

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 19-00464

vs.

Referee Decision No. 0035281630-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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 disqualified from receipt of benefits and the employer's account was noncharged.

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 made the following findings of fact:

The claimant worked for the employer as a business analyst from 4/5/2017 to 1/28/2019. The claimant quit on 1/28/2019.

Based on these findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit. Upon review of the record and the arguments on appeal, the Commission concludes a procedural error occurred in the case and the record was not developed sufficiently; consequently, the case must be remanded.

The record reflects that the claimant's job separation was the result of an unsubmitted and unspecified "mutual agreement" entered into between the claimant and the employer. The claimant was the only party to attend the hearing. She testified that, per the agreement she signed with the employer, she was not able to testify as to what occurred that resulted in the agreement, except that she quit her job with the employer per the terms of the agreement. The claimant testified that

she released all legal claims with the employer by signing the agreement. Concluding that he could not provide legal advice, the referee did not advise the claimant regarding the limitations on waiver of statutory rights. Since the claimant offered no evidence as to what brought about the agreement, believing she was prohibited from doing so, the referee issued a decision adverse to the claimant.

In what appears to be an issue of first impression before us, we hold that a confidentiality provision¹ in a separation agreement cannot be enforced to preclude a claimant from testifying in a reemployment assistance appeals hearing or otherwise participating in the reemployment assistance process. We conclude that both the Social Security Act's "fair hearing" requirement² and Section 443.041(1), Florida Statutes, preclude a confidentiality provision (or any other provision in a separation agreement) from impairing the claimant's right to testify or otherwise provide evidence in support of her claim for reemployment assistance benefits, and we hold such provisions unenforceable in reemployment assistance proceedings to the extent they purport to do so.³ We further conclude that a referee has the responsibility to advise a party that her right to testify in reemployment assistance proceedings cannot be abridged by such an agreement, because of the affirmative duty placed on state unemployment agencies to ensure fair hearings.⁴

The Social Security Act requires, as a prerequisite to federal grants for administrative funding for state unemployment benefits programs, that a state provide an "[o]ppportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied . . ." 42 U.S.C. §503(a)(3). The U.S. Department of Labor interprets Section 303(a)(3) of the Social Security Act as *requiring* states to prohibit the waiver of rights. EMPL. & TRAINING ADMIN., U.S. DEP'T OF LABOR, UNEMPLOYMENT INS. PROGRAM LETTER ("UIPL") NO. 45-89 (AUG. 11, 1989).⁵ While this UIPL was issued in 1989, anti-waiver provisions were recommended in federal guidance as far back as 1950.⁶ Florida's anti-waiver

¹ The claimant did not specifically testify that she was bound by a confidentiality provision, but her testimony and behavior were consistent with the existence of one.

² Section 303(a)(3) of the Social Security Act of 1935 as amended, codified at 42 U.S.C. §503(a)(3).

³ We also suspect that the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and the Due Process and Access to Courts provisions of the Florida Constitution (Article I, Sections 9 & 21 respectively) would dictate the same result, but we need not analyze those general provisions given the program-specific legal authority.

⁴ The referee is correct that he should not provide parties legal advice as to how to frame the *substance* of their claims. However, there are many circumstances where advising parties regarding their *procedural* rights is not only permissible, but required in our proceedings, even though it may constitute "legal" advice.

⁵ Also available at https://oui.doleta.gov/dmstree/uipl/uipl89/uipl_4589.htm.

⁶ See Unemployment Ins. Serv., U.S. Dep't of Labor, Manual of State Employment Security Legislation 44 (Sept. 1950) ("Blue Book").

provision codifies this DOL guidance in Section 443.041(1), Florida Statutes. Moreover, because Florida's law must be interpreted so as to be in conformity with federal mandates (*see* Section 443.031, Florida Statutes), the anti-waiver provision must be applied consistent with federal fair hearing requirements.

Section 443.041(1), Florida Statutes, provides in pertinent part that “[a]ny agreement by an individual to waive, release, or commute her or his rights to benefits *or any other rights* under this chapter is void” (emphasis added). While this provision is clearly intended to preclude the waiver or release of the right to seek reemployment assistance benefits, the provision also protects “other” rights under Chapter 443, which includes the right to a hearing and the right to give testimony. §443.151(4)(b)1. & 5., Fla. Stat. We have no difficulty in concluding that a contract cannot indirectly prohibit participation in a hearing where it cannot do so directly, which is what the confidentiality agreement would do here if enforced in our proceedings.

While we have found no judicial authority in Florida or other jurisdictions addressing this issue with respect to unemployment proceedings, numerous courts have concluded in various contexts that confidentiality agreements cannot preclude discovery into factual issues that may have been behind a settlement agreement and which may be relevant in other litigation. For example, in *Scott v. Nelson*, 697 So. 2d 1300 (Fla. 1st DCA 1997), the First District Court of Appeal agreed with courts from several other jurisdictions that a confidentiality provision in a settlement agreement does not preclude information about the settled claims from being discovered in a separate lawsuit by third parties. Perhaps more comparable to the situation herein are the many cases that have held that a settling employee's statutory right to participate in EEOC proceedings is not validly waivable, given the public interest in the agency's operations. *See, e.g., EEOC v. Astra USA, Inc.*, 94 F.3d 738 (1st Cir. 1996); *EEOC v. Cosmair, Inc., L'Oreal Hair Care Div.*, 821 F.2d 1085 (5th Cir. 1987). Moreover, in none of the cases cited above was there a statutory provision explicitly prohibiting waiver of the right to participate or testify, as there is here.

For these reasons, we hold that a confidentiality provision in a settlement agreement cannot bar the claimant from testifying or providing other evidence regarding the nature and specifics of, and reasons for, her separation from the employer in a reemployment assistance appeals hearing.⁷ Accordingly, we vacate the decision under appeal and remand the case to the referee to conduct a new hearing in which the claimant may freely testify as to the circumstances resulting in

⁷ Our holding addresses the validity and enforceability of the confidentiality provision *solely* as to the reemployment assistance process.

her separation from employment, and the extent to which the settlement agreement was a part of, or otherwise related to, that separation. The referee shall develop the record as to how and why the separation occurred, and if the claimant voluntarily resigned as part of the agreement, whether such resignation was for good cause attributable to the employer. The claimant may also provide a copy of the settlement agreement if desired. If any objection is raised by the employer as to the submission of the agreement, the referee shall first address the issue and rule thereon prior to taking the agreement into evidence for consideration on the merits.

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



*78121172 *

Docket No.0035 2816 30-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES:

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 worked for the employer as a business analyst from 4/5/2017 to 1/28/2019. The claimant quit on 1/28/2019.

CONCLUSION OF LAW: The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work.

The record shows the claimant voluntarily quit. The burden of proof is on the claimant who voluntarily quit work to show by a preponderance of the evidence that quitting was with good cause. Uniweld Products, Inc., v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). The claimant elected not to disclose the reasons for her resignation on record due to a separation agreement. Without evidence of the reasons behind her quitting, the claimant cannot meet the required burden of proof. The claimant is subject to disqualification.

The law provides that benefits will not be charged to the employment record of a contributing employer who furnishes required notice to the Department when the claimant left the work without good cause attributable to the employer.

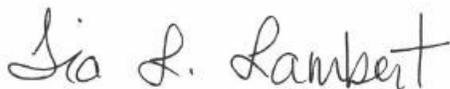
The claimant quit without good attributable to the employer, therefore, the employer's tax record will not be charged for any benefits paid in connection with this claim.

DECISION: The determination dated 2/12/2019 is **AFFIRMED**. The claimant is disqualified from benefits for the weeks starting 1/27/2019 and until she earns \$4,675 . The employer's record will not be charged for benefits paid in connection with 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 14, 2019.

R. RUSEK
Appeals Referee



By:

Tia Lambert, 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 definitif 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 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.

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.