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 ineligible for benefits.¹

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 referee’s decision does not reflect who appeared at the hearing. The record reflects both parties appeared.

The issue before the Commission is whether the claimant was totally or partially unemployed within the meaning of Section 443.036(44), Florida Statutes.

¹ The “Notice of Disqualification” determination under review held the claimant “not entitled” to receive benefits from November 27, 2016, through March 18, 2017, because he is receiving vacation pay in an amount greater than his weekly benefit amount for that period and has a job attachment to the employer and, therefore, is not unemployed. The referee affirmed the determination, but asserted in his conclusions of law that “the claimant is not unemployed, is receiving disqualifying income, and is disqualified from the receipt of benefits from November 27, 2016 through March 18, 2017.” Contrary to the referee’s assertion, vacation pay is not listed among the various types of disqualifying remuneration addressed in Section 443.101(3) and (8), Florida Statutes. Vacation pay is relevant only to the analysis of whether the claimant is totally or partially unemployed. Accordingly, the issue in this case is one of eligibility under Section 443.091, Florida Statutes, not disqualification under Section 443.101, Florida Statutes.
The referee made the following findings of fact:

The claimant began employment with the instant employer on March 29, 2015, when the employer of record acquired the claimant’s previous employer. The claimant has not separated from the employer and is receiving vacation pay in an amount greater than $275 per week for the period from November 27, 2016, through March 17, 2017. The claimant filed a claim for reemployment benefits effective November 27, 2016. The claimant’s weekly benefit amount is $275. (Emphasis added.)

Based on these findings, the referee held the claimant is not unemployed and is, therefore, ineligible for receipt of benefits from November 27, 2016, through March 18, 2017. Upon review of the record and the arguments on appeal, the Commission concludes the above-italicized findings of fact are unsupported, and the record was not sufficiently developed for the Commission to apply the law properly; consequently, the case must be remanded.

Section 443.036(44)(a), Florida Statutes, provides in pertinent part:

An individual is “totally unemployed” in any week during which he or she does not perform any services and for which earned income is not payable to him or her.

The above-quoted statutory provision is not contingent upon any agreement between the parties for future work. If the claimant neither works nor accrues earned income in a particular week, he is unemployed in that week without regard to any future prospects of returning to work.

The record reflects that the claimant works aboard maritime vessels and that he became a permanent employee of the present employer on March 29, 2015, when the employer took over management of the vessels. The record further reflects the claimant works in 120-day rotations, with 120 days on the vessel followed by 120 days off the vessel, that he completed his last rotation on November 18, 2016, and he was scheduled to return to the vessel for his next rotation on March 18, 2017.² During the claimant’s time off the vessel, he does not receive regular pay, except for attendance at required training. The record reflects the claimant attended required training January 16 through 25, 2017, and that he was paid his regular daily wage

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² The hearing was conducted on January 24, 2017, prior to the date the claimant was scheduled to return to work.
for those days in training. Pursuant to a collective bargaining agreement with the
Seafarers International Union, the employer “pays into” a vacation benefit fund
administered by the union. The claimant’s testimony establishes he applied for and
received a net payment of $4,800 from the union’s vacation benefit fund during his
off period from November 19, 2016, through March 17, 2017.

A similar issue was recently addressed in R.A.A.C. Order No. 16-02566
(March 17, 2017), where the Commission reexamined longstanding precedent on the
issue of pay or benefits during non-working weeks in light of the statutory
amendments adopted after the Stewart v. Florida Department of Commerce, 246 So.
2d 146 (Fla. 3d DCA 1971) decision. In that case, pay was provided by bargaining
agreement during what would normally be considered an off-season or layoff period.
We concluded that the claimant was not unemployed during that period, despite the
fact that she was not actually working.

This case presents a slightly different factual situation. The claimant was
drawing a benefit from a union fund that apparently was funded by employers,
including the employer at issue. However, full analysis under the governing law in
this case requires additional record development. First, what were the provisions of
the plan\(^3\) that paid the funds to the claimant? What was the characterization of the
benefits in the plan, and what are the conditions for eligibility? The best evidence
for this information would be the relevant portions of the employee benefits plan at
issue or a summary description of such plan.

Second, how were the benefits funded? Were they solely funded through
employer contributions (and any investment gain on such contributions)? Or were
there any direct union contributions or claimant contributions included? This
evidence may be best provided in the relevant collective bargaining agreement and
the plan documents. Since the record is silent regarding these key factual matters,
the record requires further development. A review of the record reveals that a
document appearing to be an excerpt from the collective bargaining agreement
addressing the vacation benefit is present in the appeals folder and was provided to
the parties with the notice of hearing. However, the document was never referenced
during testimony or moved into evidence as an exhibit. On remand, it would be
advisable for the referee, at a minimum, to address this document and move it into
evidence. We urge the parties to provide all relevant portions of the benefit plan
documents and the collective bargaining agreement as discussed above in advance of
the next hearing.\(^4\)

\(^3\) This appears to be the “Seafarers Vacation Plan.”

\(^4\) The documents in the appeals folder are very light and somewhat difficult to read. The parties
should attempt to upload or otherwise transmit clean versions of the documents for the next
hearing.
Once the record has been fully developed, the referee must issue a decision addressing all material evidence, and engage in an analysis of the claimant’s employment status under relevant Commission precedent and case law. Specifically, the referee must determine whether the claimant was totally or partially unemployed during the periods from November 19, 2016, through January 15, 2017, and January 26 through March 17, 2017, when the claimant was off the vessel, not working, and not attending paid training.

Additionally, because the claimant’s voice was very muffled, portions of his testimony were unintelligible. Other portions of his testimony were inaudible due to the referee’s interrupting and talking over the claimant. On remand, the referee is directed to preserve a clear record by ensuring that all testimony is clear and audible, having the parties loudly repeat any testimony that is inaudible or unintelligible, and by refraining from interrupting and talking over the parties.

The decision of the appeals referee is vacated and the cause 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 8/30/2017, 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: Benjamin Bonnell
Deputy Clerk
Docket No.0029 9558 55-04

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES:

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:

RETIREMENT PENSION OR ANNUITY: Whether the claimant received, from a base period employer, benefits from a retirement, pension or annuity program embodied in a union contract or a public or private employee benefit program, pursuant to Section 443.101(8), Florida Statutes.

REEMPLOYMENT ASSISTANCE: Whether the claimant was totally or partially unemployed, pursuant to Sections 443.036(44); 443.111(4), Florida Statutes.

Findings of Fact: The claimant began employment with the instant employer on March 29, 2015, when the employer of record acquired the claimant’s previous employer. The claimant has not separated from the employer and is receiving vacation pay in an amount greater than $275 per week for the period from November 27, 2016, through March 17, 2017. The claimant filed a claim for reemployment
benefits effective November 27, 2016. The claimant’s weekly benefit amount is $275.

**Conclusions of Law:** Section 443.111(4), Florida Statutes provides in relevant part:

**WEEKLY BENEFIT FOR UNEMPLOYMENT.**

(a) *Total.* Each eligible individual who is totally unemployed in any week is paid for the week a benefit equal to her or his weekly benefit amount.

(b) *Partial.* Each eligible individual who is partially unemployed in any week is paid for the week a benefit equal to her or his weekly benefit less that part of the earned income, if any, payable to her or him for the week which is in excess of 8 times the federal hourly minimum wage. These benefits, if not a multiple of $1, are rounded downward to the nearest full dollar amount.

The Federal minimum wage was $5.15 per hour through July 23, 2007, rose to $5.85 per hour, effective July 24, 2007, with increases to $6.55 per hour effective July 24, 2008, and $7.25 effective July 24, 2009. Therefore, the allowed weekly earnings for which no deduction is made is $46.80 through July 23, 2008, then $52.40 through July 23, 2009, and $58 after that.

The record reflects the claimant filed a claim for reemployment benefits. The claimant remains employed with the instant employer and has a return date of March 17, 2017. The claimant is receiving pay from the employer greater than his weekly benefit amount for the period from November 27, 2016, through the week ending March 18, 2017; therefore, the claimant is not unemployed, is receiving disqualifying income, and is disqualified from the receipt of benefits from November 27, 2016, through the week ending March 18, 2017.

**Decision:** The determination dated December 23, 2016, 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 January 26, 2017.

C. GUNTER  
Appeals Referee

By:  
ROBYN L. DEAK, 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.

IMPORTANT - 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 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 representada 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.

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 adrèks 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 fak, men yo-a delivre, lage pa sèvis mesaje lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entenèt la, dat yo te resewwa 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 nepòt 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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This document contains important information, dates, or eligibility status regarding your Reemployment Assistance claim. It is important for you to understand this document. This document is available in Spanish and Creole. If you do not read or understand Spanish, English, or Creole, call 1-800-681-8102 for free translation assistance regarding your Reemployment Assistance claim.

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