**STATE OF FLORIDA**
**REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 15-01214

vs.

Referee Decision No. 0024660233-02U

Employer/Appellee

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**ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

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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.

## I.
## *Procedural Background*

The Commission's review is generally limited to the evidence and issues before the referee and contained in the official record. After review of the hearing record, on September 21, 2015, the Commission issued an order requesting supplemental responses from the parties on two issues, and also requesting cleaner copies of certain documents admitted into evidence below. The employer provided a response on September 25, 2015. No response was provided from the claimant. After review of the employer's response, the documents provided are accepted into the record on review; however, the arbitration award provided by the employer is received for the sole purpose of determining whether the claimant took reasonable steps to preserve her employment by pursuing post-deprivation remedies, and not as substantive evidence of misconduct.

## II.
## *The Decision Below*

The referee's findings of fact state as follows:

> The claimant was hired on January 7, 2013, and separated on December 1, 2014. The employer, [a state university], employed the claimant as a full-time assistant dean and as the Director of the Student Disability Resource Center (SDRC). The claimant was a member of management and held to a higher standard. She had signed for the Employee Handbook. The employer had specific policies, described in the Employee Handbook, prohibiting sexual harassment, mandating equal opportunity, and prohibiting discrimination and non-retaliation. These terms were defined in the Employee Handbook. The sexual harassment policy prohibited one employee to propose to another member of the university community, that they engage in, or tolerate, activities of a sexual nature in order to avoid some punishment or receive some reward. The policies are fairly and consistently enforced. While serving as the director of the SDRC, the claimant initiated a romantic relationship with a student employee of the SDRC, who was, at the same time, a client of the SDRC. This evolved into a sexual relationship, which climaxed with them cohabiting at her house. While under the supervision of the claimant, the employee was a client in a student capacity and [received] preferential treatment due to his romantic relationship with the claimant. This included writing academic papers which he turned in as his own work, providing letters to faculty members regarding his disability accommodations, requesting medical "incompletes" for academic course work on his behalf, selecting him for a graduate assistant position after their romantic relationship was established, and permitting him to receive pay and internship credit for hours she knew the employee did not work. After a year, he moved out and filed a sexual harassment complaint against her, fearing she would retaliate against him now that he was no longer involved with her. The [employer] conducted an investigation into the matter. During the course of the investigation, she was interviewed and admitted to everything. The claimant was discharged.

Based on these findings, the referee held the claimant was discharged for misconduct connected with work, reasoning as follows in pertinent part:

> The record reflects the employer was the moving party in the job separation. Therefore, the claimant is considered to have been discharged. The burden of proving misconduct is on the employer. *Lewis v. Unemployment Appeals Commission*, 498 So. 2d 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of competent substantial evidence. *De Groot v. Sheffield*, 95 So. 2d 912 (Fla. 1957); *Tallahassee Housing Authority v. Unemployment Appeals Commission*, 483 So. 2d 413 (Fla. 1986). It was shown the claimant was discharged because she violated her employer's sexual harassment policies by initiating a romantic relationship with an individual who was both her employee and a client, which evolved into a sexual relationship and cohabitation. She admitted to this conduct during the investigation and during the telephone hearing. The claimant was a member of management and held to a higher standard. As such, she stood in a fiduciary relationship to her employer. Trust is implicit in that relationship. Her conduct in this case destroyed that trust. The testimony at the hearing established the policies were known to her, and they are fairly and consistently enforced. Her conduct is, therefore, misconduct as defined in subparagraphs (a), (b) and (e), above. Accordingly, it is held the claimant separated under disqualifying circumstances.

The claimant timely appealed this decision to the Commission for review.

## III.
## *Issues on Appeal*

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. The issue before the Commission is whether the claimant was discharged by the employer for misconduct connected with work as provided in Section 443.101(1), Florida Statutes. As part of that review, the Commission reviews the record to determine whether the referee's findings of fact are supported by competent, substantial evidence, and whether the referee's conclusions of law demonstrate the referee correctly applied the reemployment assistance law to the findings. Additionally, we consider the

claimant's arguments on appeal that (1) the evidence of record failed to establish that the claimant engaged in sexual harassment by making unwelcome advances of a sexual nature; and (2) that in the absence of sworn testimony from the accusing party (hereinafter "the complainant"), the employer failed to meet its burden of proving that the claimant's actions were unwelcome.

## IV.
## *Analysis*

Section 443.036(29), Florida Statutes, states that misconduct connected with work, "irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other":

> (a) Conduct demonstrating a conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; or theft of employer property or property of a customer or invitee of the employer.
>
> (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
>
> (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
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> (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

> (e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:
>
> a. He or she did not know, and could not reasonably know, of the rule's requirements;
>
> b. The rule is not lawful or not reasonably related to the job environment and performance; or
>
> c. The rule is not fairly or consistently enforced.
>
> 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The employer contended, and the referee held, that the claimant violated its Sexual Harassment Policy.[1] Although not identified in the referee's decision, the employer contended that the claimant violated this policy in two ways: (1) by engaging in sexual harassment of the complainant, an individual who was both an employee supervised by the claimant, and who was receiving services through the SDRC, of which the claimant was Director; and (2) by showing favoritism towards the complainant during the course of their relationship by providing tangible benefits to him that were not consistent with employer policies. We analyze these issues separately.

### A. *Did the Employer Establish that the Claimant Violated Its Sexual Harassment Policy by Making Unwelcome Advances of a Sexual Nature?*

The relevant portions of the employer's policy state as follows:

> 1. Policy Statement: Sexual harassment is a form of discrimination based on a person's gender. Sexual harassment is contrary to the [employer's] values and moral standards, which recognize the dignity and worth of each person, as well as a violation of federal and state laws and [the employer's] rules and policies. Sexual harassment cannot and will not be tolerated by [the employer], whether by faculty, students, or staff or by others while on property owned by or under the control of the [employer].

* * * * *

[1] A copy of the policy was admitted into the record as Employer ("Emp.") Exhs. pp. 71-78.

3. Definition: *Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature* directed at an employee or student by another when:

a. Submission to such conduct is made either explicitly or implicitly a term or condition of employment, academic status, receipt of [the employer's] services, participation in [the employer's] activities and programs, or affects the measure of a student's academic performance; or

b. Submission to or rejection of such conduct is used as the basis for a decision affecting employment, academic status, receipt of services, participation in [the employer's] activities and programs, or the measure of a student's academic performance; or

c. Such conduct has the purpose or effect of unreasonably interfering with employment opportunities, work or academic performance or creating an intimidating, hostile, or offensive work or educational environment.

4. Examples of Sexual Harassment: Incidents of sexual harassment may involve persons of different or the same gender. They may involve persons having equal or unequal power, authority or influence. *Though romantic and sexual relationships between persons of unequal power do not necessarily constitute sexual harassment, there is an inherent conflict of interest between making sexual overtures and exercising supervisory, educational, or other institutional authority. Decisions affecting an employee's job responsibilities, promotion, pay, benefits, or other terms or conditions of employment, or a student's grades, academic progress, evaluation, student status, recommendations, references, referrals, and opportunities for further study, employment or career advancement, must be made solely on the basis of merit.*

* * * * *

d. Unwelcome requests or demands for sexual favors or unwelcome sexual advances;

* * * * *

[Emphasis added.]

In support of its contention that the claimant had engaged in sexual harassment of the complainant, the employer presented, among other evidence, its intake notes of an interview with the complainant (the notes were reviewed and signed by him)[2]; an Investigative Summary containing the employer's findings and conclusions regarding the complainant's complaint of harassment against the claimant; copies of text messages between the claimant and the complainant; and the testimony of the investigator who prepared the Investigative Summary.

The evidence reflects that the claimant and complainant's relationship evolved from a professional relationship in the workplace, to an after-hours friendship, to an intimate relationship in which the claimant and complainant cohabited, before the complainant eventually terminated the relationship. The most significant piece of evidence, the Intake Notes constituting the complainant's statement regarding the material facts of the case, demonstrate that the complainant never clearly and unambiguously advised the claimant that he did not wish to enter into a romantic and sexual relationship. The complainant indicated that when the claimant told him after a late-night dinner that she loved him, the complainant told her that it was "f ked up that she would tell me some s t like that," asked her "what am I supposed to do with that," and told her that he was "terrified that I was going to hurt her" in an effort to discourage her from pursuing a romantic relationship. Emp. Exhs. p. 34. The record evidence reflects, however, that the claimant did not interpret his behavior as indicating the conduct was unwelcome, and in fact, the claimant and complainant became intimate within a short time. Emp. Exhs. p. 35.

The employer's investigator noted that there was some evidentiary support for the claimant's belief that the relationship was welcome. Emp. Exhs. p. 23. However, the employer concluded that "ultimately it is [the complainant's] own subjective perception (coupled with a reasonable person standard), not [the claimant's] interpretation of [the complainant's] feelings, which governs in the sexual harassment context." *Id.* The employer concluded that, because the claimant initiated the relationship, hired the complainant, created a job position for him, represented to him that she was influential across campus and in the social work field, "this created powerful incentives for [the complainant] to avoid disappointing [the claimant]." *Id.* While the Commission does not disagree with this last observation, the relevant question in this case is not the employer's interpretation and application of its own rule, but whether the employer has established

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[2] Due to our holding on the issue of sexual harassment of the complainant, it is not necessary to address in detail the claimant's second argument on appeal to the Commission. However, we have held on several occasions that under the evidentiary standards applicable to reemployment assistance appeals hearings, witness statements may be admitted as competent evidence. *See* R.A.A.C. Order No. 14-00075 (August 27, 2014), available at http://www.floridajobs.org/finalorders/raac_finalorders/14-00075.pdf.

misconduct within the meaning of Section 443.036(29)(e), Florida Statutes. This also includes consideration of whether the claimant knew or reasonably could have known of the rule's requirements as applied to this situation (*See* R.A.A.C. Order No. 13-06171 (February 12, 2014)), and whether the rule was fairly enforced in this specific context. §443.036(29)(e)1.a. & c., Fla. Stat.

Since the evidence reflects that the claimant and the complainant had different beliefs as to whether the claimant's romantic overtures were welcome, the Commission must determine the appropriate standard of analysis to determine whether the claimant violated the rule and, if so, whether she should have known that her conduct was in violation. We have previously held that the claimant's subjective intent is not controlling with respect to whether his or her behavior constitutes harassment, but rather whether it is both subjectively and objectively perceived as such by others. *See* R.A.A.C. Order No. 13-08300 at 4 (February 6, 2014)[3]; R.A.A.C. Order No. 14-05924 at 11 (April 24, 2015).[4] In those cases, however, the conduct at issue was far more blatant and objectively inappropriate than that at issue here, such as writing a potentially highly offensive word on a work document (13-08300) and attempting to kiss a subordinate, pulling on her shirt, and touching her breasts during work hours without any prior off-duty relationship (14-05924). In this case, the claimant and complainant had a friendship that evolved into an intimate relationship without any clear rejection of the claimant's advances. There was nothing objectively offensive about the claimant's conduct in pursuing a romantic relationship in the manner she did, even if it was inherently unwise.

Courts addressing the issue of welcomeness in Title VII cases[5] have focused on whether the alleged victim's comments or behavior provided sufficient indication that advances were unwelcome. *See*, *e.g., Dockter v. Rudolf Wolff Futures, Inc.*, 913 F. 2d 456, 459 (7th Cir. 1990) (noting that while the alleged victim had rejected the employer's advances, "her initial rejections were neither unpleasant nor unambiguous, and gave James no reason to believe that his moves were unwelcome"); *Mangrum v. Republic Industries, Inc.*, 260 F. Supp. 2d 1229, 1253 (N.D. Ga. 2003); *Kouri v. Liberian Services, Inc.*, 1991 U.S. Dist. Lexis, Civil Action No. 90-00582-A (E.D. Va. 1991). *See also EEOC v. Prospect Airport Serv., Inc.,* 621 F.3d 991, 997-98 (9th Cir. 2010) (holding that while unwelcomeness is inherently

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[3] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-08300.pdf.
[4] Available at http://www.floridajobs.org/finalorders/raac_finalorders/14-05924.pdf.
[5] Because the relevant definition in the employer's policy is clearly based on the Title VII standard (*see* 29 C.F.R. §1604.11), we conclude that precedent under Title VII is relevant in determining whether the employer has established a violation of its rule for purposes of reemployment assistance law, as well as for the affirmative defense regarding whether the claimant should have known her conduct was in violation of the rule.

subjective, the issue of whether it was communicated effectively should be evaluated objectively). Applying the analysis in these cases to the case before us leads to the clear conclusion that the record evidence does not establish that, on an objective basis, the claimant should have been aware that her conduct was unwelcome.

Moreover, the employer's policy does not indicate that a romantic or sexual relationship between the claimant and the complainant was *per se* impermissible.[6] While paragraph 4 of the policy quoted above noted that such a relationship created a conflict of interest, it did so in the context of a requirement (addressed below) that all decisions be based on merit criteria rather than favoritism. Indeed, the policy does not contain a statement that such relationships are disfavored or discouraged.[7] The evidence does include a text message from the claimant acknowledging that she would be "fired for being in your life." Emp. Exhs. p. 58. However, this text is ambiguous as to why such a disclosure would be incriminating. The text might support an inference that she knew the relationship was improper, or that she knew that having provided the complainant certain benefits would constitute a violation of the rule. It might also support an inference that she was merely attempting to dissuade the complainant from terminating the relationship or filing a complaint. Given the other evidence in this case to the contrary, this text is not sufficient to establish knowledge on the part of the claimant that the relationship was *per se* prohibited.

The employer contended at the hearing that the claimant had a duty to disclose her relationship with the complainant to a supervisor so that the complainant could be assigned to a new supervisor. The record, however, discloses no specific policy applicable to this claimant requiring her to do so.[8]

We conclude that the evidence is not sufficient to establish, for purposes of this case, that the claimant either knew, or should have known, that her advances were unwelcome. As a consequence, we hold that the claimant has established the affirmative defense contained in Section 443.036(29)(e)1.a., Florida Statutes, as to the allegation of sexual harassment. We also hold that the employer failed to establish that the claimant violated any rule by failing to disclose the relationship. In so holding, the Commission recognizes both the rights and duties employers

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[6] The Commission recognizes that, as a public employer whose employees may possess Constitutional rights to associate, the issue of whether the employer can or should prohibit such relationships is a complicated one. Compare, however, the employer's policy with USF Policy 1.022 (available at http://regulationspolicies.usf.edu/policies-and-procedures/pdfs/policy-1-022.pdf).

[7] Guidance that may be of more recent genesis, but not provided to the referee and not of record in this case, does so hold.

[8] The employer's published policies reflect that such a requirement may exist for some employees, such as faculty. There is no indication that the claimant was a member of this bargaining group.

possess with regard to such relationships, and the inescapable fact that the claimant used exceptionally poor judgment in pursuing such a relationship. Nothing in this decision should be interpreted as limiting, under reemployment assistance law, an employer's ability to craft and enforce reasonable policies designed to promote a safe and professional working and educational environment.

### B. *Did the Employer Establish that the Claimant Violated Its Sexual Harassment Policy by Showing Inappropriate Favoritism Towards the Complainant?*

Paragraph 4 of the employer's sexual harassment policy provides that decisions regarding an employee's job, or a student's academic opportunities, must be made solely on the basis of merit. The employer contended, and the referee held, that the claimant violated this portion of the policy by providing favored treatment to the complainant.

The complainant's statement indicated a number of ways in which the claimant provided him with favorable treatment, including during the time they were cohabiting. She placed him in a graduate assistanceship and an internship. His statement indicated that he was getting credit for the same hours for both positions. Emp. Exhs. p. 39. Most significantly, the evidence demonstrates that she made efforts to have him collect wages for his OPS position when he was unable to work, an act that violated the employer's policies and Florida law (§839.13, Fla. Stat.). Emp. Exhs. pp. 41, 52. The record supports an inference that the claimant provided this and other benefits to the claimant as a consequence of their relationship. Thus, the Commission concludes that the evidence supports the referee's findings and conclusions that the claimant violated the employer's policy on sexual harassment by using her official position to provide the complainant benefits to which he would not have been otherwise provided or entitled. This behavior constitutes misconduct as defined in Section 443.036(29)(a)&(e), Florida Statutes. Because the employer established a violation of its policy as to favoritism, including actions that were violative of state law, the Commission concludes that the referee properly held the claimant disqualified from benefits for misconduct.

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 referee's decision is affirmed. The claimant is disqualified from receipt of benefits.

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

10/30/2015 ,

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: Mary Griffin
Deputy Clerk

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

*39619519 *

**Docket No.0024 6602 33-02** Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

***CLAIMANT/Appellee*** ***EMPLOYER/Appellant***

APPEARANCES Employer

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), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

**Findings of Fact:** The claimant was hired on January 7, 2013, and separated on December 1, 2014. The employer, , employed the claimant as a full-time assistant dean and as

the Director of the Student Disability Resource Center (SDRC). The claimant was a member of management and held to a higher standard. She had signed for the Employee Handbook. The employer had specific policies, described in the Employee Handbook, prohibiting sexual harassment, mandating equal opportunity, and prohibiting discrimination and non-retaliation. These terms were defined in the Employee Handbook. The sexual harassment policy prohibited one employee to propose to another member of the community, that they engage in, or tolerate, activities of a sexual nature in order to avoid some punishment or receive some reward. The policies are fairly and consistently enforced. While serving as the director of the SDRC, the claimant initiated a romantic relationship with a student employee of the SDRC, who was, at the same time, a client of the SDRC. This evolved into a sexual relationship, which climaxed with them cohabiting at her house. While under the supervision of the claimant, the employee was a client in a student capacity and receive preferential treatment due to his romantic relationship with the claimant. This included writing academic papers which he turned in as his own work, providing letters to faculty members regarding his disability accommodations, requesting medical "incompletes" for academic course work on his behalf, selecting him for a graduate assistant position after their romantic relationship was established, and permitting him to receive pay and internship credit for hours she knew the employee did not work. After a year, he moved out and filed a sexual harassment complaint against her, fearing she would retaliate against him now that he was no longer involved with her. The conducted an investigation into the matter. During the course of the investigation, she was interviewed and admitted to everything. The claimant was discharged.

**Conclusions of Law:**As of May 17, 2013, the Reemployment Assistance Law of Florida defines misconduct connected with work as, but is not limited to, the following, which may not be construed in pari materia with each other:

a. Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; theft of employer property or property of a customer or invitee of the employer.

b. Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer.

c. Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

d. A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

e. 1. A violation of an employer's rule, unless the claimant can demonstrate that:

a. He or she did not know, and could not reasonably know, of the rule's requirements;

b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The record reflects the employer was the moving party in the job separation. Therefore, the claimant is considered to have been discharged. The burden of proving misconduct is on the employer. Lewis v. Unemployment Appeals Commission, 498 So.2d 608 (Fla. 5th DCA 1986). The proof must be by a

preponderance of competent substantial evidence. De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 483 So.2d 413 (Fla. 1986). It was shown the claimant was discharged because she violated her employer's sexual harassment policies by initiating a romantic relationship with an individual who was both her employee and a client, which evolved into a sexual relationship and cohabitation. She admitted to this conduct during the investigation and during the telephone hearing. The claimant was a member of management and held to a higher standard. As such, she stood in a fiduciary relationship to her employer. Trust is implicit in that relationship. Her conduct in this case destroyed that trust. The testimony at the hearing established the policies were known to her, and they are fairly and consistently enforced. Her conduct is, therefore, misconduct as defined in subparagraphs (a), (b) and (e), above. Accordingly, it is held the claimant separated under disqualifying circumstances.

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 witnesses to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

**Decision**: The determination dated December 22, 2014, is REVERSED. The claimant is disqualified for the week beginning November 30, 2014, plus five weeks 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 distributed/mailed to the last known address of each interested party on February 26, 2015.

**S. DIMON**
Appeals Referee

By: Connie P. Rudd

CONNIE RUDD, 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 envìo 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 definitif 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.

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