

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-07374

vs.

Referee Decision No. 13-66112U

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 wherein the claimant was held ineligible for 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 is an educational employee on vacation or holiday recess or is claiming benefits between two successive academic years or terms and performed services in that capacity during the first year and has a contract to perform or a reasonable assurance of performing such services at the end of the vacation or holiday recess or during the immediately succeeding academic year or term as provided in Section 443.091(3), Florida Statutes.

The referee's findings of fact state as follows:

The claimant has worked as a school bus driver for a private company, providing services to a county school board, since 2006. He went on summer break beginning June 8, 2013. He was informed that he will return on August 19, 2013, in the same capacity.

Based on these findings, the referee held the claimant ineligible for receipt of benefits from June 2, 2013, through August 18, 2013. 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.

Florida law provides that benefits based on services to an educational institution are not payable between academic terms or during established vacation or holiday breaks if the individual worked for the institution prior to the break and has a reasonable assurance of performing such services in the next term or after the vacation or holiday break. The "school break rule" initially applied to school employees only and did not include claimants employed by a private employer. Effective July 1, 2013, however, Section 443.091(3)(f), Florida Statutes, expressly extended ineligibility during school breaks to claimants employed by a private employer when the private employer holds a contractual relationship to supply services to an educational institution and the base period wages attributable to school services are identified as such in the quarterly reports filed by the employer.

As this claimant was employed by a private employer, the "school break rule" was not applicable and did not apply to the claimant for the period of June 8 through June 30, 2013. Regarding the period of July 1 through August 18, 2013, the record fails to reflect the claimant's base period wages were identified as services performed for an educational institution as required by the statute. Accordingly, the claimant is not ineligible for benefits from June 8 through August 18, 2013.

The decision of the appeals referee is reversed. 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

3/25/2014 ,

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: 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 pràn àmpil tòn, paské tòn limité pou ou ranpli apèl la.

Docket No. 2013-66112U

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT

LOCAL OFFICE #: 3609-0

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:

SCHOOL: Whether benefits claimed are based on services to, for, or on behalf of an educational institution for a week commencing during a period between successive academic years or terms, if such services were performed in the first year/term and a contract or reasonable assurance exists that the claimant will perform services in any such capacity for any educational institution in the second year/term, pursuant to Section 443.036(17), (37), or 443.091(3), Florida Statutes.

Findings of Fact: The claimant has worked as a school bus driver for a private company, providing services to a county school board, since 2006. He went on summer break beginning June 8, 2013. He was informed that he will return on August 19, 2013, in the same capacity.

Conclusions of Law: The law provides that a claimant is ineligible for benefits based on services provided to, for, or on behalf of an educational institution or institution of higher education during periods between successive academic years or regular terms and during vacation or holiday recesses if the claimant performed services to, for, or on behalf of an educational institution or institution of higher education in the first of such

years or terms or in the period immediately before the recess and there is a contract or reasonable assurance that the claimant will perform services in any such capacity in any educational institution or institution of higher education during the second year or term, or immediately following the vacation or recess.

The record reflects that the claimant is on summer break. It was shown that has reasonable assurance that he will return to this position on August 19, 2013. Accordingly, he is ineligible for this period.

Decision: The determination dated July 8, 2013, is MODIFIED. That portion of the determination holding the claimant ineligible from June 2, 2013, through August 18, 2013, is AFFIRMED. The adjudicator shall determine eligibility subsequent to that date.

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 August 15, 2013.

ARTHUR LEASURE
Appeals Referee

By: Robyn L. Deak
ROBYN L. DEAK, 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.
