

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 13-05117

vs.

Referee Decision No. 13-41555U

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 which held the claimant not disqualified from receipt of benefits and charged the employer's account.

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.

The issue before the Commission is whether the claimant voluntarily left work without good cause attributable to the employing unit or was discharged by the employer for misconduct connected with work within the meaning of Section 443.101(1), Florida Statutes.

The referee made the following findings of fact:

The claimant worked for the instant employer, a temporary help firm/day labor company from April 2012, through October 26, 2012. The claimant completed documentation at the time of hire indicating that he was required to contact the employer upon the conclusion of each job assignment and that failure to do so could result in a denial of his benefits. The claimant initially began working for the employer as a day laborer and on April 25, 2012, the claimant began working for the employer as a temporary

employee. The claimant reported in person to the job site upon the conclusion of his last assignment and was not offered a new job assignment nor was he ever advised that he would become a day laborer once his temporary assignment with the client company ended.

Based on these findings, the referee held the claimant was discharged for reasons other than misconduct connected with work. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is not supported by competent and substantial evidence and, therefore, is not in accord with the law; accordingly, it is reversed.

Section 443.101(10)(b), Florida Statutes, provides, in pertinent part:

A temporary or leased employee is deemed to have voluntarily quit employment and is disqualified for benefits . . . if, upon conclusion of his or her latest assignment, the temporary or leased employee, without good cause, failed to contact the temporary help or employee-leasing firm for reassignment, if the employer advised the temporary or leased employee at the time of hire and that the leased employee is notified also at the time of separation that he or she must report for reassignment upon conclusion of each assignment, regardless of the duration of the assignment, and that reemployment assistance may be denied for failure to report. For purposes of this section, the time of hire for a day laborer is upon his or her acceptance of the first assignment following completion of an employment application with the labor pool. The labor pool as defined in s. 448.22(1) must provide notice to the temporary employee upon conclusion of the latest assignment that work is available the next business day and that the temporary employee must report for reassignment the next business day. The notice must be given by means of a notice printed on the paycheck, written notice included in the pay envelope, or other written notification at the conclusion of the current assignment.

The record reflects the employer notified the claimant he was required to report back for reassignment in the *morning* or risk being disqualified for reemployment assistance benefits. The employer's witness testified the employer only assigns work between 6:00 and 7:00 a.m., and there are no jobs available in the afternoon. The claimant, however, reported back for reassignment at the *end* of the day when he picked up his paycheck. The Commission concludes a day labor pool/temporary help firm is entitled to require an employee to report back for

reassignment at a certain time of day when the employer has work available. In this case, the claimant was instructed to report back to the employer for reassignment in the morning, and failed to do so. Consequently, he voluntarily quit employment without good cause attributable to the employer, and is disqualified from the receipt of benefits pursuant to the applicable statutory section.

The Commission notes the claimant testified he failed to report back for reassignment the following morning because he was evicted from his mother's home that night and relocated to a different city. The Commission declines to accept the claimant's voluntary relocation as "good cause" for failing to report back under Section 443.101(10)(b), Florida Statutes.

The decision of the appeals referee is reversed. The claimant is disqualified from receipt of benefits for the week ending October 27, 2012, and until he becomes reemployed and earns \$2720. The employer's account is relieved of charges in connection with this claim. As a result of this decision of the Commission, benefits received by the claimant for which the claimant is not entitled may be considered an overpayment subject to recovery, with the specific amount of the overpayment to be calculated by the Department and set forth in a separate overpayment determination.

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
9/16/2013,
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 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. **2013-41555U**

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3565-0

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.)

Findings of Fact: The claimant worked for the instant employer, a temporary help firm/day labor company from April 2012, through October 26, 2012. The claimant completed documentation at the time of hire indicating that he was required to contact the employer upon the conclusion of each job assignment and that failure to do so could result in a denial of his benefits. The claimant initially began working for the

employer as a day laborer and on April 25, 2012, the claimant began working for the employer as a temporary employee. The claimant reported in person to the job site upon the conclusion of his last assignment and was not offered a new job assignment nor was he ever advised that he would become a day laborer once his temporary assignment with the client company ended.

Conclusions of Law: The law provides that a leased employee of an employee leasing company or a temporary employee of a temporary help firm voluntarily quit employment and is subject to disqualification if:

- a. the employer advised the temporary or leased employee at the time of hire and notified the leased employee at the time of separation to report for reassignment upon the conclusion of each assignment, and
- b. the temporary or leased employee was notified at the time of hire that failure to report for reassignment may result in denial of Reemployment Assistance benefits (leased employees must also receive this notification at the time of separation), and
- c. the employee failed, without good cause, to contact the employer for reassignment upon conclusion of the latest assignment.

A day laborer will be disqualified under this provision if all of the following occurred. The day laborer completed an employment application, then accepted a work assignment. When the first work assignment was accepted, the employer advised the day laborer to contact the labor pool for reassignment after each assignment and that reemployment assistance benefits may be denied if the day laborer did not report for reassignment. At the conclusion of the latest assignment, the labor pool provided written notification to the day laborer that work was available the next business day and that the day laborer was required to contact the labor pool for reassignment the next business day. The day laborer, without good cause, failed to report to the labor pool for reassignment on the next business day.

In the instant case it was shown that the claimant last worked for the instant employer as a temporary employee. The record reflects that the claimant completed documentation at the time of hire indicating that he was required to contact the employer upon the conclusion of each job assignment and that failure to do so could result in a denial of his benefits. It was shown that the claimant contacted the temporary help firm upon the conclusion of his last assignment; however he was not offered a new assignment. Accordingly, the claimant is considered to have been discharged. Misconduct connected with the work has not been shown or alleged. Accordingly, the claimant should not be disqualified from the receipt of benefits.

The law provides that benefits will not be charged to the employment record of a contributing employer who furnishes required notice to the Department when the claimant was discharged for misconduct connected with the work. The employment record of the employer shall be charged for benefits paid to the claimant.

Decision: The determination dated April 26, 2013, is REVERSED. The claimant is not disqualified from the receipt of benefits. The employment record of the employer shall be charged for benefits paid to the claimant.

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 June 7, 2013.

SHERENE THOMAS
Appeals Referee

By: Shaundrecia Robinson
SHAUNDRECIA ROBINSON, 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.
