

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-08307

vs.

Referee Decision No. 13-77249U

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, 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, 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.

While the Commission affirms the referee's decision, the circumstances of this case warrant further comment. The claimant was employed as a full-time office assistant by this employer from October 30, 2011, to June 14, 2013. The claimant testified that she was the victim of continuous physical domestic violence by her live-in boyfriend, and that he physically battered her again on Sunday, June 16, 2013. On the morning of Monday, June 17, 2013, in order to protect herself and her daughter, she moved out of state to reside with family and consequently resigned from her employment with this employer.

The referee found that the claimant quit without notice following a fight with her boyfriend and that she relocated out of state with her young daughter to live with a family member. The referee disqualified the claimant from receipt of reemployment assistance benefits on the basis that she did not make sufficient efforts to preserve her employment prior to quitting and, therefore, quit without good cause attributable to the employer. The claimant has appealed the decision to the Commission. The Commission concludes the record supports the referee's material findings of fact and finds the referee's conclusion to be a reasonable application of the pertinent laws to the material facts of the case. Although the referee's findings understate the claimant testimony regarding continuous domestic abuse, the Commission is nevertheless obligated to affirm the order of the Appeals Referee.

This Commission as well as the courts have addressed the “family emergency” scenario in several recent decisions. *See, e.g., Szniatkiewicz v. Unemployment Appeals Commission*, 864 So. 2d 498 (Fla. 4th DCA 2004), where the court, citing *Howlett v. South Broward Hospital District*, 451 So. 2d 976 (Fla. 4th DCA 1984), held an unapproved temporary absence of an employee with proper notice to the employer, for the purpose of responding to a legitimate family emergency, did not constitute misconduct connected with work. In *Andres v. Florida Unemployment Appeals Commission*, 888 So. 2d 119 (Fla. 4th DCA 2004), the claimant requested either a part-time schedule or a “leave of absence” in order to care for her sixteen-month old son who had become seriously ill. When her requests for accommodation were refused by the employer, the claimant quit. The Commission found the statute does not entail an award of benefits to claimants who quit under such circumstances; however, the court found the “family emergency exception” dictated a reversal of the Commission’s order. While the Commission continues to assert a court should not create exceptions to a statute, *Andres* can be read as standing for the proposition expressed (indirectly) in *Howlett* and *Szniatkiewicz* that an employee who has separated from employment because of an employer’s failure/refusal to grant *reasonable accommodation* with respect to the employee’s need to attend to a “family emergency” has good cause attributable to the employer for leaving his/her job.

However, in *Hall v. Florida Unemployment Appeals Commission*, 697 So. 2d 541 (Fla. 1st DCA 1997), a claimant who was the victim of physical abuse by her husband, quit her job in Florida and moved to California to escape the abuse. When she filed a claim for benefits, it was denied. The court upheld the agency determination that the claimant was disqualified because she voluntarily left employment without good cause within the meaning of the unemployment compensation statute. The court noted that the domestic violence had not rendered the claimant unable to fulfill any condition of her employment and the employer did not have any control over the danger posed by the claimant's husband. The family emergency cases were distinguished because they all involved discharge cases, not voluntary separations.

This case is similar to *Hall* in that the claimant in this case was also found by the Appeals Referee to have voluntarily resigned her position. An appeals referee’s findings are to be accorded a presumption of correctness. *See Berthe v. George G.*, 698 So. 2d 1386 (Fla. 2d DCA 1997). This Commission may not reweigh the evidence and substitute its findings for those of the referee. *See Grossman v. Jewish Community Ctr. of Greater Fort Lauderdale, Inc.*, 704 So. 2d 414, 716 (Fla. 4th DCA

1998). The Commission is sympathetic to the reasons the claimant left her position and relocated. However, given the fact that the Legislature has failed to act upon recently proposed bills filed to include domestic violence within the definition of “good cause” (see Section 443.101(1)(a)1., Florida Statutes), the Commission is compelled to affirm the result in this case.

The referee’s decision is affirmed.

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

10/31/2013 ,

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: Kimberley Pena

Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
POST OFFICE BOX 8697
FORT LAUDERDALE FL 33310

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. 2013-77249U

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT

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.

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 employer, apparently a mapping and survey firm, from October 30, 2012 until June 14, 2013. The claimant was employed full time as the office assistant and receptionist. The claimant quit without notice following a fight with her boyfriend and relocated with her young daughter to New Jersey to live with a family member. The claimant's last day of work was on June 14, 2013 and she permanently relocated to New Jersey on June 17,

2013. The claimant did not make any effort to preserve her job before quitting.

The employer did not provide contact information for the hearing.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work.

Since the claimant left employment for reasons other than those listed above, Florida Reemployment Assistance law requires disqualification. Although the claimant's reasons for leaving the job may have been personally compelling, they do not meet the qualification requirements for Reemployment Assistance benefits. Further, the claimant made insufficient efforts to preserve her job before leaving. There is no showing that the employer is a staff leasing firm.

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 left the work without good cause attributable to the employer.

Since the claimant left the work without good cause attributable to the employer, the employer's record is relieved of charges should benefits be paid on this claim.

Decision: The determination dated August 5, 2013, is AFFIRMED.

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 September 17, 2013.

CHARLES
NEUFFER, III
Appeals Referee

By:  _____
C. SILVERA, 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^{èm} 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 paman 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.
