

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-06192

vs.

Referee Decision No. 0024230266-02U

Employer/-None

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 referee's findings of fact state as follows:

The claimant established a claim for benefits with an effective date of October 12, 2014. The claimant's occupation was a truck driver until he was injured on August 20, 2014. The claimant has been applying for work, however the claimant is under his physician's care and has not been released to work. The claimant's restrictions consist of no walking, no standing, and no driving. The claimant is unable to work based on his ability.

Based on these findings, the referee held the claimant ineligible from August 20, 2014, through the week ending November 15, 2014, for receipt of benefits. 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.

The referee concluded that, since the claimant was medically restricted and could not work in his customary occupation, the claimant did not meet the eligibility requirements of the law. The referee, however, improperly limited her focus to the claimant's ability to work in his customary occupation. Although a claimant may be under medical restrictions and unable to perform his or her last job as a result of that restriction, such a restriction does not automatically mean the person is unable to perform other work within the limits of his or her skills and capabilities. For instance, a claimant who temporarily restricts his or her availability to part-time work due to a serious medical condition rather than a personal discretionary reason has not simply made a volitional decision to reduce work hours. Under such circumstances, a claimant is not ineligible to receive benefits. *See* U.A.C. Order No. 07-01956 (April 12, 2007); U.A.C. Order No. 04-11185 (January 27, 2005).

To be eligible for a claimed week of reemployment assistance benefits, Florida Administrative Code Rule 73B-11.021(4) requires that the claimant be free of "unreasonable occupational restrictions regarding wages, hours, place and type of work in relation to the claimant's training, experience, work history, and local labor market conditions." In applying this rule, however, the Commission is mindful that some individuals suffering from significant injuries must reenter the workplace, either temporarily or permanently, in different career paths because of physical limitations due to those injuries. Furthermore, the Commission recognizes that this rule must be applied to be consistent with the principles of the Rehabilitation Act and Americans with Disabilities Act, that governmental benefits should not be denied to "otherwise qualified individuals" on the basis of disability. *See generally* 29 U.S.C. §794; 42 U.S.C. §12132.

The claimant in this case asserts he would be able to perform a "sit-down job" despite his medical limitations. The Commission notes there are a significant number of jobs and job categories which are sedentary in nature. The *DICTIONARY OF OCCUPATIONAL TITLES* defines "sedentary work" as the following:

Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists up to 1/3 of the time) and/or a negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

See U.S. EMPLOYMENT SERVICE, *DICTIONARY OF OCCUPATIONAL TITLES* (Lincolnwood III: VGM Career Horizons 4th ed., rev. 1991) at http://www.occupationalinfo.org/appendxc_1.html.¹ The Commission notes that if an individual is capable of meeting these above-noted requirements, the individual is capable of performing some recognized jobs. The referee, however, did not ascertain whether the claimant is capable of meeting the threshold physical requirements for sedentary work for the period of time in question and whether the claimant is actively seeking employment in such positions.

As a finder of fact, the referee has a duty to examine or cross-examine any witness as is necessary to properly develop the record. Fla. Admin. Code R. 73B-20.024(3)(b). It is incumbent upon the referee to develop the record and accurately reflect the material testimony in the decision so that a reviewing body can evaluate the case. Without this information, the Commission is unable to determine whether the referee correctly held the claimant ineligible from receipt of benefits.

On remand, the referee is directed to further develop the record to determine whether the claimant is physically able to perform the duties required of the types of jobs he is seeking. To make this determination, it is necessary to further develop the record regarding the claimant's work search and the specific positions he is seeking, the basic job duties and expectations that an applicant would reasonably expect of those positions, and whether, at the time the claimant applied for these positions, the claimant could reasonably expect to perform these duties given his physical restrictions. The Commission recognizes that, upon applying for a position, the claimant might discover that the specific duties of a position would not be consistent with his physical restrictions; therefore, the inquiry should be whether the claimant could reasonably expect to perform the position at the time he made the contact and not whether the ultimate job turned out to be unsuitable. The referee is to then render a new decision with sufficient, specific findings of fact regarding the claimant's physical restrictions and the types of work for which he was searching, and address the claimant's availability and ability to work.

The Commission notes that, depending on the nature of the claimant's condition and work restrictions, he may want to seek assistance from his local CareerSource Center for counseling and disability services. Additionally, if the claimant's impairments prevent him from driving, he may wish to explore the possibility of obtaining para-transit services from his local regional transit authority.

¹ We note that under this definition, the ability to stand and walk occasionally is not per se a requirement of sedentary positions; thus, even if the claimant cannot perform these actions, he may still be able to meet the physical requirements of some sedentary jobs, even if not all of them.

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

2/24/2015,

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: Juanita Williams

Deputy Clerk



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



*35172017 *

Docket No.0024 2302 66-02

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: ABLE AND AVAILABLE FOR WORK: Whether the claimant has been able and available for work, pursuant to Sections 443.036(1); 443.036(6); 443.091(1)(d), Florida Statutes; Rule73B-11.021, Florida Administrative Code.

Findings of Fact: The claimant established a claim for benefits with an effective date of October 12, 2014. The claimant's occupation was a truck driver until he was injured on August 20, 2014. The claimant has been applying for work, however the claimant is under his physicians care and has not been released to work. The claimant's restrictions consist of no walking, no standing, and no driving. The claimant is unable to work based on his ability.

Conclusions of Law: Department regulations provide that a claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to finding work, including contacting at least five prospective employers for each week of unemployment claimed. Claimants residing within a county that has a population of 75,000 or below shall contact at least three prospective employers for each week of unemployment claimed. The law provides that a claimant must report at least biweekly to receive unemployment benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and had contacted at least five prospective employers or reported in person to a one-stop career center for reemployment services for each week of unemployment claimed, and, if she or he has worked, to report earnings from that work. Effective May 17, 2013, a claimant's proof of work search efforts may not include the same prospective employer at the same location in three consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. For each week of unemployment claimed, each report must, at a minimum, include the name, address, and telephone number of each prospective employer contacted, or the date the claimant reported to a one-stop career center.

Department regulations provide that a claimant must be able to work and available for work during the major portion of the claimant's customary workweek within the calendar week for which a claim is filed. "Customary workweek" means the usual workweek of the industry or occupation in which the claimant is seeking employment. Effective May 17, 2013, the work search requirements do not apply to claimants required to participate in reemployment services under s. 443.091(e).

The record reflects the claimant has properly been held ineligible based on his ability to work. The record reveals since the effective date of his claim, the claimant has been unable to work in his current occupation. Thus, it is concluded the claimant has properly been held ineligible.

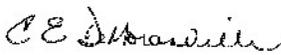
Consideration was given to the claimant's contention he is looking for work as a receptionist or passing mail. Although the claimant stated he is taking an online class to improve his communication to become a receptionist and able to pass mail while sitting, the record shows by the claimant's own testimony he does not have any experience as a receptionist and unable to walk to distribute mail at this time. Therefore, the claimant's contention is respectfully not accepted.

Decision: The determination dated October 31, 2014, holding the claimant ineligible based on his ability to work from August 20, 2014, and indefinitely, is affirmed through week ended November 15, 2014. The adjudicator shall determine future eligibility.

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/mailed to the last known address of each interested party on November 20, 2014.

CAROL STYLES
Appeals Referee

By: 

CONNIE DEMORANVILLE, 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 distribution/mailed 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 distribución/fecha de envío 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 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 distribisyon/postaj. Si 20yèm 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.