

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-05867

vs.

Referee Decision No. 13-45908U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the claimant's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision holding the claimant 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.

The issue before the Commission is whether the claimant received severance pay as provided in Section 443.101(3)(b), Florida Statutes.

The referee's findings of fact state as follows:

The claimant was employed for [the employer] beginning May 2002. The claimant was a full-time employee. The claimant earned approximately \$1,596 each week. On April 2, 2013, the employer informed the claimant that he would be discharged effective immediately. The employer told the claimant that the claimant would receive as separation pay based on the length of time the claimant had worked for the employer. The claimant received \$34,544 in separation pay. The separation pay was paid to the claimant in or around April 26, 2013, which was the claimant's next pay period. Department records show the claimant applied for reemployment assistance benefits effective April 21, 2012, and established a weekly benefit amount of \$275.

Based on these findings, the referee held the claimant disqualified from receipt of benefits from April 21, 2013 through September 7, 2013. Upon review of the record and the arguments on appeal, the Commission concludes the record was not sufficiently developed and the disqualification period is incorrect; consequently, the case must be remanded.

Section 443.101(3)(b), Florida Statutes, provides, in relevant part, that an individual shall be disqualified for benefits for any week with respect to which he or she is receiving or has received remuneration in the form of severance pay. The number of weeks that an individual's severance pay disqualifies the individual is equal to the amount of the severance pay divided by that individual's average weekly wage received from the employer that paid the severance pay, rounded down to the nearest whole number, *beginning with the week the individual is separated from employment.*

At the hearing before the appeals referee, at which the claimant was the only party to appear and provide evidence, the claimant testified he separated from employment on April 2, 2013, because his job was eliminated, and that he was informed at the time of separation he would be paid severance pay in the amount of \$34,544.18. The claimant's testimony reflects he was told that he was being paid the severance pay in consideration of his years of service and that the payment amount was based on his length of service. According to the claimant's testimony, he was required to sign a release in order to receive the severance payment, and he received the lump sum payment on the next payday following his separation from employment. The Commission notes, that there is no evidence that the release was given as a resolution of an actual or threatened administrative charge of discrimination or as part of a litigation settlement. Accordingly, we conclude that the employer's requirement that the claimant sign a release in order to receive the severance payment, which is a standard business practice, does not operate to exclude the severance payment from the purview of Section 443.101(3)(b), Florida Statutes. The record therefore supports the referee's conclusion that the claimant received a severance payment and is disqualified from receipt of benefits for the period specified in the statute. Since the disqualification period, however, cannot be correctly calculated based on the existing record, the case must be remanded.

A review of Department of Economic Opportunity records reveals the disqualification period was not correctly calculated in the initial determination under review in this case. Although the adjudicator correctly calculated the number of weeks of disqualification to be 22 weeks based on the severance pay amount and average weekly wage amount the claimant provided in his initial application for benefits, the adjudicator incorrectly counted the 22-week period as starting from the

April 21, 2013, effective date of the claim instead of the week in which the job separation occurred, the week ending April 6, 2013. Accordingly, based on the information the claimant provided in his application for benefits, the determination should have reflected a disqualification period of April 2, 2013, through August 31, 2013, instead of April 21, 2013, through September 7, 2013.

In affirming the disqualification, the referee perpetuated the adjudicator's error by utilizing the same incorrect disqualification dates reflected in the determination (April 21 through September 7, 2013). Moreover, the referee compounded the error by failing to recalculate the number of weeks of disqualification upon receiving evidence that the information provided in the application for benefits and utilized by the adjudicator was incorrect. The claimant's testimony reflects he incorrectly typed the severance payment amount in his application for benefits as \$35,544.18 and that the correct severance amount is \$34,544.18. Based on this testimony, it is clear that the number of weeks of disqualification must be recalculated since the adjudicator's calculation of a 22-week disqualification period is based on an incorrect severance amount. However, the record as currently developed is insufficient to determine the claimant's average weekly earnings, a figure that is required in order to calculate the number of weeks of disqualification.

In order to calculate the number of weeks of disqualification and the correct dates of the disqualification period, the case must be remanded for clarification of the claimant's testimony regarding his average weekly wages. The claimant estimated he earned about \$89,000 per year in his position with this employer. When questioned regarding his gross weekly pay, he estimated that he received net bi-weekly wages of \$2,400. When questioned whether the average weekly wage of \$1,596.69 he indicated in his application for benefits was correct, the claimant responded that he must have obtained that figure from a paycheck and that it is correct since it is about \$2,400 bi-weekly. We note, however, that if the claimant's gross weekly wages were \$1,596.69, then his gross annual wages would be \$83,000, not \$89,000. We further note that if the claimant's gross annual wages were \$89,000 as he indicated in his testimony, then his gross weekly wages would be \$1,711.54. Since it is necessary to ascertain the correct amount of the claimant's average weekly wages in order to correctly calculate the number of weeks of disqualification, the case must be remanded for clarification of the claimant's testimony regarding his gross annual and gross weekly wages. If the claimant's average weekly wages (gross, not net) were \$1,711.54, then his disqualification period would be 20 weeks. (The claimant's \$34,544.18 severance pay divided by an average weekly wage of \$1,711.54 equals 20.14 and, when rounded down, results in 20 weeks of disqualification.) If, however, his average weekly pay was \$1,596.69, then the disqualification period is 21 weeks instead of 20 weeks. (The claimant's \$34,544.18

severance pay divided by an average weekly wage of \$1,596.69 equals 21.64 and, when rounded down, results in 21 weeks of disqualification.) Since the record as currently developed is not clear regarding the claimant's average weekly wages, the case must be remanded for further proceedings and a correct calculation of the number of weeks of disqualification and corrected dates of the disqualification period.

The Commission notes the claimant contends his severance payment was actually a bonus since the employer withheld a higher percentage of taxes than was withheld from his regular wages and informed him that the payment was taxed as bonus. The claimant argues that if the payment were truly a severance payment, taxes would have been withheld at the same percentage as his regular wages. The claimant's argument, however, is without merit. Regardless of whether it was a bonus or a severance payment, the lump sum payment is subject to the withholding rate applicable to all *supplemental wages* as provided in 26 C.F.R. §31.3402(g)-1(a)(1)(i). Bonuses and severance pay are both categorized as "supplemental wages," as opposed to "regular wages." See IRS Publication 15 (2013) (Circular E), Chapter 7, *Supplemental Wages*. IRS Revenue Ruling 2008-29 (Internal Revenue Bulletin 2008-24 (June 16, 2008)) provides, "Severance pay is supplemental wages because it is not a payment for services in the current payroll period but a payment made upon or after termination of employment for an employment relationship that has terminated." Withholding for severance can be handled under different methods, but it is not withheld on the same basis as regular wages. *Id.* One common method for supplemental wages under \$1,000,000 annually is a flat 25% withholding. 26 C.F.R. §31.3402(g)-1(a)(7). The claimant, therefore, is mistaken in his belief that a lump sum severance payment would have the same percentage of taxes withheld as his regular wages, and is similarly mistaken in his belief that a lump sum bonus payment would have a higher percentage of taxes withheld than a lump sum severance payment.

Additionally, the claimant asserted at the hearing he is entitled to benefits because his position was eliminated, regardless of any severance payment, and that he knows others who have received severance payments without being disqualified from receipt of reemployment assistance benefits. We note, however, that a revision to the reemployment assistance statute that became effective August 1, 2011, added severance payments to the list of payments that would operate to disqualify a claimant from receipt of benefits. Accordingly, we conclude that the claimant may very well know of others who received severance pay and were not disqualified from receipt of benefits prior to the August 1, 2011, effective date of the statutory revision.

While the claimant's disqualification under Section 443.101(3)(b), Florida Statutes, is supported by the record, the period of disqualification is incorrect and the record was not sufficiently developed to correctly calculate the number of weeks of disqualification; therefore, the case must be remanded for further proceedings. On remand, the referee must adduce testimony from the claimant to establish the correct amount of the claimant's average weekly wage. The referee must issue a decision calculating the number of weeks of disqualification based on the severance amount and average weekly wage amount provided by the claimant in his testimony, and determine the dates of the disqualification period.

The decision of the appeals referee is vacated and the case is remanded for further proceedings.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Thomas D. Epsky, Member
Joseph D. Finnegan, Member

This is to certify that on
12/2/2013,
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 limitè pou ou ranpli apèl la.

Docket No. 2013-45908U

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT

LOCAL OFFICE #: 3678-0

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: SEVERANCE PAY: Whether the claimant received severance pay or goodwill pay, pursuant to Section 443.101(3), Florida Statutes.

Findings of Fact: The claimant was employed for the employer beginning May 2002. The claimant was a full-time employee. The claimant earned approximately \$1,596 each week. On April 2, 2013, the employer informed the claimant that he would be discharged effective immediately. The employer told the claimant that the claimant would receive as separation pay based on the length of time the claimant had worked for the employer. The claimant received \$34,544 in separation pay. The separation pay was paid to the claimant in or around April 26, 2013, which was the claimant's next pay period. Department records show the claimant applied for reemployment assistance benefits effective April 21, 2012, and established a weekly benefit amount of \$275.

Conclusions of Law: The law provides that a claimant will be disqualified for benefits for any week in which remuneration in the form of severance pay is or was received. The number of weeks that a claimant's severance pay disqualifies the claimant is equal to the amount of the severance pay divided by the claimant's average weekly wage received from the employer that paid the severance pay.

The record and evidence in this case show that the claimant received severance pay of \$34,544.

The claimant was informed by the employer that he would be receiving a lump sum payment based on his length of employment with the employer. The claimant received this payment sometime in or near April 26, 2013. The facts establish that the claimant received severance pay. The claimant is disqualified for the period of time for which the claimant was paid severance pay. The claimant is only disqualified for the period in which he received severance pay.

Decision: The determination of the claims adjudicator dated May 15, 2013, is **AFFIRMED**. The claimant is disqualified from receipt of reemployment benefits from April 21, 2013 through September 7, 2013.

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 20, 2013.

SCOTT DOUGHER
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.
