

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 13-07522

vs.

Referee Decision No. 13-63285U

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 affirming a determination wherein the claimant was held eligible for benefits and the employer was held chargeable.

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 issues before the Commission are whether the claimant was totally or partially unemployed within the meaning of Section 443.036(45), Florida Statutes, and whether the employer's account should be charged.

The referee's findings of fact state as follows:

The claimant filed a claim for benefits in June 2013. The claimant's weekly benefit amount was \$160. The claimant worked as a part time seafood clerk for the employer's store from February 18, 2006, through the date of the hearing, August 5, 2013. The claimant worked part time each week from June 2, 2013, through the date of the hearing, August 5, 2013. The claimant earned less than \$160 each week during the above listed period.

Based on these findings, the referee held the claimant eligible for receipt of benefits. The referee also, by affirming the determination, charged the employer's account. Upon review of the record and the arguments on appeal, the Commission concludes the claimant was partially unemployed during the weeks in question, and accordingly that portion of the referee's decision is affirmed. Procedural error occurred in connection with deciding the issue of charging, however, which requires that the case be remanded.

The determination issued on June 26, 2013, also held that benefits paid would be charged to the employer's account. The notice of hearing failed to list that issue and the referee did not address it at the hearing; however, the referee's decision affirmed the determination. The failure of the hearing notice to address the issue of charging and the referee's failure to address that issue have operated to deny the employer due process of law. Accordingly, while that portion of the decision holding the claimant ineligible because she was partially unemployed can be affirmed, the cause must be remanded for a hearing and decision regarding the issue of the chargeability of the employer's experience rating account.

Section 443.131(3)(a), Florida Statutes, reads in pertinent part as follows:

Benefits may not be charged to the employment record of an employer who furnishes part-time work to an individual who, because of loss of employment with one or more other employers, is eligible for partial benefits while being furnished part-time work by the employer on substantially the same basis and in substantially the same amount as the individual's employment during his or her base period, regardless of whether this part-time work is simultaneous or successive to the individual's lost employment.

In this case, the claimant worked part time [for this employer] prior to obtaining full-time employment with another employer. She continued to work [for this employer] during and after the other employment. After losing the full-time employment, the claimant filed a claim for partial benefits. However, it is not clear whether [this employer] is entitled to relief of charges pursuant to the above-cited provision because even though the claimant continues to work for [this employer], she is working substantially fewer hours than she did during her base period, that being the calendar year 2012. The application of this statute will require additional fact-finding.

The Florida Department of Revenue tax records reflect the claimant worked a heavy part-time schedule, mostly 25 to 32 hours per week, during the first three quarters of her base period (the calendar year 2012). Her hours then dropped precipitously, for reasons unexplained in this record, and this reduction appears to predate her subsequent full-time employment with a different employer in January 2013. It appears that she continued a similar schedule with [this employer] until early February 2013, when she unilaterally changed her availability for work with this employer and commenced working Saturdays only; subsequently, she worked four to nine hours per week. These facts suggest that, toward the end of the third quarter of 2012, the claimant effectively ceased working under the terms of her original heavy part-time schedule and commenced new terms of employment, which involved a greatly reduced working schedule. The circumstances surrounding this change at the end of the third quarter of 2012, which we view as an effective separation and rehire, are unknown. However, even if the claimant immediately became re-employed and suffered no intervening period of unemployment, this apparent separation must be addressed to decide whether Section 443.131(3)(a), Florida Statutes, or split charging would operate to relieve the employer of charges associated with wages paid prior to the date of the separation.

It is further noted that the employer contends (and has contended) that the claimant is not making herself available for work and that she has refused offers of increased work. Like the issue of charging, these issues were not contained in the notice of hearing and thus were not initially within the referee's jurisdiction. Given the Department's records and the testimony presented in this case, however, the Commission finds the referee should have attempted to obtain waiver of notice concerning these issues and addressed them at the hearing. On remand, the notice of hearing shall contain proper notices concerning these issues.

The record reflects the claimant refused an offer of additional work made by the employer's meat manager on or after May 31, 2013. The record also reflects that on or around June 15, 2013, the assistant store manager offered the claimant more work that she refused, stating she was going on a trip. The record further reflects that on or around July 6, 2013, the claimant refused an offer of work tendered by the assistant store manager, contending she had to be available for any possible job interviews. Lastly, the record reflects that, during the hearing on August 5, 2013, the store manager offered the claimant "expanded hours . . . in range of where you were." Under these circumstances, the Commission finds that testimony must be adduced to establish whether the terms of any of these offers were sufficiently clear and whether the work was suitable pursuant to Section 443.101(2), Florida Statutes, and Florida Administrative Code Rule 73B-11.019. If so, the referee must address the question of why the claimant did not accept the offers, whether she should be disqualified because she refused an offer or offers of suitable work without good

cause, and whether or how this affected her qualifications for and eligibility to receive benefits during the time she was claiming and receiving them. The referee must then rule on whether the employer is entitled to relief from charging with regard to benefits paid after any offers of suitable work were refused without good cause. It should be noted that the reasons this employer might be entitled to noncharging (with regard to the issue of separation and with respect to benefits paid subsequent to any date on which the claimant may have refused an offer of suitable work without good cause) are separate and distinct from each other, as are the periods during which benefits were paid. Finally, we note that the purpose of the reemployment assistance law, particularly since the 2011 amendments, is to provide assistance in obtaining employment security by increasing opportunities for reemployment for those who are unemployed (or underemployed) through no fault of their own. It is not to permit someone to collect benefits where additional suitable work may be readily available from a current employer.

The referee's decision to hold the claimant partially unemployed is affirmed. The issue of charging is remanded for further hearing and decision as provided for in this order.

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
3/17/2014,
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. 2013-63285U

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

CLAIMANT/Appellee

EMPLOYER/Appellant

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3628-0

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:

UNEMPLOYMENT: Whether the claimant was totally or partially unemployed, pursuant to Sections 443.036(44); 443.111(4), Florida Statutes.

Findings of Fact: The claimant filed a claim for benefits in June 2013. The claimant's weekly benefit amount was \$160. The claimant worked as a part time seafood clerk for the employer's store from February 18, 2006, through the date of the hearing, August 5, 2013. The claimant worked part time each week from June 2, 2013, through the date of the hearing, August 5, 2013. The claimant earned less than \$160 each week during the above listed period.

Conclusions of Law: The law provides that a claimant is "totally unemployed" in any week during which no services are performed and for which earned income is not payable.

The law provides that a claimant is "partially unemployed" in any week of less than full-time work if earned income payable for that week is less than the claimant's weekly benefit amount.

The record reflects that the claimant worked less than full time hours and was paid less than \$160 from June 2, 2013, through the date of the hearing, August 5, 2013. Therefore, the claimant is partially unemployed during the above listed period. Accordingly, the claimant is eligible for the receipt of benefits in that period.

Decision: The determination dated June 26, 2013, is **AFFIRMED**.

This is to certify that a copy of the above decision was mailed to the last known address of each interested party on August 9, 2013.

KRIS LONKANI
Appeals Referee

By: *Karen H. Smith*
KAREN H. SMITH, 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.

IMPORTANT - 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 laman, 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.
