STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 15-04509

vs.

Referee Decision No. 0026540567-06U

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 wherein the claimant was held disqualified from receipt of benefits and the employer's account was noncharged.

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 within the meaning of Section 443.101(1), Florida Statutes.

The referee's pertinent findings of fact state as follows:

> The claimant worked as a full-time pharmacy technician for a company from October 21, 2014, through July 6, 2015. A new pharmacist was hired in June 2015. In the beginning of June 2015, the pharmacist told him that he had "no idea what he was doing," in front of a customer. The pharmacist told the pharmacy manager and patients that the claimant didn't know how to do his job approximately six times in June 2015. In the middle of June 2015, the claimant asked if there were other departments that he could work in. The claimant's request was denied due to no openings [being] available. On July 6, 2015, the claimant was told

> that he misplaced drugs that he did not. The claimant decided to quit at that time. On July 7, 2015, the claimant contacted the vice president of operations to rescind his resignation to attempt to get his job back and work in a different department. The claimant's request was denied.

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 referee's decision is not in accord with the law; accordingly, it is reversed.

Section 443.101(1)(a), Florida Statutes, provides that an individual shall be disqualified from receipt of benefits for voluntarily leaving work without good cause attributable to the employing unit. Under the statute, "the term 'good cause' includes only that cause attributable to the employing unit which would compel a reasonable employee to cease working." §443.101(1)(a)1., Fla. Stat. *See also Uniweld Products, Inc. v. Industrial Relations Commission*, 277 So. 2d 827, 829 (Fla. 4th DCA 1973) (holding good cause is such cause as "would reasonably impel the average able-bodied qualified worker to give up his or her employment"). Further, it is well established that, "[w]henever feasible, an individual is expected to expend reasonable efforts to preserve his employment." *Glenn v. Florida Unemployment Appeals Commission*, 516 So. 2d 88, 89 (Fla. 3d DCA 1987).

The record, and findings, reflect the claimant quit his job with the employer because of a pattern of ongoing demeaning verbal comments by his supervisor, the employer's pharmacist. The claimant provided unrebutted testimony that the pharmacist repeatedly told him that he did not know how to do his job in front of customers and co-workers, and that the pharmacist continued her inappropriate conduct after the claimant complained to the employer. The record reflects that the claimant complained about the pharmacist's conduct towards him to the pharmacy manager and the director of operations on several occasions and requested to work in a different department, but no changes in the pharmacist's behavior occurred and no transfer was offered. The referee held the claimant disqualified from receipt of benefits, reasoning the claimant was supersensitive within the meaning of *Uniweld Products*, and thus that he did not demonstrate he quit for reasons that constitute good cause attributable to the employer.

Contrary to the referee's reasoning, the Commission concludes the supervisor's actions of regularly criticizing the claimant, rather than merely correcting his performance, *in front of co-workers and customers,* constituted good cause attributable to the employer for the claimant to resign his employment. While the issue of good cause has been described by some courts as an ultimate issue of fact

best left to the referee, others have described it as a legal issue or a mixed issue of law and fact. *See*, *e.g.*, *Tourte v. Oriole of Naples*, 696 So. 2d 1283, 1284-85 (Fla. 2d DCA 1997). We do not accept the proposition that the Commission has any less authority to establish legal standards upon which application of the statute depends, as we did in *Gollet Enterprises East, Inc., v. Unemployment Appeals Commission*, 630 So. 2d 1166 (Fla. 4th DCA 1993), than do the District Courts of Appeal, as they have done numerous times.[1]

On several occasions, including *Gollet Enterprises*, the courts have held that a supervisor's subjecting an employee to a pattern of abusive or humiliating behavior can constitute good cause attributable to the employer to quit. *See also Miot v. Dade County Sch. Bd.*, 741 So. 2d 641 (Fla. 3d DCA 1999); *Dempsey v. Old Dominion Freight Lines*, 868 So. 2d 1239 (Fla. 3d DCA 1994); *Buckeye Cellulose Corporation v. Unemployment Appeals Commission***,** 522 So. 2d 39 (Fla. 1st DCA 1988). In *Miot*, the court reversed both the referee and the Commission to reach that decision. In these cases, the conduct complained of was repeated harassment and was typically abusive, profane, or in raised voice. This case presents a different but similar situation. There is no indication that the criticism was profane or loud. However, routinely telling an employee he doesn't know what he is doing – effectively, that he is incompetent – in the presence of co-workers and customers can be as degrading, embarrassing and humiliating as profane verbal abuse in a face-to-face setting. That such ongoing conduct by a supervisor falls far below the expectations for proper counseling, discipline, and supervision of employees in today's workplace is hardly disputable. We conclude that an employee reacting to such a demeaning and humiliating pattern of behavior by quitting could not properly be found to be supersensitive.

Further, the record reflects the claimant made a reasonable effort to preserve his employment prior to quitting. In *Rivera v. Florida Unemployment Appeals Commission*, 99 So. 3d 505 (Fla. 3d DCA 2011), the claimant complained to both her general manager and district manager about an assistant general manager's harassment. After being told her allegations could not be corroborated, the claimant's request for transfer was denied and, believing she would have to continue working with her harasser, the claimant voluntarily quit. *Id*. at 507. The court reversed the order disqualifying the claimant from receipt of benefits for failing to make reasonable efforts to preserve her employment after the transfer was denied, noting that the claimant had already expended reasonable efforts to preserve her

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[1] *See*, *e.g.*, *Stuart v. Unemployment Appeals Commission*, 961 So. 2d 1020 (Fla. 1st DCA 2007); *Marcelo v. Department of Labor & Employment Sec.*, 453 So. 2d 927 (Fla. 2d DCA 1984); *Thomas v. Peoplease Corp.*, 877 So. 2d 45 (Fla. 3d DCA 2004); *Schenck v. Unemployment Appeals Commission*, 868 So. 2d 1239 (Fla. 4th DCA 2004); *Spangler v. Unemployment Appeals Commission*, 632 So. 2d 98 (Fla. 5th DCA 1994).

employment. *Id*. at 508. Once a claimant has placed his or her employer on notice of an issue within the employer's power to correct, has cooperated with the employer in investigating the issue, and risks further harm by remaining in the employment, a claimant will normally be found to have made reasonable efforts to preserve his or her employment.

Like the claimant in *Rivera*, the claimant in this case complained to his superiors, the pharmacy manager, and the director of operations about the pharmacist's harassment, and requested he be moved to another department where he would not have to work with the harasser. Because the claimant placed the employer on notice of the harassment, something that was within the employer's power to correct, and requested he be moved away from the harasser, the employer's refusal to move the claimant and failure to correct the situation, when coupled with the fact the claimant would continue to be subject to the objectionable behavior of the supervisor, the Commission concludes the claimant demonstrated good cause attributable to the employer for quitting in accordance with Section 443.101(1)(a), Florida Statutes, and *Rivera*. Accordingly, the referee's decision to disqualify the claimant and relieve the employer's account of charges is reversed.

The decision of the appeals referee is reversed. If otherwise eligible, the claimant is entitled to benefits. The employer's record shall be charged with its proportionate share of benefits paid in connection with this claim.

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
2/24/2016 ,
the above Order was filed in the office of the Clerk of the Reemployment Assistance Appeals Commission, and a copy mailed to the last known address of each interested party.
By: Kimberley Pena
Deputy Clerk

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

*46820778 *

Docket No.0026 5405 67-06 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

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:

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

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

CHARGES TO EMPLOYER'S EMPLOYMENT RECORD: Whether benefit payments made to the claimant will be charged to the employment record of the employer, pursuant to Sections 443.101(9); 443.131(3)(a), Florida Statutes; Rules 73B-10.026; 11.018, Florida Administrative Code. (If charges are not at issue on the current claim, the hearing may determine charges on a subsequent claim.)

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.

Jurisdictional Issue:The claimant received both notices of hearing dated August 27, 2015, and September 23, 2015. The claimant was unable to attend the hearings and immediately requested reopening. A new hearing was scheduled for October 20, 2015. A case will be re opened for a hearing on the merits when a party requests a reopening within twenty 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 record shows that the claimant missed the original hearings and immediately requested reopening. The claimant showed good cause for reopening.

Findings of Fact: The claimant worked as a full time Pharmacy Technician for a company from October 21, 2014, through July 6, 2015. A new pharmacist was hired in June 2015. In the beginning of June 2015, the Pharmacist told him that he had "no idea what he was doing," in front of a customer. The Pharmacist told the Pharmacy Manager and patients that the claimant didn't know how to do his job approximately six times in June 2015. In the middle of June 2015, the claimant asked if there were other departments that he could work in. The claimant's request was denied due to no openings available. On July 6, 2015, the claimant was told that he misplaced drugs that he did not. The claimant decided to quit at that time. On July 7, 2015, the claimant contacted the Vice President of Operations to rescind his resignation to attempt to get his job back and work in a different department. The claimant's request was denied.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that temporarily terminated the claimant's work within the previous six calendar months, or to relocate due to a military connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification.

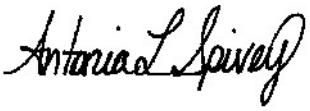
The record reflects that the claimant quit. The law provides for disqualification of a claimant who voluntarily left work without good cause attributable to the employing unit. The cause must be one which would reasonably impel an average able bodied qualified worker to leave employment. The applicable standards are the standards of reasonableness as applied to the average man or woman, and not to the supersensitive. Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827, 829 (Fla. 4th DCA 1973). Although the claimant made some efforts to resolve his issues prior to quitting, the issues were not shown to be out of the scope of normal office conflict. Additionally, the claimant's attempt to rescind his resignation the following day indicates that the claimant made an emotional decision in the moment and was not made due to careful consideration of the circumstances. The reasons for the claimant's resignation was supersensitive; therefore, the claimant is disqualified from the receipt of benefits. The employer's account will not be charged.

Decision: The determination dated August 3, 2015, is AFFIRMED.

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 October 22, 2015.

M. GIRVIN
Appeals Referee

By: 

ANTONIA SPIVEY (WATSON), 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.
