ki pat satisfè desizyon yo te pran an gen dwa mande yon revizyon nan men Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); **https://raaciap.floridajobs.org/.** Si ou voye l pa lapòs, dat ki sou tenb la ap dat ou depoze apèl la. Si ou depoze apèl la sou yon sitwèb, ou fakse li, bay li men nan lamen, oswa voye li pa yon sèvis mesajri ki pa Sèvis Lapòs Lèzetazini (*United States Postal Service*), oswa voye li pa Entènèt, dat ki sou resi a se va dat depo a. Pou evite reta, mete nimewo rejis la (*docket number*) avèk nimewo sekirite sosyal moun k ap fè demann lan. Yon pati k ap mande revizyon dwe presize nenpòt ki alegasyon erè nan kad desizyon abit la, epi bay baz reyèl oubyen legal pou apiye alegasyon sa yo. Yo p ap pran an konsiderasyon alegasyon erè ki pa byen presize nan demann pou revizyon an.