

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-09173

vs.

Referee Decision No. 0007500020-03U

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 referee's findings of fact state as follows:

The claimant was employed as a bartender beginning on June 5, 2013. The claimant's spouse is in the Navy. The claimant's husband received orders of deployment to be deployed for nine months on a ship in the Mediterranean. The claimant could not live with her spouse while he is deployed. The claimant was living in Jacksonville, Florida working for the employer. The claimant quit her job to relocate and live with her parents in Alachua, Florida while her husband is deployed. The claimant quit the job on July 4, 2013, to relocate.

Based on these findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit. Upon review of the record and the arguments on appeal, the Commission concludes that the referee incorrectly applied the law and as a result, the record was not sufficiently developed; consequently, the case must be remanded.

Section 443.101(1), Florida Statutes, provides that an individual shall be disqualified from receipt of benefits for voluntarily leaving work without good cause attributable to the employing unit. Good cause is such cause as "would reasonably impel the average able-bodied qualified worker to give up his or her employment." *Uniweld Products, Inc. v. Industrial Relations Commission*, 277 So. 2d 827 (Fla. 4th DCA 1973). Additionally, in defining good cause, Section 443.101(1)(a)1., provides that an individual "is not disqualified under this subsection for voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous six calendar months, or *for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.*" The italicized portion of the statutory provision reflects a change in the law that occurred on July 1, 2004, which was adopted with the intent to lessen the financial burdens faced by military families. See Chapter 2004-237, Laws of Florida.

The referee apparently interpreted the above-cited language to apply solely when an employee resigns a position to relocate *with* his or her military spouse who has had change of station orders or deployment orders. Our review of the statutory language, and the legislative history, indicates that the statute is not so limited. While the statutory language indicates that the relocation must be "as a result of" orders, there is no specific limitation that the relocation must be to relocate with the military spouse.

Likewise, the legislative history demonstrates that while relocation with an active duty spouse was a primary consideration for HB 1183 and SB 1606, the Legislature also appears to have anticipated that it could apply where a spouse relocated to live with family as a result of activation or deployment (albeit primarily for Guard and Reserve Units). See Senate Staff Analysis, Senate Military and Veteran's Affairs Committee March 11, 2004¹; House Staff Analysis, March 19, 2004.² The Senate analysis notes that the Department of Economic Opportunity's estimate of 2000 persons per year who would receive benefits due to relocation *with*

¹
<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2004s1606.ap.doc&DocumentType=Analysis&BillNumber=1606&Session=2004>

²
<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1183c.ap.doc&DocumentType=Analysis&BillNumber=1183&Session=2004>

a spouse did not include those “individuals who, as a result of their military-connected spouse’s ‘activation’ or ‘deployment,’ elect to voluntarily terminate their employment and relocate, often to live with other family members.” Senate Staff Analysis at 2. It is clearly anticipated that such relocations could constitute “good cause” under the statute.

The record reflects the claimant, a bartender, voluntarily quit her employment in order to relocate from Jacksonville, Florida, to live with her parents in Alachua, Florida. The claimant testified that she had to quit her job with the employer due to the fact that her husband’s deployment overseas adversely affected their household income. The claimant testified that her husband, a petty officer first class in the United States Navy, was deployed for nine months on the aircraft carrier U.S.S. Harry Truman. However, the referee failed to develop the record by questioning the claimant about the specifics regarding how or why her husband’s deployment affected the family income or required her relocation to live with her parents. For example, we assume that her husband continued to receive his military pay, but the record does not reflect if he lost any form of housing allowance or other benefit as a result of the deployment. The record also does not reflect whether the claimant incurred any increased expenses, such as child care, or impact on her ability to work, due to the deployment of her husband. If the evidence shows that the claimant’s husband’s deployment did impact the family financially so that the claimant would reasonably be forced to resign to relocate to live with other family, the statute clearly anticipates that such relocation would not be disqualifying.

On remand, the referee is directed to conduct a supplemental hearing and further develop the record. The referee’s decision is vacated and the case is remanded. On remand, the referee is directed to develop the record in greater detail as outlined above and to render a decision that contains accurate and specific findings of fact concerning the events that led to the claimant’s separation from employment with a proper analysis of those facts. Any hearing convened subsequent to this order shall be deemed supplemental, and all evidence currently in the record shall remain in the record.

The Commission notes that the claimant’s Notice of Appeal was filed by a representative for the claimant. Section 443.041, Florida Statutes, provides that a representative for any individual claiming benefits in any proceeding before the Commission shall not receive a fee for such services unless the amount of the fee is approved by the Commission. The claimant’s representative shall provide the amount, if any, the claimant has agreed to pay for services, the hourly rate charged or other method used to compute the proposed fee, and the nature and extent of the services rendered, not later than fifteen (15) days from the date of this Order.

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

5/1/2014,

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: Kimberley Pena

Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
MSC 347 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 gen dwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limité pou ou ranpli apèl la.

Docket No. **0007500020-02**

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT

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.

Findings of Facts: The claimant was employed as a bartender beginning on June 5, 2013. The claimant's spouse is in the navy. The claimant's husband received orders of deployment to be deployed for nine months on a ship in the Mediterranean. The claimant could not live with her spouse while he is deployed. The claimant was living in Jacksonville, Florida working for the employer. The claimant quit her job to relocate and live with her parents in Alachua, Florida while her husband is deployed. The claimant quit the job on July 4, 2013 to relocate.

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. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that

temporarily terminated the claimant's work within the previous 6 calendar months, or to relocate due to a military-connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification.

The record and evidence in this case show that the claimant voluntarily quit the job to relocate and live with her parents while her husband is deployed.

The record and evidence in this case show that the claimant quit the job to relocate while her military connected spouse is deployed. The record does not show that the claimant quit her job to relocate with her military connected spouse. In fact, the evidence shows the claimant did not have the option of living with her spouse during his deployment. Consideration has been given to the claimant's testimony in regards to the personal reasons as to why she chose to quit her job and relocate to live with her parents. However, the record does not show that the claimant was required to separate from the job. The claimant could have remained in Jacksonville, Florida and maintained her employment while her husband was deployed. Therefore, the claimant does not qualify for reemployment benefits.

An attorney represented the claimant at the hearing. An attorney's fee in the amount of \$300 is approved. The fee is to be paid by the claimant.

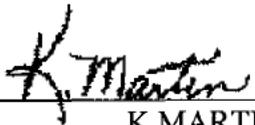
Decision: The determination of the claims adjudicator dated September 10, 2013, is affirmed but modified to show that the claimant voluntarily quit to relocate. The claimant is disqualified from the receipt of reemployment benefits the week ended July 6, 2013, and until she earns \$4,675.

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 November 1, 2013.

N HARRIS
Appeals Referee

By: 
K MARTIN, 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 above 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 www.connect.myflorida.com 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 www.connect.myflorida.com 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 Servicios de Reempleo; 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, www.connect.myflorida.com 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 odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesajè lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak nimewo sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

Any questions related to benefits or claim certifications should be referred to the Claims Information Center at 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.
