

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 16-02092

vs.

Referee Decision No. 0028517944-04U

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 and charged the employer's account.

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 voluntarily left work without good cause or was discharged by the employer for misconduct connected with work within the meaning of Section 443.101(1), Florida Statutes.

The referee made the following findings of fact:

The claimant was employed as an inventory manager by the employer, an event rental company, from June 3, 2015 through May 9, 2016. On May 9, 2016[,] the employer called the claimant into the office to discuss the claimant's performance. During the conversation, the claimant expressed dissatisfaction with where he felt he was headed in the company and said he was going to be giving his two[-]week notice. However, the claimant did not actually resign nor did the claimant intend his statement to be a resignation. The claimant had been considering resignation, but had not made a decision yet and mentioned it to the employer to see the employer's response and to determine his value to the

employer. The employer heard the statement as a resignation, and decided it was not worth the effort to continue working with the claimant on performance expectations if the claimant was intending to resign, and the employer terminated the claimant effective immediately that day, May 9, 2016. The claimant filed a claim for reemployment assistance benefits with an effective date of May 15, 2016.

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 findings of fact are inconsistent with the referee's credibility determination; consequently, the case must be remanded.

The record reflects the claimant was separated from employment on May 9, 2016, during a meeting to discuss his job performance. The claimant, the employer's owner, and the employer's general manager were present during the meeting. The claimant testified that he told the employer's owner that he was struggling to complete all of the assigned work because he was asked to perform his usual work in addition to the work of four other employees that had recently been separated from employment. He further testified he told the owner that he was thinking about giving a two-weeks' notice of his resignation, and the employer discharged him immediately upon learning that he was considering resigning. The owner testified that the claimant responded to his admonishing the claimant for his work performance by stating that it did not matter because he was going to give his two-weeks' notice anyway, and that he decided not to let the claimant work out his notice period and dismissed him on the spot. The general manager testified that after the owner admonished the claimant for his work performance, the claimant responded by saying that it did not matter because he planned on giving his notice of resignation. The referee held the claimant not disqualified from receipt of benefits, reasoning that the claimant did not resign from his job, the employer discharged the claimant after the claimant mentioned resigning at the conclusion of the meeting on May 9, 2016, and the employer discharged the claimant for reasons other than misconduct.

Florida Administrative Code Rule 73B-20.025(3)(d) requires the referee, if confronted with conflicting evidence with respect to a disputed issue of fact, the finding of which is determinative of the outcome of the appeal, to acknowledge such conflict and set forth the rationale by which that conflict is resolved. The parties in this case offered conflicting accounts of the events surrounding the claimant's separation as discussed above. While the referee made a credibility determination in favor of the claimant, the referee's finding that reflects the claimant "said he was

going to be giving his [two-weeks'] notice" is consistent with the testimony of the employer's witnesses (and inconsistent with the claimant's testimony). The referee's statement that is contained in the Conclusions of Law section of the decision and reflects "the claimant informed the employer that he was *considering* tendering his resignation and [two-weeks'] notice" is consistent with the claimant's testimony and *inconsistent* with the finding referenced in the preceding sentence. The Commission agrees that if the claimant stated that he was merely considering resigning, he did not resign, and the referee properly held the claimant not disqualified from receipt of benefits. If, however, the claimant told the owner that he was resigning or was going to be resigning, the record would reflect that the claimant quit his job.¹ Because the finding that the claimant was going to quit is not consistent with the finding in the Conclusions of Law that the claimant was considering quitting, the case must be remanded.

In order to address the foregoing, the referee's decision is vacated and the case is remanded. On remand, the referee is directed to render a new decision that contains accurate and specific findings of fact that are consistent with the credibility determination. Specifically, the findings in the new decision must state whether the claimant told the employer that he was quitting his job or would be quitting his job or, instead, told the owner that he was *considering* quitting his job. These findings must be consistent throughout the decision, and the referee must properly analyze those facts in accordance with this order.

¹ The referee's decision focuses on the claimant's subjective intent. However, it is well established that if an employer acts in such a way as to cause a claimant to reasonably believe he has been discharged, the claimant has been constructively discharged even if the employer did not intend for a separation to occur. See *LeDew v. Unemployment Appeals Commission*, 456 So. 2d 1219, 1223-24 (Fla. 1st DCA 1984). We see no reason not to apply a similar analysis to the actions of a claimant. If the claimant's statement reasonably led the employer to believe he was resigning at that point or promptly thereafter, the employer's decision to discharge him immediately can only be deemed a discharge for any period of time prior to that where the resignation would reasonably be deemed effective. §443.101(1)(a)3., Fla. Stat.

The decision of the appeals referee is vacated and the case is remanded for further proceedings.

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

8/9/2016,

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



*53143605 *

Docket No.0028 5179 44-04

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.

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 was employed as an inventory manager by the employer, an event rental company, from June 3, 2015 through May 9, 2016. On May 9, 2016 the employer called the claimant into the office to discuss the claimant's performance. During the conversation, the claimant expressed dissatisfaction with where he felt he was headed in the company and said he was going to be giving his two week notice. However, the claimant did not actually resign nor did the claimant intend his statement to be a resignation. The claimant had been considering resignation, but had not made a decision yet and mentioned it to the employer to see the employer's response and to determine his value to the employer. The employer heard the statement as a resignation, and decided it was not worth the effort to continue working with the claimant on performance expectations if the claimant was intending to resign, and the employer terminated the claimant effective immediately that day, May 9, 2016. The claimant filed a claim for reemployment assistance benefits with an effective date of May 15, 2016.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause or was discharged for misconduct connected with the work will be disqualified for benefits.

The Reemployment Assistance Law of Florida defines "misconduct" 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 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.

In determining whether a separation is voluntary, examining the intent of the worker is necessary. The word "voluntary" connotes something freely given and proceeding from one's own choice or full consent. St. Joe Paper Company v. Gautreaux, 180 So.2d 668 (Fla. 1st DCA 1968).

An employee is considered discharged if the words and actions of the employer would logically lead a prudent person to believe he or she has been terminated from the job. LeDew v. Unemployment Appeals Commission, 456 So.2d 1219 (Fla. 1st DCA 1984).

The record herein reflects the employer discharged the claimant when the employer told the claimant to leave its premises and advised the claimant to return his uniforms after the claimant informed the employer that he was considering tendering his resignation and two weeks' notice. No evidence was presented to show the claimant engaged in any conduct constituting statutory misconduct. As such, it is held the employer discharged the claimant for reasons other than misconduct connected with the work. Accordingly, the claimant is not subject to disqualification from the receipt of benefits pursuant to Florida law.

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

Decision: The determination of the claims adjudicator dated June 2, 2016 wherein it was held the claimant was approved for the receipt of benefits beginning May 8, 2016, if otherwise eligible, based on a finding the claimant was discharged for reasons other than misconduct connected with the work and held the employer's account chargeable for benefits paid to the claimant in connection with this claim 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 June 23, 2016.

P. Chance
Appeals Referee

By: 

CLAUDETTE SILVERA, 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 the last five digits of the 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.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

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 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 los últimos cinco dígitos del 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.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

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 lèt 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 senk dènye chif nimewo sekirite sosyal demandè a 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.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

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.