

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Docket No. 18-02515

vs.

Referee Decision No. 0034133919-05U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for consideration of an appeal of the decision of a reemployment assistance appeals referee. The referee's decision advised that a request for review should specify any and all contentions of error with respect to the referee's decision, and that contentions of error not specifically raised in the request for review may be considered waived. The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

The Commission's review is generally limited to the issues before the referee and the evidence and other pertinent information contained in the official record. The referee has the responsibility to develop the hearing record, weigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. The Commission reviews the evidentiary and administrative record and the referee's decision to determine whether the referee followed the proper procedures, adequately developed the evidentiary record, made appropriate and properly supported findings, and properly applied the reemployment assistance law established by the Florida Legislature. The Commission cannot reweigh the evidence and the inferences to be drawn from it. Further, absent extraordinary circumstances, the Commission cannot give credit to testimony contrary to that accepted as true by the referee.

Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes that the referee sufficiently followed the proper procedures and the case does not require reopening or remanding for further proceedings. The referee's material findings are supported by competent, substantial evidence in the record. The referee also correctly applied the law in deciding the case.

On appeal to the Commission, the employer agrees with that portion of the referee's decision holding the claimant ineligible for benefits for the summer months from June 10, 2018, through August 18, 2018, but disagrees with that portion of the referee's decision holding the claimant "eligible" for the week ending June 9, 2018, arguing that the referee also should have held the claimant ineligible during that week as it was the last week of the 2017/2018 school year during which the claimant worked.

The employer's argument is based on a misapprehension of the scope of the referee's jurisdiction in the case and the effect of the referee's decision, albeit a common and understandable one.¹ In the reemployment assistance benefits review process, issues affecting eligibility or disqualification other than initial monetary qualification are identified and resolved initially through the issuance of a non-monetary determination. §443.151(3)(c), Fla. Stat. A determination only resolves those specific issues identified in it. When a determination is appealed, the referee only obtains jurisdiction over the specific issue(s) raised in the determination(s) appealed. §443.151(4)(b)1.-2., Fla. Stat. We recognize that parties and courts are sometimes confused by the balkanized process of dispute resolution used by the reemployment assistance process, but the individualized issue-spotting and determination issuance process is fundamental to the federal-state model employed in Florida and elsewhere and is essential for the prompt determination of entitlement to benefits on claims.

Although the referee's decisional paragraph stated that, "The determination dated July 31, 2018 is modified to reflect that the claimant is eligible for receipt of benefits the week which ended June 9, 2018," the referee's decision only affected – and correctly so – the period of ineligibility mandated by Section 443.091(3), Florida Statutes. The referee's statement that the claimant was "eligible" for the prior week did not resolve any other issues that might have affected the claimant's eligibility for that week. Indeed, looking at the claimant's claim as a whole, she is not eligible for benefits for that week for two reasons: (1) she was not "unemployed" that week, which is a prerequisite for any receipt of benefits [§443.091(1)]; and (2) she did not file a claim for that week [§443.091(1)(a)]. The employer can rest assured that benefits will not be paid for that week notwithstanding the language of the referee's decision. However, to clarify the effect of the referee's decision, we modify the decisional paragraph to read as follows:

Decision: The determination dated July 31, 2018 is modified to reflect that the claimant is ineligible for receipt of benefits from June 10, 2018 through August 18, 2018.

¹ Even appellate courts have occasionally misapprehended the limited nature of the referee's and Commission's jurisdiction over the issues in a case.

The referee's decision is affirmed as modified.

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

12/28/2018 ,

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



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



*74571792 *

Docket No.0034 1339 19-05

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.

SCHOOL: Whether benefits claimed are based on services to, for, or on behalf of an educational institution for any week commencing during a period between successive academic years or terms, if such services were performed in the first year or term and there is a contract or reasonable assurance that the claimant will perform services in any such capacity for any educational institution in the second academic year or term, pursuant to Sections 443.036(17), (37), and 443.091(3), Florida Statutes.

Nonappearance:A hearing was scheduled in this matter for September 19, 2018 at 9:00 a.m. The claimant did not appear at the September 19 hearing because she did not receive the call at the time of the hearing. The claimant requested reopening on September 20, 2018.

A case will be re-opened for a hearing on the merits when a party requests a reopening within 20 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 reflects that the claimant did not appear at the September 19 hearing because she did not receive the call at the time of the hearing. The claimant's reason for failing to appear is considered compelling. The claimant exercised due diligence in immediately requesting reopening. Therefore, the claimant has established good cause for her nonappearance and is entitled to a hearing on the merits of the case.

Findings of Fact: The claimant worked for the employer as a bus attendant during the 2017-2018 school term. The term ended on June 8, 2018. The claimant was scheduled to return to work in the same position for the 2018-2019 term, which began August 20, 2018. The claimant did return on August 14 and 15, 2018 for an in-service and began working again in her same position on August 20, 2018. The employer contacted the claimant on June 19 and June 20, 2018 to ask the claimant to work during the summer. The claimant never returned the employer's calls, so she did not work for the summer term.

Conclusions of Law: The law provides that a claimant is ineligible for benefits based on services provided to, for, or on behalf of an educational institution or institution of higher education during periods between successive academic years or regular terms and during vacation or holiday recesses if the claimant performed services to, for, or on behalf of an educational institution or institution of higher education in the first of such years or terms or in the period immediately before the recess and there is a contract or reasonable assurance that the claimant will perform services in any such capacity in any educational institution or institution of higher education during the second year or term, or immediately following the vacation or recess.

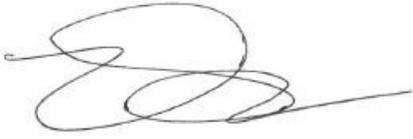
The record reflects that the claimant worked for the employer, an educational institute, during the 2017-2018 school term which ended on June 8, 2018. The employer provided the claimant with reasonable assurance that she would return to her job at the beginning of the 2018-2019 school term. The claimant returned to work August 20, 2018. Since the claimant had such reasonable assurance from the employer, she is ineligible for receipt of benefits from June 10, 2018 through August 18, 2018. She is eligible for receipt of benefits for the week which ended June 9, 2018 since she worked for the majority of that week.

Decision: The determination dated July 31, 2018 is modified to reflect that the claimant is eligible for receipt of benefits the week which ended June 9, 2018 and ineligible for receipt of benefits from June 10, 2018 through August 18, 2018.

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 19, 2018.

J. SHARP
Appeals Referee



By:

Valarie L. Washington, 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 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 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 diskalfye 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 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.

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