

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-01651

vs.

Referee Decision No. 0019398671-02U

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.

On appeal to the Commission, evidence was submitted that was not previously presented to the referee. The parties were advised prior to the hearing that the hearing was their only opportunity to present all of their evidence in support of their case. Florida Administrative Code Rule 73B-21.011 provides that the Commission can consider newly discovered evidence only upon a showing that it is material to the outcome of the case *and* could not have been discovered prior to the hearing by an exercise of due diligence. The Commission did not consider the additional evidence because it does not meet the requirements of the rule. The Commission does not address the ability of the parties to use such evidence in any further evidentiary proceedings that may occur before the Office of Appeals; however, the parties are advised that evidence submitted to the Commission is not made part of the evidentiary record for such proceedings unless otherwise stated.

The issue before the Commission is whether the claimant voluntarily left work without good cause attributable to the employing unit or was discharged by the employer for misconduct connected with work within the meaning of Section 443.101(1), Florida Statutes.

The referee's findings of fact state as follows:

The claimant was employed as a full-time account manager with a company which delivered and installed appliances beginning in 2010. The claimant worked for the employer through June 20, 2011. At that time, the claimant resigned from her position. The claimant reached the decision to resign because she was involved in a domestic violence situation which was affecting her attendance.

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 the record was not sufficiently developed; consequently, the case must be remanded.

At the hearing before the appeals referee, the employer's witness, the Vice President (VP), asserted the claimant quit. The VP testified the claimant had received a warning for poor attendance the week before her resignation, and that when she requested additional time off to attend to a personal legal matter, the VP told her to "take the entire day off tomorrow. Think about your future with [the employer] and I will be doing the same." The VP testified that she received an email from the claimant later that day stating the claimant was resigning from her position. The claimant asserted she resigned from her employment in lieu of discharge because she had been told by the office manager that if she took time off to attend to the legal matter, she should not return to work. The office manager did not appear as a witness at the hearing and, therefore, the claimant's testimony regarding what she was told by the office manager is un rebutted.

An employee is considered discharged if the words and actions of the employer would logically lead a prudent person to believe he or she has been terminated from the job. *LeDew v. Unemployment Appeals Commission*, 456 So. 2d 1219 (Fla. 1st DCA 1984). Based on the existing record, the Commission is unable to determine whether the claimant was separated from employment under disqualifying circumstances. On remand, evidence must be adduced regarding when the claimant was told by the office manager that she would be discharged if she took time off to attend to a personal legal matter; whether the office manager had the authority to discharge the claimant; whether the claimant's conversation with the office manager occurred before or after the conversation with the employer's VP during which she was told to take the next day off; and whether the claimant was or reasonably should have been aware that the VP's position was superior to that of the office manager. Further, a review of the hearing record reflects that the employer could not have reasonably expected the claimant to assert that the office manager told her not to

return to work if she left to handle a personal legal matter. On remand, the referee is directed to give the employer the opportunity to provide testimony from the office manager. Additionally, on remand the referee is directed to analyze whether the claimant's conversation with either the office manager or the VP would logically lead a prudent person to believe she would be terminated if she took time off the following day to attend to her personal legal matter.

The Commission notes the claimant's argument on appeal that if she quit to attend to a personal legal matter, it was with good cause because she was undergoing a domestic violence situation. Unfortunately, Florida courts and the Florida Legislature have declined to extend the definition of "good cause" to include domestic violence situations. See §443.101(1)(a)1., Fla. Stat; *Hall v. Florida Unemployment Appeals Commission*, 697 So. 2d 541 (Fla. 1st DCA 1997). However, Florida does require an employer to grant up to three days leave for an employee to address issues relating to domestic violence. §741.313(2)(a), Fla. Stat. If the employer denied the claimant leave to attend to a legal matter related to domestic violence, it may have been in violation of this provision. On remand, the referee must develop the record to ensure that the claimant was not denied any rights under Section 741.313(2)(a), Florida Statutes. The referee must determine whether Section 741.313, Florida Statutes, applies to this employer, as it is only applicable to employers with 50 or more employees. §741.313(3), Fla. Stat. The referee is also directed to develop the record regarding whether the claimant made an appropriate request for leave by notifying the employer that it was related to a domestic violence situation. §741.313(4)(a), Fla. Stat. If the claimant's resignation was caused in part by a suggestion that her taking statutorily-guaranteed leave would or might result in her termination, the referee should determine whether the claimant had good cause attributable to the employer to resign.

The Commission also notes the VP stated at the hearing that the claimant's resignation email and other documents were "sent in" by the employer; however, the referee did not state whether or not she received the documents, and they do not appear in the hearing case file. The referee did not develop the record regarding whether the documents were sent to the referee and the claimant in accordance with Florida Administrative Code Rule 73B-20.014(2). Although the referee ultimately ruled in the employer's favor in the absence of the documentary evidence, on remand the parties are directed to resubmit to the referee any documents they submitted for the original hearing, ensuring that the opposing party receives a copy of each of those documents in accordance with Florida Administrative Code Rule 73B-20.014(3), which requires 24-hour advance receipt for evidence to be admissible. If properly authenticated and admissible, the parties' documents should be labeled and entered into evidence as exhibits. Additional testimony may then be presented by the parties in response to this evidence.

Finally, the Commission has considered the claimant's argument on appeal that a prior determination on the matter was issued, which the employer did not timely appeal. The Commission's review of Department records does not reflect the existence of any prior determinations issued regarding this employer, although a fact-finding document with an earlier date is present in those records. In any event, the claimant is advised that whether an employer timely responds to departmental fact-finding information requests does not affect its ability to appeal a determination made as a result of the parties' responses to those requests.

In order to address the foregoing issues, the referee's decision is vacated and the case is remanded for further proceedings. On remand, the referee is directed to hold a supplemental hearing to develop the record as outlined above and render a new decision that contains accurate and specific findings of fact and a proper analysis of those facts, along with an appropriate credibility determination in accordance with Florida Administrative Code Rule 73B-20.025(3)(d). Any hearing convened subsequent to this order shall be deemed supplemental, and all evidence currently in the record shall remain in the record.

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
8/6/2014,
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: Ebony Porter
Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
REEMPLOYMENT ASSISTANCE PROGRAM
PO BOX 5250
TALLAHASSEE, FL 32314 5250



*24891180 *

Docket No.0019 3986 71-02

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

CLAIMANT/Appellee

EMPLOYER/Appellant

APPEARANCES

Claimant

Employer

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 Fact: The claimant was employed as a full-time account manager with a company which delivered and installed appliances beginning in 2010. The claimant worked for the employer through

June 20, 2011. At that time, the claimant resigned from her position. The claimant reached the decision to resign because she was involved in a domestic violence situation which was affecting her attendance.

Conclusions of Law: The law provides that a claimant who has voluntarily left work without good cause as defined in the statute shall be disqualified from receiving benefits. "Good cause" includes only such cause as is attributable to the employing unit or which consists of an illness or disability of the claimant requiring separation from the work. The term "work" means any work, whether full-time, part-time or temporary.

The record and evidence in this case show that the claimant voluntarily quit the job for personal reasons when the claimant informed the employer of her intent not to return to the position. The claimant testified at the hearing about all of the factors she considered in reaching her decision to resign from her position. Although the claimant may have quit for personally compelling reasons, benefits cannot be paid on that basis. Section 443.101 (1) (a), Florida Statutes, denies payment of benefits to persons who voluntarily leave a job, unless the leaving was for good cause attributable to the employer, due to the claimant's personal illness or disability that required separation; or to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. Inasmuch as these conditions were not met, the referee has no authority to grant benefits in this case. Accordingly, it is held that the claimant quit for reasons not attributable to the employer, and is thus disqualified from the receipt of benefits on the basis of this separation.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The Reemployment Assistance Appeals Commission set forth factors to be considered in resolving credibility questions. These include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the employer's witness to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

Decision: The determination of the claims adjudicator dated January 13, 2014, is **REVERSED**. The claimant is disqualified from the receipt of reemployment assistance benefits from the week including the date of the separation, June 20, 2011, and until the time that she works again, and earns at least \$4675.

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 distributed to the last known address of each interested party on March 21, 2014

SHAVON NELSON
Appeals Referee

By:



HECTOR BERMUDEZ, 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 connect.myflorida.com or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's 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 reembolsar 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 connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

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, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

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 mesaje 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.

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.