

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-04350

vs.

Referee Decision No. 13-35285U

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 Commission concludes the record adequately supports the referee's material findings and the referee's conclusion is a correct application of the pertinent laws to the material facts of the case.

In this case, the appeals referee concluded the claimant was disqualified from reemployment assistance benefits because she voluntarily quit work without good cause within the meaning of the statute. Section 443.101(1)(a)1., Florida Statutes, provides that "good cause" includes only cause that is attributable to the employing unit which would compel a reasonable employee to cease working or that is attributable to the individual's illness or disability requiring separation from his or her work.

The record reflects that in this case the claimant voluntarily quit pursuant to a workers' compensation settlement agreement. The claimant has not asserted that she was physically unable to work at the time of her separation. *See Large v. Unemployment Appeals Commission*, 927 So. 2d 1066 (Fla. 4th DCA 2006). While the claimant may have had medical restrictions, the employer accommodated those restrictions and continuing work was available to her. Accordingly, the record does not reflect that the claimant had an illness or disability that required her separation from work.

In addition, the findings and evidence do not support a conclusion that the claimant's quitting was attributable to the employer. While the claimant has asserted that she was the victim of retaliation when she initially returned to work following her leave of absence, her own testimony establishes that the problem was resolved when the employer transferred her to a different department upon her request.

Furthermore, the agreement through which the claimant resigned did not provide her good cause to quit. Generally, an employee who voluntarily resigns pursuant to an agreement with the employer is disqualified from reemployment assistance on the basis that the quitting was not attributable to the employer. *See Lake v. Unemployment Appeals Commission*, 931 So. 2d 1065 (Fla. 4th DCA 2006). In *Lake*, the employee refused an offer of light duty work, but accepted a lump sum settlement on her workers' compensation claim while agreeing to cease employment. The court affirmed the Commission's order holding the employee voluntarily quit without good cause. *See also Calle v. Unemployment Appeals Commission*, 692 So. 2d 961 (Fla. 4th DCA 1997); *In re Astrom*, 362 So. 2d 312 (Fla. 3d DCA 1978).

The courts have recognized a limited exception to this general rule where an employer has made an assurance to the employee regarding eligibility for reemployment assistance benefits and that assurance provided the impetus for the employee to sign the agreement. *See Sullivan v. Florida Unemployment Appeals Commission*, 93 So. 3d 1047 (Fla. 1st DCA 2012). In *Sullivan*, the court held that the employer's assurance that it would not contest Sullivan's claim for reemployment benefits provided the impetus for her to sign a workers' compensation settlement agreement and, therefore, her quitting was attributable to the employer, citing *Rodriguez v. Florida Unemployment Appeals Commission*, 851 So. 2d 247 (Fla. 3d DCA 2003).

In *Rodriguez*, an employee accepted the employer's voluntary buyout offer, which provided that the buyout would not interfere with applications for reemployment assistance benefit and those who accepted the buyout would acquire layoff status. The court held that the employer's assurance of Rodriguez's eligibility for reemployment assistance benefits, designed to induce her to accept the agreement, provided her good cause to quit that was attributable to the employer.

This case is distinguishable from *Sullivan* and *Rodriguez*. In this case, the claimant became separated from the employer pursuant to a document entitled "SETTLEMENT AGREEMENT," which contained the following provision:

Claimant agrees to voluntarily resign, effective today, from this Employer. Claimant agrees to execute a general release. Employer will pay a sum of \$100.00 as consideration for this release. This payment will be in addition to the settlement amount stated above. It is agreed, however, that nothing in this settlement or the general release is intended to affect any right Claimant may have to seek and/or receive Unemployment Compensation Benefits or Employer's right to defend same.

This provision reflects the claimant's resignation was voluntarily, unlike the employee in *Rodriguez* whose agreement provided she would acquire layoff status. In addition, the provision makes no assurance that the claimant would be eligible for benefits, as were the circumstances in *Rodriguez*. Furthermore, the provision makes no assurance that the employer would not contest a claim for benefits, as were the circumstances in *Sullivan*. To the contrary, the plain language of the agreement specifically reserved for the employer the right to defend against the claimant's application for reemployment assistance. This reservation of the employer's rights also makes this case distinguishable from *Martell v. State of Florida, Unemployment Appeals Commission*, 654 So. 2d 1203 (Fla. 1st DCA 1995).

Since the parties' agreement did not restrict the claimant from seeking benefits *and* did not restrict the employer from defending against a claim for benefits, the effect of the agreement was to maintain the status quo rather than to change either party's rights with respect to any future claim for reemployment assistance benefits. Therefore, the circumstances under which the claimant resigned are factually closer to the circumstances in *Lake, Calle* and *In re Astrom*.

Furthermore, we are not compelled by the claimant's testimony that the employer's attorney told her during settlement negotiations that she would be able to receive reemployment assistance benefits. The claimant's resignation from employment was part of a settlement agreement that was reached by way of mediation proceedings, during which the claimant was represented by counsel. Florida's public policy strongly favors mediation and settlement; consequently, the Legislature has enacted Section 44.405(1), Florida Statutes, which provides all mediation communications shall be confidential. The statute specifically prohibits disclosure of mediation communications and provides remedies for violations. *Id.* The statute separately provides a mediation party with a privilege to prevent another person from testifying regarding mediation communications. §44.405(2),

Fla. Stat. In reemployment assistance proceedings, where parties are often unrepresented, the Commission does not find it prudent to require parties to make formal objections in order to invoke a privilege. In any case, the statute's plain language establishes that the prohibition against disclosure is absolute and exists independent of whether or not the privilege is invoked. Since the claimant was statutorily prohibited from testifying regarding communications that were made during the course of mediation, the referee properly gave no weight to the claimant's testimony on those matters.

We further note that consideration of the claimant's testimony regarding what the employer's lawyer told her during negotiations is barred by the parol evidence rule. *Polk v. Crittenden*, 537 So. 2d 156, 159 (Fla. 5th DCA 1989) (citations omitted) (the parol evidence rule "serves as a shield to protect a valid, complete and unambiguous written instrument from any verbal assault that would contradict, add to, or subtract from it, or affect its construction."). For extrinsic evidence to be admissible, ambiguity must appear on the face of the contract. *Carlton, Inc. v. Southland Diversified Co.*, 381 So. 2d 291, 293 (Fla. 4th DCA 1980). Furthermore, if a matter "is mentioned, covered, or dealt with in the writing, then presumably the writing was meant to represent all of the transaction on that element." *Milton v. Burton*, 79 Fla. 266, 272 (Fla. 1920). Where a contract is clear and unambiguous in its terms, a reviewing body may not give those terms any meaning beyond the plain meaning of the words contained therein. *Dows v. Nike, Inc.*, 846 So. 2d 595, 601 (Fla. 4th DCA 2003) (citation omitted).

In this case, the Commission is constrained by the agreement between the parties, which unambiguously provided that neither party waived any rights they have under the reemployment program law. Since the agreement is valid, complete, and unambiguous, the claimant could not rely on extrinsic evidence in the reemployment assistance hearing to prove the employer made an assurance that she would receive benefits, as such an assurance would be inconsistent with the employer's reservation of rights contained in the plain language of the agreement.

Because the claimant did not meet the burden of establishing her quitting work was for good cause within the meaning of the statute, she must be disqualified from benefits.

The referee's decision is affirmed. The claimant is disqualified from receipt of 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

11/20/2013 ,

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 asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pran àmpil tòn, paské tòn limité pou ou ranpli apèl la.

Docket No. **2013-35285U**

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3674-0

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.

TIMELINESS: Whether an appeal, request for reconsideration, or request to reopen an appeal was filed within twenty days after mailing of the determination or decision to the adversely affected party's address of record or, in the absence of mailing, within twenty days after delivery, pursuant to Sections 443.151(3); 443.151(4)(b)1., Florida Statutes; Rules 73B-10.022(1); 10.022(5); 10.023(1); 11.017(2); 20.002-007, Florida Administrative Code.

Jurisdictional Issue: On April 2, or 3, 2013, the claimant received two adverse determinations that were mailed on March 27, 2013. The claimant called the Department, and a representative walked her through the process of filing an appeal online. The claimant submitted the online appeals the same day that she received the determinations, but did not receive a confirmation number. The representative stated that the submission would not be showing in the system until the following Monday, and did not advise her to wait for a confirmation number. The claimant did not hear anything regarding the appeal, so she contacted the

Department again and submitted a second letter of appeal on April 19, 2013.

The law provides that a determination is final unless an adversely affected party files an appeal or request for reconsideration within twenty days after the mailing date of the determination notice to the party's last-known address or, in lieu of mailing, within twenty days after delivery of the notice.

The record reflects the claimant submitted an online appeal with the assistance of a representative who walked her through the process. The representative's failure to ensure the claimant received a confirmation number was tantamount to providing misinformation that she did not need to receive one. Accordingly, since the claimant was diligent in filing a timely appeal, although it was not received by the Office of Appeals, the appeal is held as timely filed.

Findings of Fact: The claimant worked for a pharmacy and health care clinic from November 24, 2008, until February 26, 2013. On July 19, 2012, when the claimant was 37 weeks pregnant, she slipped and fell. Her husband rushed her to the hospital, where she was diagnosed with a muscular pull to the left side of her back. The claimant continually experienced muscle spasms on the left side of her body following the fall. The claimant remained in the hospital and had her baby early via cesarean section. The worker's compensation doctor did not immediately release the claimant to return to work. The claimant returned to work on September 27, 2012, with medical restrictions not to lift over 15 pounds, not to sit for extended periods of time, and requiring that she stand and stretch periodically. The claimant was able to work full-time some weeks, but often missed work due to the injury. The claimant sought help from an attorney regarding her worker's compensation claim. On February 25, 2013, the claimant last worked for the employer. The claimant attended mediation on the following day, and signed a settlement agreement

indicating that she was resigning from her position in order to receive a payment to settle the worker's compensation claim. As of the date the claimant signed the worker's compensation settlement agreement, on February 26, 2013, the claimant was able to work full-time, but with the same restrictions.

Conclusions of Law: The law provides for disqualification of a claimant who voluntarily left work without good cause attributable to the employing unit. The cause must be one which would reasonably impel an average able-bodied qualified worker to leave employment. The applicable standards are the standards of reasonableness as applied to the average man or woman, and not to the supersensitive. Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827, 829 (Fla. 4th DCA 1973).

The record reflects the claimant quit to accept a worker's compensation settlement. 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 evidence shows the claimant was able to work full-time when she signed the settlement agreement. Consideration is given to the claimant's contention that her attorney advised her she would be terminated if she did not sign the agreement. The hearing officer in this case is not at liberty to comment on the legal advice provided to the claimant, but it must be noted that the statement is hearsay. 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. Although the claimant's reasons for quitting

may have been personally compelling, they were for personal reasons to obtain a worker's compensation settlement. Accordingly, the claimant did not quit with good cause attributable to the employer. The claimant is disqualified for the receipt of benefits.

Decision: The determination dated March 27, 2013, is AFFIRMED. The claimant remains disqualified for the receipt of benefits from February 24, 2013, and until earning \$4,131.

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 May 16, 2013.

JENNIFER LARSON
Appeals Referee

By:



DESYREE JONES, 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 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.
