

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

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 16-00975

vs.

Referee Decision No. 0027815827-04U

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 an appeal of the decision of a reemployment assistance appeals referee pursuant to Section 443.151(4)(c), Florida Statutes. The referee's decision stated that a request for review should specify any and all allegations of error with respect to the referee's decision, and that allegations of error not specifically set forth in the request for review may be considered waived.

Upon appeal of an examiner's determination, a referee schedules a hearing. Parties are advised prior to the hearing that the hearing is their only opportunity to present all of their evidence in support of their case. The appeals referee has responsibility to develop the hearing record, weigh the evidence, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. Section 443.151(4)(b)5., Florida Statutes, provides that any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding Section 120.57(1)(c), Florida Statutes, hearsay evidence may support a finding of fact if the party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing and the appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

The Commission's review is generally limited to the evidence and issues before the referee and contained in the official record. A decision of an appeals referee cannot be overturned by the Commission if the referee's material findings are supported by competent, substantial evidence and the decision comports with the legal standards established by the Florida Legislature. The Commission cannot reweigh the evidence or consider additional evidence that a party could have reasonably been expected to present to the referee during the hearing. Additionally, it is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. Absent extraordinary circumstances, the Commission cannot substitute its judgment and overturn a referee's conflict resolution.

The claimant in this case was discharged for alleged theft in violation of the employer's cash handling procedures. The employer established by direct evidence the amount of money, and the paperwork turned in by the claimant for the job in question (the "employer copy"). However, the employer's evidence that the claimant charged the customer more than the amount turned in was established by hearsay within hearsay evidence by the president as to what information was provided by the customer verbally,<sup>1</sup> and by submission of a document admitted into evidence that the employer contended was the copy of the invoice left with the customer (the "customer copy"). The claimant did not admit that he altered or falsified the invoices. Because the customer did not appear at the hearing, and the claimant denied preparing the customer copy as it was written, this case turns on the question of whether that document was properly authenticated by a method other than direct testimony of a person with knowledge of its origin. If so, the combined evidence in the case would have been sufficient to draw a circumstantial inference of misrepresentation and theft; if not, the employer would not have presented sufficient competent, substantial evidence to prove misconduct.

Under Florida law, tangible evidence may be authenticated by unique or distinctive characteristics of the evidence in conjunction with the circumstances under which it was obtained. *See, e.g., Gosciminski v. State*, 132 So. 3d 678, 700 (Fla. 2013). We conclude that the circumstances were sufficient to authenticate the customer copy. The customer's invoice had the same printed number as the employer copy, and appears to have been identical to the employer copy in its preprinted components. While the claimant contended that employees sometimes leave proposals for a customer to review, he provided no plausible explanation as to

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<sup>1</sup> This testimony was corroborative hearsay, and was admissible to supplement, explain, or corroborate other evidence, but was not sufficient by itself as the sole support for a dispositive factual finding. *See* R.A.A.C. Order No. 14-05924 at 6 (April 24, 2015), available at [http://www.floridajobs.org/finalorders/raac\\_finalorders/14-05924.pdf](http://www.floridajobs.org/finalorders/raac_finalorders/14-05924.pdf).

how the one the customer provided had \$300 marked as the price without any sign of alteration; indeed, the claimant denied that he ever provided a \$300 quote to the customer. Under these circumstances, the employer provided sufficient evidence to authenticate the customer copy, and it was properly admitted as an exhibit and considered by the referee.

The referee's decision reflects only one party appeared at the hearing. The decision is corrected to reflect both parties appeared.

The referee's decision, as corrected, is affirmed. The claimant is disqualified from receipt of benefits. The employer's account is relieved of charges 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

8/18/2016 ,

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



\*50774289 \*

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**Docket No.0027 8158 27-04**

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

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***CLAIMANT/Appellant***

***EMPLOYER/Appellee***

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APPEARANCES

Claimant

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### **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.

**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.)

**Findings of Fact:** The claimant previously worked full time as a service technician at a plumbing company from August 2015 through December 2015. The company had a strict policy regarding the handling of cash and receipt of funds stating that any difference in the amount collected from the customer and the amount turned in at the office will be deemed unsatisfactory employee performance and will be addressed through discipline up to and including possible termination of employment. The claimant was made aware of this policy upon hire and throughout his employment. The claimant signed an employee handbook acknowledgement form on December 2, 2015. In December 2015, the claimant performed plumbing services for a customer and turned in an invoice to the plumbing company showing \$225 in cash was paid for the job. The claimant turned in \$225 cash to the plumbing company with the invoice. The customer later contacted the company due to issues with the work performed. The company asked the customer for a copy of the invoice in order to honor the warranty. The customer gave the company an invoice showing he had paid \$300 in cash. The company became aware at that time that the customer had paid \$300 in cash for the work performed. The company utilizes carbon copy invoices so that identical invoices can be made for the customer and the company. Both copies of the invoice are not identical. Signatures, comments, and pricing on the invoices are different but the invoice number is the same on both copies. On December 22, 2015, the President of the company issued the claimant a termination letter citing the difference in pricing between the two invoices. The President discharged the claimant for violating company policy regarding the handling of cash.

**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 testimony provided by the employer and the claimant demonstrates that the claimant was discharged. In cases of discharge, 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).

The employer has proven misconduct by a preponderance of competent substantial evidence. The employer had a policy in place which required all cash collected from customers to be turned into the office. The claimant was made aware of the policy upon hire and throughout her employment. The employer's policy stated that any mishandling of funds could lead to a termination of employment. The employer presented hearsay evidence regarding the customer's allegation that he was charged \$300 as written on the customer invoice. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

1. The party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing; and
2. The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

The hearsay evidence may be used to support a finding of fact as it would be admissible over an objection in a civil action as a business record. Under subsection (a) of the statute, the employer has shown that the claimant's conduct demonstrate a conscious disregard of an employer's interests and is found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of the employee. Under subsection (b) of the statute, the employer has shown that the claimant's actions were careless or negligent to a degree that manifests culpability, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to her employer. Additionally, the claimant violated an employer rule. The claimant has demonstrated that he knew or could have reasonably known about the rule's requirements. The rule is lawful and reasonably related to the job environment and performance. No competent testimony has been provided at hearing to show that the rule was not fairly or consistently enforced. The employer has demonstrated that the claimant's actions are defined as misconduct under subsection (e) of the statute. Accordingly, the claimant is disqualified from the receipt of reemployment assistance benefits beginning December 20, 2015. The employer's tax account will not be charged for benefits paid on this claim.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. In Order Number 2003-10946 (December 9, 2003), the Commission set forth factors to be considered in resolving credibility questions. These factors 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 to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

**Decision:** The determination dated February 1, 2016 is AFFIRMED. The claimant is disqualified from the receipt of reemployment assistance benefits beginning December 20, 2015, plus five weeks, and until the claimant has earned \$4,675. The employer's tax account will not be charged for benefits paid on this claim.

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 March 18, 2016.

**R. Castillo**  
Appeals Referee

*Shanendra J. 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 20<sup>th</sup> 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](https://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 reembolsar 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](https://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](https://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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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.