

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-08356

vs.

Referee Decision No. 13-75887U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Pursuant to the appeal filed in this case, the Reemployment Assistance Appeals Commission has conducted a complete review of the evidentiary hearing record and decision of the appeals referee. *See* §443.151(4)(c), Fla. Stat. By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record.

On appeal to the Commission, the appellant alleges that the referee ignored the appellant's evidence and arguments in favor of the testimony and other evidence of the appellee. It is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. The Commission cannot substitute its judgment for that of the referee in matters of conflict resolution. Accordingly, the referee's findings are sustained.

Although the claimant may have quit for personally compelling reasons, benefits cannot be paid on that basis. Section 443.101(1)(a), Florida Statutes, denies payment of benefits to persons who voluntarily leave a job, unless the leaving was for good cause *attributable to the employer*; due to *the claimant's* personal illness or disability that required separation; or to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. Inasmuch as these conditions were not met, the Commission has no authority to grant benefits in this case.

The referee's finding the claimant was argumentative with her supervisor each time the supervisor tried to speak with her about work is unsupported by any record evidence. The employer's believed evidence reflects only that the claimant was unwilling to accept instruction or training from co-workers. The record is devoid of any evidence she was argumentative with her supervisor; consequently, the referenced finding is rejected. Rejection of the finding, however, does not affect the legal correctness of the referee's ultimate decision.

The determination under review in this case held the claimant disqualified from receipt of benefits from June 3, 2012, based on her separation from employment and that she was overpaid benefits in the amount of \$1,064 as a result of the disqualification. Department of Economic Opportunity records reflect this overpayment amount is for benefits paid for the weeks ending June 15, 2013, through August 3, 2013. A separate determination under review in Referee Decision No. 2013-75886U/R.A.A.C. Order No. 13-08355 held the claimant overpaid \$4,278. DEO records reflect the overpayment addressed in that case relates to benefits paid for the weeks ending June 16, 2012, through February 16, 2013. To the extent the overpayment of benefits for the weeks ending June 16, 2012, through February 16, 2013, is addressed separately in Referee Decision No. 2013-75886U/R.A.A.C. Order No. 13-08355, the referee's findings of fact relating to benefit payments for those weeks are rejected as inapplicable to the determination under review in this case. Moreover, the referee's holding in the decision that the claimant was overpaid \$4,394 is corrected to reflect the claimant was overpaid *\$1,064 in regular benefits for the week ending June 15, 2013, through August 3, 2013.* The overpayment of benefits for the weeks ending June 16, 2012 through February 16, 2013, is addressed separately in R.A.A.C. Order No. 13-08355.

The Commission notes that there was an inordinate delay before a determination was issued by the Department concerning the claimant's separation from this employer and believes that a brief commentary is appropriate. Departmental records reflect that the claimant filed a claim for benefits effective June 3, 2012. Both the claimant and this employer provided separation information at that time, but it was not acted upon and the claimant subsequently filed a new claim for benefits effective June 3, 2013. At that time, it was determined that no determination had been issued concerning the claimant's separation and so, one was issued on August 12, 2013. That determination held the claimant was disqualified because she left her employment without good cause attributable to the employer and noncharged the employer's account. The claimant appealed that determination and after hearing, the referee affirmed the determination. The claimant appealed the referee's decision and the Commission, by this order, affirms the referee's decision.

Section 443.151(1)(3)(e), Florida Statutes, provides in pertinent part that the Department of Economic Opportunity may reconsider a determination if it finds an error or if new evidence or information pertinent to the determination is discovered after a prior determination or redetermination, provided that a redetermination may not be made more than one year after the last day of the benefit year. In this case, it is obvious that, de facto, a silent determination was made at the beginning of the claimant's 2012 claim to hold the claimant qualified for receipt of benefits. The claimant's benefit year ended on June 2, 2013. Therefore, the Department's action to issue a determination (or redetermination) on August 12, 2013, was taken within the time allowed by law.

The Commission's review of the record and the Department's record reveals the delay in adjudication was caused, in all probability, by the similarity in the names of the two employers that employed the claimant just before her separation in June 2012 One person returned both employers' responses to the notices of claim filed to the Department simultaneously. One form noted the transfer, the other that the claimant quit.

The Commission finds the delay in the issuance of the separation determination until August 12, 2013, both unfortunate and regrettable, but it is constrained by the plain wording of the statute regarding the power given by the Legislature to the Department to adjudicate necessary issues within a certain time frame. Presumably the legislature gave this power to the Department because it realized that given the extreme volume of claims that come before the Department for processing during the course of any given year, mistakes will be made, and will have to be corrected.

A decision of an appeals referee cannot be overturned by the Commission if the referee's material findings are supported by competent, substantial evidence and the decision comports with the legal standards established by the Florida Legislature. Upon review, the Commission concludes that the record adequately supports the referee's material findings. Moreover, the referee's conclusion is a correct application of the pertinent laws to the material facts of the case.

The referee's decision is affirmed. The claimant is disqualified from receipt of benefits. The claimant has been overpaid \$1,064 in benefits for the week ending June 15, 2013 through August 3, 2013. The employer's account is relieved of charges in connection with this claim.

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

2/20/2014 ,

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: Kimberley Pena
Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
MSC 350WD 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 asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limité pou ou ranpli apèl la.

Docket No. **2013-75887U**

Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3661-0

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.

CHARGES TO EMPLOYMENT RECORD: Whether benefit payments made to the claimant shall be charged to the employment record of the employer, pursuant to Sections 443.101(9); 443.131(3)(a), Florida Statutes; Rules 73B-10.026, 11.018, Florida Administrative Code. (If employer charges are not at issue on the current claim, the hearing may determine charges on a subsequent claim.)

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 Fact: On March 28, 2012, the claimant was hired to work for as a part-time receptionist. The claimant worked for the owner at a different jobsite for a few years prior to 2012. The other jobsite was a different business and under a different employer identification number. The employer had new programs and the claimant did not know how to use the programs. The employees tried to give the claimant instructions and the claimant told them, "I know, I know, don't show me, I can do this." The claimant was argumentative with the supervisor each time the supervisor tried to speak with the claimant about work.

In May 2012, the supervisor asked the claimant if she had been in the petty cash drawer. The claimant told the supervisor, "Yes, I had to give change for a \$20." The supervisor told the claimant that \$10 was missing from petty cash and since she was the only one in the petty cash drawer, she was responsible for the \$10." The claimant put the \$10 in petty cash and she told the supervisor, "Now you can pay me \$10." The claimant was given the \$10 back the next day because she was angry about the incident. On June 7, 2012, the supervisor gave all the employees an evaluation, as she did each year. Part of the evaluation was completed by the employee's co-workers. During the claimant's evaluation, the supervisor told the claimant that she had to accept instructions from others and that the other employees didn't like her because she was nasty to them when they tried to give her instructions. On June 8, 2012, the claimant quit because she believed that her hours were reduced.

The claimant filed a claim for benefits effective June 3, 2012, and established a weekly benefit amount of \$149. The claimant filed a second claim for benefits effective June 3, 2013, and established a weekly benefit amount of \$133. The claimant received \$149 in regular benefits each week, from week ending June 16, 2012 through July 14, 2012. The claimant received \$68 in regular benefits each week ending July 21, 2012 and July 28, 2012. The claimant received \$149 in regular benefits each week,

from week ending August 18, 2012 through January 5, 2013. The claimant received \$65 in regular benefits for week ending January 12, 2013. The claimant received \$133 in regular benefits each week, from week ending June 15, 2013 through August 3, 2013.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that temporarily terminated the claimant's work within the previous 6 calendar months, or to relocate due to a military-connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification.

The record shows that the claimant quit, because she believed that her hours were reduced. The testimony in the record shows that as a part-time employee and the claimant was not guaranteed hours. However, the claimant's hours were not reduced. The burden of proof is on the claimant who voluntarily quit work to show by a preponderance of the evidence that quitting was with good cause. Uniweld Products, Inc., v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). The claimant did not meet the burden of proof. Since the claimant has not shown that her quitting was with good cause attributable to the employer, she is disqualified from receipt of benefits.

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.

The entry into evidence of a transaction history generated by a personal identification number establishing that a certification or claim for one or

more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person or by direct deposit via electronic means, constitutes prima facie evidence that the person claimed and received reemployment assistance benefits from the state.

Since the claimant is disqualified from receipt of benefits, she is overpaid for the benefits she received.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The claimant alleged that the supervisor asked her if she went into the petty cash drawer and she told the supervisor, "Yes, I had to get change for a \$20." The supervisor told the claimant that \$10 was missing from petty cash and since she was the only one that opened the petty cash, she was responsible for the \$10. The claimant put \$10 in the petty cash and she told the supervisor, "Now you give me \$10 back." The claimant testified that on the same day, she was given an evaluation and the supervisor told her that the other girls thought she was slow, that they did not like her because she acted nasty and that she used to be pleasant. The claimant testified that the supervisor told her, "I'm giving you twenty hours a week, take it or leave it, you're too slow." The claimant testified that she was hired to work twenty-five to thirty hours each week and that the supervisor reduced her hours to twenty each week. The supervisor testified that she was not guaranteed hours and that the claimant's hours were not reduced. The claimant was hired as part-time and she was not guaranteed hours. The supervisor contended that the claimant was the only person in the petty cash and that she did ask her to put \$10 in. However, the claimant was so angry about it that the \$10 was given back to the claimant. The supervisor testified that the evaluation was two weeks after the conversation regarding the petty cash and that she gave all the employees an evaluation on the same day. Part of the evaluation was provided by co-workers and discussed with each person being evaluated.

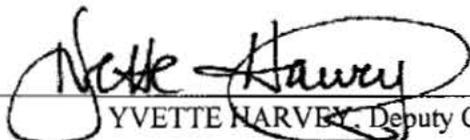
The supervisor testified that she did not tell the claimant during the interview, "I'm giving you twenty hours, take it or leave it, you're too slow." The claimant testified that she was not nasty. The supervisor testified that the claimant was argumentative when she tried to give her directions regarding work, or when the co-workers tried to tell her how to do something, she would tell the co-worker, "I know, I know, don't show me, I can do this." The supervisor told the claimant that she had to accept instructions from others. There were several new programs that the claimant did not know how to use. 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.

Decision: The determination dated August 12, 2013, is AFFIRMED. The claimant is disqualified from receipt of benefits from June 3, 2012, and until she works and earns \$2,261. The claimant is overpaid \$4,394 in regular benefits.

This is to certify that a copy of the above decision was mailed to the last known address of each interested party on September 13, 2013.

ROSEMARY RIGGINS
Appeals Referee

By:


YVETTE HARVEY, 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 definitiv 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 lamèn, 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.

Any questions related to benefits or claim certifications should be referred to the Claims Information Center at 1-800-204-2418. An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.
