STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 13-08938

vs.

Referee Decision No. 0008700125-03U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the employer's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision holding the claimant not disqualified from receipt of benefits.

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. We review the referee's findings of fact to determine whether they are supported by competent, substantial evidence. We further review the referee's conclusions of law to ensure that they correctly apply the reemployment assistance law.

The Findings of Fact

The relevant portions of referee's findings of fact state as follows:

> The claimant's supervisor, the [u]tilities [s]uperintendent, evaluated the claimant's performance annually. On one or more annual evaluations, the utilities superintended [sic] indicated that the claimant's interaction with coworkers/supervisors needed improvement. The [u]tilities [s]uperintendent kept a daily log, or diary, of incidents or occasions where he spoke to employees concerning an incident or issue. The [u]tilities [s]uperintendent recorded speaking to the claimant concerning issues with his behavior from 2007 through August 2012. In October 2011, the claimant had a disagreement with a coworker over plums or avocados. On this occasion, the claimant accidentally took plums

> from the coworker's bag rather than a communal bag. The coworker advised the claimant he would break the claimant's hand. The utilities superintendent believed the claimant said he would leave the coworker's head and hands on the table. The claimant did not say he would leave the coworker's head and hands on the table. On or around August 14, 2012 the claimant asked a supervisor for a shovel/rake while he was working inside a hole/ditch. The supervisor pushed the shovel/rake over his is [sic] foot. The claimant picked up the shovel/rake from the ground and began using it. The claimant received a written warning based on the belief he took the shovel/rake from the coworker and threw it. The claimant did not throw the shovel/rake. On May 8, 2013, the claimant had a verbal altercation with another employee after the employee made a comment about his underwear showing due to his pants being low. During the altercation, the coworker stated that the claimant's mother was a "bitch" and a "whore." The coworker stated that he was going to "knock the claimant down and knock [the claimant's] motherfucking head off." The claimant told the coworker "If you hit me make sure you kill me because I'm going to [commit] you to surgery." The crew leader was operating a machine while the verbal altercation took place. The crew leader believed the altercation was going to escalate into a physical altercation. The crew leader came off his machine and held the claimant's coworker back. The coworker left the jobsite. The claimant remained at the jobsite for approximately another hour. The utilities supervisor received reports from coworkers present during the altercation that the claimant said after the altercation that he had gone to the Army/Navy store and had a knife and he was not "afraid to use it." The claimant did not have a knife on his person at the jobsite and did not talk about having a knife to his coworkers.

Based on our review of the hearing record, each of the referee's findings are supported by competent, substantial evidence provided by one or more of the witnesses, or the documentary evidence. The referee's decision included a credibility determination in favor of the claimant, and the key findings as to the allegations against the claimant largely track the claimant's testimony on these issues.

On appeal to the Commission, the employer contests the referee's factual findings, contending that the referee ignored the employer's competent evidence. However, it is the referee's responsibility to weigh the evidence and make specific factual findings. The appeals referee must:

> [C]onsider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence.

Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (citation omitted). *See also* Fla. Admin. Code R. 73B-20.025(3). While the Commission has the ability to reverse findings not supported by competent, substantial evidence, and to modify findings when doing so does not conflict with the competent, substantial evidence and the referee's findings, the Commission cannot reweigh the evidence to reach findings contrary to those made by the referee that are properly supported. *Tedder v. Unemployment Appeals Commission*, 697 So. 2d 900, 901 (Fla. 2d DCA 1997). Moreover, while the Commission may remand a case for additional consideration where the referee has erroneously failed to admit and consider probative evidence, the referee's decision indicates that she accepted and considered the employer's documentary evidence. Accordingly, there is no basis to remand the case for additional consideration.

The employer also contests the referee's credibility determination. The city points out that it produced numerous statements written by the claimant's coworkers who had direct knowledge of the incident, as well as multiple witnesses who talked to the claimant and others. The city also presented extensive documentation regarding the claimant's work history and prior incidences of warnings or notes on his evaluations regarding failing to get along with coworkers or supervisors. Our careful review of the record leaves us as perplexed with the credibility determination as the employer apparently is. To be sure, the credibility determination that was made by the referee in this case is not the determination the Commission would have made, had it been the Commission's function to make it.

Credibility, however, is the sole province of the referee. Credibility is a matter that falls within the purview of the hearing officer's discretion as finder of fact. *See Glover v. Sanford Child Care, Inc.*, 429 So. 2d 91 (Fla. 5th DCA 1983); *Andrus v. Florida Department of Labor and Employment Security*, 379 So. 2d 468 (Fla. 4th DCA 1980). As trier of fact, the hearing officer is privileged to weigh and reject conflicting evidence. *See David Clark & Associates, Inc. v. Kennedy*, 390 So. 2d 149 (Fla. 1st DCA 1980); *Linn v. Florida Unemployment Appeals Commission*, 961 So. 2d 1030 (Fla. 3rd DCA 2007); Fla. Admin. Code Rule 73B-20.025(3)(d). In *Continental Baking Company v. Vilchez*, 219 So. 2d 733 (Fla. 2d DCA 1969), the court observed:

> The only issue before this court is whether there was competent substantial evidence to support the findings of the appeals referee. If there was sufficient evidence this court may not reverse.

219 So. 2d at 734 (citations omitted). The Commission has no authority to reverse a credibility determination where there is competent, substantial, and internally consistent evidence supporting it. Accordingly, the referee's findings are affirmed.

The Conclusions of Law

As of May 8, 2013, the day on which the final incident occurred that resulted in the claimant's termination, misconduct was defined as follows:

> "Misconduct," 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.
>
> (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) 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 rule's 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.

Section 443.036(30), Florida Statutes (2012).

While the referee's findings must be affirmed, certain aspects of the referee's legal conclusions were erroneous. First, we reject the referee's conclusion that the incidents involving the claimant that occurred from 2007 through 2011 "have no timely nexus to the termination." Both the testimony of the employer's witnesses, and the documentary evidence itself, make it clear that the claimant's prior behavior and disciplinary history were considered in the decision to terminate him. The memorandum from [the employer] dated May 14, 2013, recommending the claimant's termination, specifically mentioned consideration of the claimant's past disciplinary history. We recognize that past disciplinary history may not always be relevant to the outcome of a reemployment assistance case. However, where there is a record that the claimant has been warned of *similar* conduct in the past, and such conduct recurs in the present, such incidents are relevant where there is clear indication that the incidents were part of the decision-making process by the employer. This is particularly true where the past incidents do not involve mundane issues such as tardiness, but recalcitrant or threatening behavior. Additionally, the referee should consider past incidents to determine whether they shed light on the claimant's alleged behavior in the more recent incidents. For example, past incidents may provide evidentiary support that the claimant acted in a similar way in a more recent incident.[1]

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[1] We note that, as a general rule, propensity evidence is not permitted under the Florida Evidence Code. *See* §90.404(2)(a), Fla. Stat. However, the evidentiary standard applicable to reemployment assistance appeals hearings does not require strict compliance with the Florida Evidence Code on matters other than hearsay: "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." §443.151(4)(b)5.b., Fla. Stat.

Notwithstanding our rejection of the referee's analysis on this issue, the referee's specific findings that the claimant did not engage in the conduct of which he was accused in the October 2011 and August 2012 incidents preclude any factual support from those incidents.

With respect to the May 8, 2013 incident, the referee found that the coworker was the aggressor in the incident, and that the claimant only made a threatening comment after the coworker had insulted his mother and threatened to "knock [the claimant's] motherfucking head off." Based on this finding, the referee concluded that the claimant had been provoked and, citing *Anderson v. Unemployment Appeals Commission*, 517 So. 2d 754 (Fla. 2d DCA 1987), held that the claimant's actions did not constitute misconduct. Provocation was a well-established defense under subparagraph (a) prior to the 2011 revision of the definition of misconduct. In *Davis v. Unemployment Appeals Commission*, 472 So. 2d 800 (Fla. 3d DCA 1985), the claimant, a grocery store cashier, was found to have been discharged for reasons other than misconduct after an altercation with a coworker. In that case, the coworker precipitated the incident by physically assaulting and verbally abusing the claimant without just cause. The court found the claimant reacted "in hot blood" by lunging at the coworker and issuing a conditional threat of violence. The court reasoned the claimant's bad judgment and inability to control herself may have justified her dismissal, but her actions were insufficient to deny benefits. Likewise, in *General Asphalt Co., Inc. v. Harris*, 563 So. 2d 803 (Fla. 3d DCA 1990), the claimant reacted to provocation from a coworker, resulting in the conclusion that he was not disqualified from receipt of benefits. *See also Bagenstos v. Unemployment Appeals Commission*, 927 So. 2d 153 (Fla. 4th DCA 2006) (citing other cases and applying the provocation analysis to actions of a customer).

The above-cited case law analyzed the predecessor version of Section 443.036(30)(a), Florida Statutes, which was amended by the Legislature in 2011 as follows:

> (a) Conduct demonstrating conscious ~~willful or wanton~~ 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 ~~has a right to expect~~ of his or her employee.~~; or~~

2011 Fla. Laws ch. 235 (Words ~~stricken~~ are deletions; words underlined are additions). The plain language reflects the Legislature intended for amended subparagraph (a) to encompass a broader range of conduct than its predecessor. This interpretation is supported by legislative staff analysis. *See* House of Representatives Staff Analysis, Bill # CS/HB 7005, p.9. (Feb. 28, 2011).[2]

The courts have not yet issued written opinions analyzing amended subparagraph (a). However, the Commission has concluded that provocation remains a viable consideration under subparagraph (a) in appropriate cases. *See*, *e.g.*, R.A.A.C. Order No. 13-08424 (May 5, 2014); U.A.C. Order No. 12-05219 (June 29, 2012) (holding it was not misconduct for claimant to engage in a heated discussion and, after being pushed, to push back because the claimant was provoked and acted in self-defense). While these cases did not specifically address the impact of the change in the statutory language, we do so herein, and find no reason to depart with our prior analysis.

The referee's findings show a significant instance of provocation by a coworker. Accordingly, we affirm the referee's conclusion that under the facts of this case, the employer did not establish misconduct under subparagraph (a).

The employer also contends that the claimant violated several portions of the City Code provisions applicable to employee discipline. The employer identified City Code subsections 46-196(e)(2), (3), (4), (7) and (10) as the specific standards at issue in the claimant's discharge.[3] These provisions state as follows:

> (e) Standard: Employees must cooperate and work well with other employees and the public.
>
> Offenses –
>
> * * *
>
> (2) Failure to cooperate with or using abusive and/or offensive language and/or conduct toward other employees or the public;
>
> (3) Unnecessarily disrupting the work of other employees;

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[2] *Florida House of Representatives Staff Analysis CS/HB 7005:* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7005c.EAC.DOCX&DocumentType=Analysis&BillNumber=7005&Session=2011 (last accessed August 25, 2014).

[3] *Available at* https://library.municode.com/index.aspx?clientId=11356 (last accessed August 25, 2014).

> (4) Using threats or attempting to harm another employee or the public;
>
> * * *
>
> (7) Unauthorized use of dangerous weapons, such as firearms, knives or tools which could result or results in harm to another employee or the public;
>
> * * *
>
> (10) Antagonistic attitudes or language toward supervisors or fellow employees, criticizing orders or rules issued and policies adopted by supervisors, outside the context of a formal grievance procedure;
>
> * * *

The referee concluded in her decision that "the claimant's actions did not show . . . a rule violation and did not amount to misconduct connected with the work." Based on the referee's findings of fact, we affirm the referee's conclusions that the employer did not prove rule violations as to subsections 46-196(e)(3) and (7). However, contrary to the referee's conclusions, the referee's findings did establish a violation of (2), (4) and (10). There is no question that the claimant used abusive, threatening, and antagonistic language towards a coworker. Accordingly, the employer proved violations of these disciplinary rules and established a *prima facie* case of misconduct under Section 443.036(30)(e), Florida Statutes.

Once the employer has established a violation of one of its rules, the burden of proof shifts to the claimant to establish one of the three enumerated affirmative defenses. The Commission has, in previous cases, concluded that with respect to the "fair enforcement" defense of (e)3., provocation must be considered. R.A.A.C. Order No. 13-05983 (December 2, 2013). As noted above, the referee's findings present a clear case of provocation. Under the circumstances, and consistent with our prior precedent, we conclude that the employer's rules cannot be deemed to have been fairly enforced to disqualify the claimant. Accordingly, while the referee erroneously concluded that no rule violation was established, the referee's decision must be affirmed on other grounds.

In summary, based on the referee's findings of fact which were supported by competent, substantial evidence, the referee's ultimate conclusion that the employer did not establish misconduct must be affirmed.

The referee's decision is affirmed. The claimant is not disqualified from receipt of benefits as a result of this claim. If otherwise eligible, the claimant is entitled to 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

8/25/2014 ,

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: Juanita Williams
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 asisté ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tàn, paské tàn limité pou ou ranpl àpèl la.

Docket No. **2013-69499U** Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant **EMPLOYER/Appellee**

APPEARANCES: CLAIMANT & EMPLOYER LOCAL OFFICE #: 3681-0

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 wor without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(30), Florid Statutes; Rule 73B-11.020, Florida Administrative Code.

Findings of Fact: The claimant began working for the employer on January 22, 2007, as a janitor and late worked as an equipment operator. The employer has policies regarding standards of conduct that prohibit employees from "Using threats or attempting to harm another employee or the public, failure to cooperate wit or using abusive and/or offensive language and/or conduct toward other employees or the public, an unnecessarily disrupting the work of other employees." The employer also has a policy prohibiting th unauthorized use and/or possession of weapons at work. The claimant was aware of the employer's standards o conduct policies. The claimant's supervisor, the Utilities Superintendent, evaluated the claimant's performanc annually. On one or more annual evaluations, the utilities superintended indicated that the claimant's interactio with coworkers/supervisors needed improvement. The Utilities Superintendent kept a daily log, or diary, o incidents or occasions where he spoke to employees concerning an incident or issue. The Utilitie Superintendent recorded speaking to the claimant concerning issues with his behavior from 2007 throug August 2012. In October 2011, the claimant had a disagreement with a coworker over plums or avocados. O this occasion, the claimant accidentally took plums from the coworker's bag rather than a communal bag. Th

coworker advised the claimant he would break the claimant's hand. The utilities superintendent believed th claimant said he would leave the coworker's head and hands on the table. The claimant did not say he woul leave the coworker's head and hands on the table. On or around August 14, 2012 the claimant asked supervisor for a shovel/rake while he was working inside a hole/ditch. The supervisor pushed the shovel/rak over his is foot. The claimant picked up the shovel/rake from the ground and began using it. The claimar received a written warning based on the belief he took the shovel/rake from the coworker and threw it. Th claimant did not throw the shovel/rake. On May 8, 2013, the claimant had a verbal altercation with anothe employee after the employee made a comment about his underwear showing due to his pants being low. Durin the altercation, the coworker stated that the claimant's mother was a "bitch" and a "whore." The coworker state that he was going to "knock the claimant down and knock [the claimant's] motherfucking head off." Th claimant told the coworker "If you hit me make sure you kill me because I'm going to [commit] you to surgery. The crew leader was operating a machine while the verbal altercation took place. The crew leader believed th altercation was going to escalate into a physical altercation. The crew leader came off his machine and held th claimant's coworker back. The coworker left the jobsite. The claimant remained at the jobsite for approximatel another hour. The utilities supervisor received reports from coworkers present during the altercation that th claimant said after the altercation that he had gone to the Army/Navy store and had a knife and he was nc "afraid to use it." The claimant did not have a knife on his person at the jobsite and did not talk about having knife to his coworkers. The Assistant Director of Public Works/Utilities performed an investigation of th incident by having each employee present write a statement concerning what occurred. On or around May 9 2013, the claimant advised the Human Resources (HR) Director of the incident. On or around May 9, 2013, th claimant attempted to speak to the City Manager concerning the incident, but was told he would need to spea to the HR Director instead. The claimant was not aware the employer was investigating the incident. On o around June 17, 2013, the Utilities Superintendent and the Assistant Director advised the claimant he was bein discharged and asked him to sign a document. The claimant signed the document without reading it. Th document advised the claimant that a predetermination hearing was scheduled for June 20, 2013, regarding proposed disciplinary action (termination). On or around June 18, 2013, the claimant received a notice he wa terminated based on the belief he showed a continued inability to work well with others and that he mad threatening remarks regarding a knife after the incident on May 8, 2013.

Conclusions of Law: As of May 17, 2013, the Reemployment Assistance Law of Florida defines misconduc connected with work as, but is not limited to, the following, which may not be construed in pari materia witl each other:

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

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

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

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employe licensed or certified by this state, which violation would cause the employer to be sanctioned or have it 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 anothe employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patien resident, disabled person, elderly person, or child in her or his professional care.

The record shows the claimant was discharged based on the belief he was threatening toward coworkers o more than one occasion. The burden of proving misconduct is on the employer. Lewis v. Unemploymen Appeals Commission, 498 So.2d 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of competen 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). The record reflects the claimant was awar of the employer's policies regarding standards of conduct. The incidents recorded by the Utilities Superviso from 2007 through 2011 occurred more than a year prior to the separation and have no timely nexus to th termination. The claimant's testimony shows he did not threaten a coworker during an argument over plums o avocados in October 2011. The claimant testified that he did not grab a shovel/rake from his supervisor an throw it in August 2012. The claimant's testimony shows that the coworker was the aggressor on May 8, 2013 Although claimant's comment about putting the coworker into surgery could be construed as threatening, th claimant made the comment/threat after the coworker stated he would "knock the claimant's motherfuckin head off." Striking a retaliatory blow rather than withdrawing from attack or provocation by an aggressor ma show poor judgment and inability to control oneself which justifies dismissal, but does not constitut misconduct justifying denial of unemployment compensation benefits. Anderson v. Florida Unemploymen Appeals Commission, 517 So.2d 754 (Fla. 2d DCA 1987). Although the record reflects that the claimant an his coworker did not come to blows; the reasoning, when applied to this situation, shows the claimant made retaliatory threat which is not considered misconduct under the statute. The claimant's testimony shows h made no mention of a knife or having a knife. The claimant's actions did not show a conscious disregard of th employer's interests or a rule violation and did not amount to misconduct connected with the work. Therefore the claimant is not subject to disqualification from benefits.

The referee notes the employer's provided copies of the claimant's disciplinary records and annual evaluations copies of the employer's policies concerning standards of conduct, statements from coworkers concerning th May 8th incident, and copies of the claimant's supervisor's notes. Hearsay evidence may be used for the purpos of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civi 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 th hearing; and
2. The appeals referee or special deputy determines, after considering all relevant facts and circumstances, tha the evidence is trustworthy and probative and that the interests of justice are best served by its admission int evidence.

The documents meet the statutory requirements to establish a finding of fact; however, the appeals referee find the claimant's testimony more credible.

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

factors, the hearing officer finds the testimony of the claimant to be more credible. Therefore, material conflict in the evidence are resolved in favor of the claimant.

The claimant obtained legal representation for the hearing. The legal representative is not charging a fee for time spent on the claimant's case. The appeals referee therefore approves no fee.

Decision: The determination dated July 11, 2013, is REVERSED. The claimant is qualified for the receipt o benefits.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant wil be required to repay those benefits. The specific amount of any overpayment will be calculated by th department and set forth in a separate overpayment determination, unless specified in this decision. Howeve the time to request review of this decision is as shown above and is not stopped, delayed or extended by an 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 October 4, 2013.

AMY HORLICK
Appeals Referee

By: Lisa Rell
LISA RELL, Deputy Clerk

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

A party who did not attend the hearing for good cause may request reopening, includin the reason for not attending, at https://iap.floridajobs.org/ or by writing to the address a the top of this decision. The date the confirmation number is generated will be the filin 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 th 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, th postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the Unite 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 an and all allegations of error with respect to the referee's decision, and provide factual and/or legal support fo these challenges. Allegations of error not specifically set forth in the request for review may be considere waived.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitu por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la fecha marcada e que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definido en F.A.C. 73B-21.004, el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, u domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibi beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante rembolsar esos beneficios. L cantidad específica de cualquier sobrepago [*pago excesivo de beneficios*] será calculada por la Agencia 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 límit 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 razó por no haber comparecido en la audiencia, en https://iap.floridajobs.org/ o escribiendo a la dirección en la part superior de esta decisión. La fecha en que se genera el número de confirmación será la fecha de registro de un 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 co la Comisión de Apelaciones de Desempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyn 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 correo será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio d mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en l que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [*docke number*] y el número de seguro social del reclamante. Una parte que solicita una revisión debe especifica cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reale y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en l 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 da 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 a diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap f demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anpli epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo ba 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 y bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, https://iap.floridajobs.org/ oswa alekri nan adrè ki mansyone okomansman desizyon sa a. Dat yo pwodui nimewo konfimasyon an se va dat yo prezant 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 me 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 p 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 me nan lamen, oswa voye li pa yon sèvis mesajri ki pa Sèvis Lapòs Lèzetazini (*United States Postal Service*), osw voye li pa Entènèt, dat ki sou resi a se va dat depo a. Pou evite reta, mete nimewo rejis la (*docket number*) avè nimewo sekirite sosyal moun k ap fè demann lan. Yon pati k ap mande revizyon dwe presize nenpòt k alegasyon erè nan kad desizyon abit la, epi bay baz reyèl oubyen legal pou apiye alegasyon sa yo. Yo p ap pra an konsiderasyon alegasyon erè ki pa byen presize nan demann pou revizyon an.