

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 16-00005

vs.

Referee Decision No. 0027469110-02U

Employer/Appellee

And

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 16-00006

vs.

Referee Decision No. 0027468132-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This consolidated matter comes before the Commission for disposition of the claimant's appeals pursuant to Section 443.151(4)(c), Florida Statutes, of two decisions of an appeals referee wherein the claimant was held not monetarily qualified 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. The Commission's review is generally limited to the evidence and issues before the referee and contained in the official record.

The issue before the Commission is whether the claimant was paid sufficient wages for insured work during the base period to establish monetary qualification within the meaning of Section 443.091(1)(g), Florida Statutes.

The referee's findings of fact state as follows:

The claimant filed a claim in October of 2015. The claimant worked for [employer #2] from June 1, 2015, until October 6, 2015. [Employer #2] paid the claimant \$554.13 in the 2nd quarter of 2015. The claimant had earned \$2,158.01 in the 2nd quarter of 2015 with [employer #2]. The claimant worked for [employer #1], who reported \$3,299.24 in the 3rd quarter of 2014. The claimant could not establish the actual amount earned in the 3rd quarter of 2014 with [employer #1]. The claimant had no other wages in the period from July 1, 2014, until June 30, 2015.

Based on these findings, the referee held the claimant not monetarily qualified for receipt of benefits. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decisions are not in accord with the law; consequently, they are reversed.

The record reflects the claimant filed a claim for benefits on October 27, 2015. A "Notice of Monetary Determination" was distributed on November 2, 2015, holding the claimant not monetarily qualified to receive benefits. The claimant timely appealed and a hearing notice was sent to the claimant and both of his base period employers.

The claimant's wage transcript established that the claimant's base period for his claim was the one-year period from July 1, 2014, through June 30, 2015. The claimant was only awarded wage credits in the amount of \$3,294.24 from the first employer during the first calendar quarter of his base period, and \$554.13 from the second employer during the last quarter of his base period. A claimant is required, *inter alia*, to have total wages in the base period of a claim that equal at least 1.5 times the wages reported for the highest quarter of the claim. In this case, the total of the wages reported for the base period of the claim was \$3,853.37, and 1.5 times the high quarter (\$3,299.24) is \$4,948.86. For this reason, the claimant was determined to be not monetarily qualified for benefits.

The claimant and a representative and witness for the second employer appeared at the hearing before the appeals referee. The first employer did not. The claimant testified that he believed he was paid/earned either \$3,299.24 or approximately \$3,204 from the first employer during the third quarter of 2014. Thus, the claimant failed to establish that the wages reported by the first employer

were incorrect. However, the claimant also testified that he believed he had greater earnings from the second employer during the second quarter of 2015. The second employer's witness, its accounting director, testified that the second employer *paid* the claimant \$554.13 during the second quarter of 2015, but that the claimant actually *earned* \$2,158.01 during the second quarter of 2015.

The referee held the claimant not monetarily qualified for receipt of benefits because he relied on the claimant's wages that were reported as paid to him during the base period as reflected in the Notice of Monetary Determination/Wage Transcript. In so doing, the referee erred. Accordingly, the referee's decisions must be reversed.

Florida Administrative Code Rule 73B-11.016 (1)(b) provides as follows:

Assignment of Wages to Calendar Quarters. Wages will generally be counted as reported by the employer. Upon request by the claimant or employer and for the purpose of determining the claimant's weekly benefit amount and maximum available credits, wages may be assigned to the calendar quarter in which the wages were earned, but can be used in only one base period.

While this language is permissive rather than mandatory, a clear purpose of the rule is to permit qualification for benefits when an employee earns sufficient wages in his base period, but is not so paid. A party seeking reassignment bears the burden of proving that the wages were actually earned in the quarter to which reassignment is sought. *Martinez v. Reemployment Assistance Appeals Commission*, 118 So. 3d 878 (Fla. 3d DCA 2013). However, once the party has established by sufficient proof that the wages were earned in a particular quarter in which they were not paid, reassignment should be granted unless there are countervailing considerations.

The un rebutted evidence from the second employer's accounting director establishes that the claimant's earned wages from the second employer for the second quarter of 2015 are \$2,158.01. It is clear that some of those wages were earned during the last part of the month of June 2015, and were paid in the ordinary course in July. This is the classic scenario the rule was designed to address. We hold that the claimant is entitled to reassignment of the portion of wages paid during the third quarter, but earned during the second, making his total wage credits for that quarter \$2,158.01. Since the claimant is required to have been

paid/earned more than \$4,948.86 during the base period given the high quarter earnings of \$3,294.24, and his total base period earnings after reassignment were \$5,457.25 (\$2,158.01 plus \$3,299.24) during the base period, he is monetarily qualified to receive benefits.

The decisions of the appeals referee are reversed. If otherwise eligible, the claimant is entitled to 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
3/28/2016,
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: Kady Ross
Deputy Clerk



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



*48266204 *

Docket No.0027 4691 10-02

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:

WAGE CREDITS: Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

ADDITIONAL WAGE CREDITS: Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

INSURED WORK: Whether services performed by the claimant during the base period constitute "employment," pursuant to Sections 443.036(21), 443.036(27); 443.1216, Florida Statutes.

Findings of Fact: The claimant filed a claim in October of 2015. The claimant worked for _____ from June 1, 2015 until October 6, 2015. _____ paid the claimant \$554.13 in the 2nd quarter of 2015. The claimant had earned \$2,158.01 in the 2nd quarter of 2015 with _____. The claimant worked for _____, who reported \$3,299.24 in the 3rd quarter of 2014. The claimant could not establish the actual amount earned in the 3rd quarter of 2014 with _____. The claimant had no other wages in the period from July 1, 2014 until June 30, 2015.

Conclusions of Law: To qualify for Reemployment Assistance benefits, the claimant must have:

Base period wages for insured work in two or more calendar quarters of the base period; and

Total base period wages equaling at least 1.5 times the wages paid during the high quarter of the base period, but not less than \$3400.

The "base period" is the first four of the last five completed calendar quarters immediately preceding the first day of the benefit year. The "high quarter" is the calendar quarter in which the most wages were paid. The weekly benefit amount equals one twenty-sixth of the total wages paid during the high quarter, but not less than \$32 or more than \$275. Available benefits equal twenty-five percent of total base period wages, with a maximum of \$6,325.

For claims submitted during a calendar year, the duration of benefits is limited to:

1. Twelve weeks if this state's average unemployment rate is at or below 5 percent.
2. An additional week in addition to the 12 weeks for each 0.5 percent increment in this state's average unemployment rate above 5 percent.
3. Up to a maximum of 23 weeks if this state's average unemployment rate equals or exceeds 10.5 percent.

The maximum available benefit for any claim filed effective 2015 is \$3,850, based on an unemployment rate of 6.2%.

The base period for a claim is the first four of the last five completed quarters. For the claimant's claim effective in October of 2015, the wages considered would be wages paid between July 1, 2014 and June 30, 2015. [redacted] paid the claimant \$554.13 in the 2nd quarter of 2015. [redacted] reported \$3,299.24 in the 3rd quarter of 2014. The claimant is required to make a total base period wages of at least 1.5 times the wages paid during the highest quarter in the base period. The highest quarter of wages for the claimant is the 3rd quarter of 2014, in which the claimant was paid \$3,299.24. That means that the total amount that the claimant is required to have been paid in the base period in order to be monetarily eligible is \$4,843.86. The claimant's total wages in the base period were \$3,853.37, which does not meet the required amount to establish monetary eligibility for a claim based upon the requirement of having more than 1.5 times the high quarter wages in the entire base period.

The claimant alleged that he would satisfy the 1.5 times the high quarter total wages requirement if his wages had been calculated as they were earned. The wages as earned with [redacted] were \$2,158.01. However, he could not provide any information as to the manner in which wages were earned with [redacted]. The appeals referee's jurisdiction over the reassignment of wages is specifically described in Florida Administrative Rules 73B-11.016(1)(b), which states:

(b) Assignment of Wages to Calendar Quarters. Wages will generally be counted as reported by the employer. Upon request by the claimant or employer and for the purpose of determining the claimant's weekly benefit amount and maximum available credits, wages may be assigned to the calendar quarter in which the wages were earned, but can be used in only one base period.

As the claimant failed to adequately provide evidence as how wages were earned in all quarters of the base period, the referee determines not to exercise the Department's discretion, as insufficient information was provided to establish the wages as earned. The claimant remains monetarily ineligible for benefits.

Decision: The determination dated November 24, 2015 is AFFIRMED. The claimant is monetarily ineligible for 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 December 23, 2015.

C. GREENBERG
Appeals Referee

Shanendra Barnes

By:

SHANEDRA BARNES, 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 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.