

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 19-00236

vs.

Referee Decision No. 0035034650-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of an appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a decision by the appeals referee on the claimant's combined wage claim. The referee dismissed the case pursuant to the claimant's verbal request to withdraw his appeal. On appeal to the Commission, the claimant argues that the referee erred in dismissing his appeal under the circumstances. Because we find that no reversible error occurred, we affirm. A final monetary determination on the claimant's combined wage claim is forthcoming, which the claimant will be able to appeal if he so chooses.

Background

The claimant filed a claim for benefits with an effective date of July 15, 2018. The claimant's application indicated he earned wages during the base period of his claim with employers in Florida, Rhode Island, and New Hampshire. On November 20, 2018, the Department issued a monetary determination that reflected base period wages only in Florida, but noted that there were "Pending Wage Requests" for wages earned in other states. As indicated on the determination, the Florida wages alone were not sufficient to establish a valid Florida claim. The claimant appealed the monetary determination.

At the commencement of the hearing held on the matter, the claimant made clear that he was not protesting Florida wages, which were accurately reflected on the monetary determination. Instead, he believed he was entitled to wages he earned in the states of Rhode Island and New Hampshire. The referee explained to the claimant that the availability of out-of-state wages was still pending with the Department, that when it was resolved a new determination would be issued that would be appealable, and that the referee did not have jurisdiction to add out-of-state wages to establish a valid Florida claim.

The claimant then elected to withdraw his appeal, being satisfied that the sole matter of protest—his wages from other states—was still pending at the Department, would be the subject of a forthcoming determination, and would be appealable at that time.

Analysis

A withdrawn appeal may be reopened only upon a showing that the withdrawal request was made as a result of misinformation from, or coercion by, the appellee or an employee of the Department of Economic Opportunity. Fla. Admin. Code R. 73B-20.022.

The claimant's appeal does not specifically identify how he relied to his detriment on any misinformation from the referee in withdrawing his appeal. Moreover, the referee's statements regarding the pending nature of the availability of the claimant's out-of-state wages to establish his Florida claim, and his lack of jurisdiction over the availability of out-of-state wages, are wholly consistent with the law concerning combined wage claims.

Claims based on combined wages of more than one state are authorized under the Federal Unemployment Tax Act, but are subject to federal regulations. *See* 20 C.F.R. §616.1. Under this arrangement, Florida must request that other states "transfer" the claimant's employment and wages during the base period before using such wages to establish a Florida claim. 20 C.F.R. §616.8(a). Moreover, all employment and wages in all states in which the individual worked during the base period of the claim must be included in such combining, unless the wages are designated as not transferrable under the provisions of 20 C.F.R. §616.9(b). 20 C.F.R. §616.7(c).

Each state determines wage credits for non-federal employees working within it under its own law. Furthermore, any dispute involving the amount of employment and wages subject to transfer from another state shall be decided by the transferring state in accordance with its own law. 20 C.F.R. §616.8(d)(3). Accordingly, neither the referee, nor the Department, nor the Commission here in Florida has jurisdiction to order that another state transfer any wages to establish a monetarily-qualified Florida claim.

Florida, as a paying state on any combined wage claim, is required to give claimants notice of each determination made on the claim. 20 C.F.R. §616.8(b). Redeterminations may be made based on additional or corrected information received from any source, including a transferring state. 20 C.F.R. §616.8(c).

Because the referee's statements were consistent with the applicable law, and the referee did indeed lack jurisdiction over the sole issue protested by the claimant, we see no basis to reopen the withdrawn appeal. Consequently, the referee's decision is affirmed.

Collateral Matters

Though the Commission has no jurisdiction over the availability of the claimant's out-of-states wages for this claim, we write solely to apprise the claimant of additional features of the unique legal landscape of "combined wage claims," as well as developments in the processing of his claim that have occurred subsequent to his hearing.

Circumstances which could prevent another state from transferring wages for use on a combined wage claim are various, but some are more common than others. For example, a transferring state's issuance of a nonmonetary determination prior to the request for transfer of wages can render the wages not transferable. 20 C.F.R. §616.9(b)(2); Office of Workforce Security, Empl. & Training Admin., U.S. Dep't of Labor, ET Handbook No. 399, Unemployment Compensation Claims Filed Under the Interstate Arrangement for Combining Employment and Wages, III-3. Additionally, a claimant cannot establish a combined wage claim in one state if he has an open, unexhausted claim in another state. *See* 26 U.S.C. §3304(a)(9)(B); 20 C.F.R. §616.7. And, finally, any wages used to establish a combined wage claim in any state cannot be used thereafter by any state as the basis for another monetary determination of benefits. 20 C.F.R. §616.10.

While the paying state, in this case Florida, has no authority to add out-of-state wages absent the approval of the transferring state, paying states nevertheless have some duties to shepherd claimants through the process. For example, when a claimant wants to request that another state reconsider its decision concerning availability of wages for transfer to a combined wage claim, and has additional supporting documentation to support this request, the paying state is expected to facilitate this request by sending it, along with the additional supporting documentation, to the other state(s) on a Form IB-14. *See* Office of Workforce Security, Empl. & Training Admin., U.S. Dep't of Labor, ET Handbook No. 392, Handbook for Interstate Claimstaking, VII(b). If no change is made in the wage transfer, the transferring state is required to process the IB-14 as an appeal. *Id.* at VII(f).

On this combined wage claim, the IB-14 process is underway. The claimant submitted documents to both the appeals referee and the Commission that may support reconsideration by the other states. For the claimant's benefit, we have taken steps to ensure that the Department is aware of those documents by forwarding them to the Department's Combined Wage Claim Unit.

Furthermore, the Department's records reflect that on May 29, 2019, it initiated an IB-14 process with both Rhode Island and New Hampshire. While it does not appear that Rhode Island has responded yet, the Department's records reflect that New Hampshire responded that wages with the New Hampshire employer were unavailable for the Florida claim because those wages were already transferred to Massachusetts for a claim filed effective November 12, 2017.

Once Rhode Island has responded to the IB-14, the Department will issue a new monetary determination. 20 C.F.R §616.8(b). To the extent that the new determination is adverse to the claimant, he will be able to appeal it. Florida appeal proceedings, however, will be limited to the question of whether the determination accurately represents the wages Florida was authorized to use by the other states. As explained above, any protest of the other states' determinations of availability of those wages for transfer must be decided by the transferring state in accordance with its own law pursuant to an appeal by the claimant in those states.

As noted, if the other states make no changes based on the IB-14 request, they are required to process the IB-14 as an appeal. At such a time, the claimant may wish to follow up with those states to ensure his participation in such appeals proceedings.

The referee's decision is affirmed.

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

5/31/2019,

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



*77065631 *

IMPORTANT:	For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
IMPORTANTE:	Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
ENPÒTAN:	Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limitè pou ou ranpli apèl la.

Docket No.: 0035 0346 50-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

Withdrawal Of Reemployment Assistance Appeal

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.

The appellant requested that the appeal be withdrawn on January 29, 2019. Rule 73-B20.022, Florida Administrative Code, states:

WITHDRAWAL OF APPEAL: The appellant may with the approval of the appeals referee withdraw the appeal prior to or at the hearing. If the withdrawal request is made prior to the hearing, it must be in writing and signed by the appellant; if made during the hearing, it must be entered orally on the record. If approved, the referee shall issue a written decision dismissing the appeal; provided, however, the appellant may request reopening of the appeal within twenty (20) days of the date of issuance of the dismissal decision. The referee shall act upon such a request in the manner set forth in subsection 73B-20.017 regarding reopening of appeals dismissed for non-appearance of the appellant. Notwithstanding those provisions, however, a withdrawn appeal shall be reopened only upon showing that the withdrawal request was made as the result of misinformation from or coercion by the appellee or an employee of Department of Economic Opportunity. The referee approves the appellant's request for withdrawal. As a result, the appeal is dismissed.

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 30, 2019.

W. Childers
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 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 paman 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 departman.

Yon pati ki te patisipe nan odyans lan e ki resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon bay Komisyon Apèl pou Asistans Reyanbochaj, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si apèl la te fèt pa lapòs, dat tenm lan ap dat li depoze. Si li te fakse, delivre a lamèn, delivre pa lòt sèvis kourye ki pa Sèvis Postal Etazini (United States Postal Service), oswa li te soumèt sou Entènèt, dat yo te resevwa ap dat li depoze. Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a. Yon pati k'ap mande revizyon ta dwe presize nenpòt ak tout alegasyon erè ki gen rapò ak desizyon abit la, epi bay sipò reyèl ak/oswa legal pou defi sa yo. Yo pral konsidere kòm anile, alegasyon erè ki pa etabli espesifikman nan demann pou revizyon.

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 Departman 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.