

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 15-02299

vs.

Referee Decision No. 0022338381-04U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the employer's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision which held the claimant not 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 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 worked for the employer's employee leasing company from April 9, 2012, through July 12, 2013. The claimant had a responsibility to report back to the employer at the conclusion of an assignment. The claimant was informed of the responsibility on the application at the time of hire and on her check stubs. The claimant was separated from the client company on or about July 12, 2013. The claimant did not report back to the employer.

Based on these findings, the referee held the claimant was discharged for reasons other than misconduct connected with work. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is not in accord with the law; accordingly, it is reversed.

Section 443.101(10)(b), Florida Statutes, provides, in pertinent part:

A temporary or leased employee is deemed to have voluntarily quit employment and is disqualified for benefits . . . if, upon conclusion of his or her latest assignment, the temporary or leased employee, without good cause, failed to contact the temporary help or employee-leasing firm for reassignment, if the employer advised the temporary or leased employee at the time of hire and that the leased employee is notified also at the time of separation that he or she must report for reassignment upon conclusion of each assignment, regardless of the duration of the assignment, and that reemployment assistance may be denied for failure to report. **For purposes of this section, the time of hire for a day laborer is upon his or her acceptance of the first assignment following completion of an employment application with the labor pool. The labor pool as defined in s. 448.22(1) must provide notice to the temporary employee upon conclusion of the latest assignment that work is available the next business day and that the temporary employee must report for reassignment the next business day. The notice must be given by means of a notice printed on the paycheck, written notice included in the pay envelope, or other written notification at the conclusion of the current assignment.** [Emphasis added.]

In this case, the record reflects the claimant was employed by an employee leasing company. The claimant was assigned to work as a server at a job site operated by a client of the leasing company. At the time of hire, the claimant signed an Employee Acknowledgment form and a separate document entitled Agreement. Both the Acknowledgment and Agreement contained provisions that if the work with the client company ended, the employee was to contact the leasing company within 72 hours for possible reassignment or risk losing unemployment benefits.

The record reflects the claimant received a paycheck on the date of separation. The claimant's wage statement contained the following language: "Contact [the employer] within 72 hours at [XXX-XXX-XXXX] should your assignment end, for possible reassignment. Failure to do so may cause unemployment benefits to be denied." The claimant did not contact the leasing company on or after the date of separation.

The competent evidence established that the claimant was advised at the time of hire to contact the employer for reassignment upon the completion of the assignment. Moreover, the employer also showed that the claimant was advised at the time of the separation to report back to the leasing company. The claimant received a paycheck on the final day of employment that contained the statement to report back for reassignment or risk the loss of benefits.

Prior to 2008, the Commission had held that notice on the back of a paycheck was not sufficient because it tended to lose its significance over time. However, in 2008, the Legislature amended the statute specifically to authorize such notice. *See* Ch. 2008-165, §1, at 2, Laws of Fla. Notwithstanding that change, the Commission has on occasion since 2008 erroneously cited its prior rationale in concluding that notice on a paycheck was insufficient. We reaffirm today, as in other recent cases, that the prior Commission precedent has been superseded by statute. Since the statute's own plain language provides that notice printed on a paycheck is an effective means of giving the requisite notice, the leasing company in the present case complied with the statutory requirements concerning notification at the time of hire and separation.

The claimant did not demonstrate good cause for failing to report back to the employer. Therefore, it is concluded that the claimant left work without good cause attributable to the employer, and is disqualified from the receipt of benefits.

The Commission notes the determination under review incorrectly reflects the employer is a reimbursing employer. The Department is directed to investigate and render a new determination regarding the employer's chargeability.

The decision of the appeals referee is reversed. The claimant is disqualified from receipt of benefits for the week ending July 13, 2013, and until she becomes reemployed and earns \$4,182.00. As a result of this decision of the Commission, benefits received by the claimant for which the claimant is not entitled may be considered an overpayment subject to recovery, with the specific amount of the overpayment to be calculated by the Department and set forth in a separate overpayment determination.

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
7/31/2015,
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



*41423598 *

Docket No.0022 3383 81-04

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

CLAIMANT/Appellant

EMPLOYER/Appellee

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

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rules 73B-20.016; 20.017.

Jurisdictional Issue: A case will be re-opened for a hearing on the merits when a party requests a reopening within 20 days of rendition of the decision and establishes good cause for not attending a previous hearing. If good cause is not established, the previous decision will be reinstated.

The hearing was scheduled for June 3, 2014. The employer did not appear at the hearing. The employer had a server crash at the time of the hearing. Due to the disorganization resulting from the crash and the attempt to recover, the employer missed the calls for the hearing. There is good cause to re-open the hearing.

Findings of Fact: The claimant worked for the employer's employee leasing company from April 9, 2012, through July 12, 2013. The claimant had a responsibility to report back to the employer at the conclusion of an assignment. The claimant was informed of the responsibility on the application at the time of hire and on her check stubs. The claimant was separated from the client company on or about July 12, 2013. The claimant did not report back to the employer.

Conclusions of Law: The law provides that a leased employee of an employee leasing company voluntarily quit employment and is subject to disqualification if:

- a. the leasing company employer advised the leased employee at the time of hire and at the time of separation to report for reassignment upon the conclusion of each assignment, and
- b. the leased employee was notified at the time of hire and at the time of separation that failure to report for reassignment may result in denial of Reemployment Assistance benefits, and
- c. the leased employee failed, without good cause, to contact the leasing company employer for reassignment upon conclusion of the latest assignment.

In Order 04 03430 and other orders, the Reemployment Assistance Appeals Commission held that boilerplate language contained on the pay stub of a leased employee is insufficient to satisfy the requirements of Section 443.101(10)(b), Florida Statutes, regarding the notice required to be given to leased employees at an assignment's conclusion. The notice required by the statute must be reasonably expected to put the claimant on actual notice that he or she must seek a reassignment or face losing Reemployment Assistance Benefits. Language on each and every paycheck effectively loses its message over time and is not the type of notice the Legislature intended at the time of separation. Where no competent evidence was presented that the claimant was offered further work at the end of an assignment or that the claimant quit the job or was released from the last assignment due to misconduct connected to the work, the claimant is not disqualified from receipt of Reemployment Assistance benefits.

Decision: The determination dated April 25, 2014, is REVERSED. The claimant should not be disqualified for the receipt of benefits.

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 April 30, 2015.

K. LONKANI
Appeals Referee

By:

MEGAN BRIGHTMAN, 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 sò 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 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.

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.