

**STATE OF FLORIDA**  
**REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

In the matter of:

Claimant/Appellee

R.A.A.C. Docket No. 19-01575

vs.

Referee Decision No. 0036146923-02U

Employer/Appellant

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**ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

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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.

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's unemployment is due to a leave of absence voluntarily initiated by the claimant, pursuant to Sections 443.036(28) and 443.101(1)(c), Florida Statutes.

The referee made the following findings of fact:

The claimant worked for the employer as a finishing polisher, beginning on July 18, 2017. On April 9, 2019, the claimant collapsed and had to be taken to the hospital. On April 9, 2019, the claimant brought a doctor's note regarding the incident. On April 23, 2019, the claimant presented the chief operation officer with a doctor's note which stipulated that the claimant was to return to work on April 25, 2019. On April 29, 2019, the claimant returned to work. On April 30, 2019, the claimant became ill and the chief operations officer informed the claimant that it was not safe for the claimant to work. On April 30, 2019, the claimant was

informed that the claimant could not return to work until the claimant went back to the doctor and was cleared to return to work. The claimant was informed that the claimant[']s job would be held for the claimant until the claimant could return.

Based on these findings, the referee held that since the employer initiated the leave of absence, the claimant was not on a bona fide leave of absence as defined by law and was, therefore, not disqualified from receipt of reemployment assistance benefits.<sup>1</sup> Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is not in accord with the law; accordingly, it is reversed.

Section 443.036(28), Florida Statutes, defines "leave of absence" to mean "a temporary break in service to an employer, for a specified period of time, during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave." Section 443.101(1)(c), Florida Statutes, further provides an individual shall be disqualified from receipt of benefits for any week with respect to which the Department of Economic Opportunity finds a claimant's unemployment is due to a leave of absence if the leave was "voluntarily initiated" by the individual.

In this case, the undisputed evidence reflects the employer granted the claimant a leave of absence on April 30, 2019, after the claimant complained to the employer that he was not feeling well and was unable to perform the duties of his job. The record reflects the claimant subsequently went to the emergency room and was admitted to the hospital on May 1, 2019. The record further reflects the claimant was discharged from the hospital on May 5, 2019, but was not cleared to return to work at that time. As of the hearing date, the employer was holding the claimant's position until the claimant receives medical certification to return to work.

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<sup>1</sup> The referee's findings are materially incomplete, but the underlying record is not in dispute.

The referee's conclusion that the employer rather than the claimant initiated the leave of absence reflects a misunderstanding of the intent of the statute, which is to provide for the availability of benefits where an employee enters leave status for the benefit of the employer, but to deny benefits where the employee enters leave status for the benefit of the employee. As previously stated by this Commission:

When leave is necessitated because of a condition or event that renders the claimant completely incapable of working, it is the claimant's incapacity that "initiates" the process of the leave. If the employer approves leave for the claimant in order to preserve her job through the period of incapacity, the leave is not "involuntary" *if the claimant agrees to the maintenance of her employment.*

R.A.A.C. Order No. 17-01696 at pg. 2 (August 21, 2017) (emphasis in original).<sup>2</sup> In this case, the claimant's leave was voluntarily initiated by him, and for his own benefit, based on the needs and circumstances of his medical condition, and not by the employer.<sup>3</sup> The claimant approached the employer on two separate occasions because he was physically unable to work. These events triggered employer responsibilities to act according to federal law, and the employer's doing so did not convert the leave to one initiated by the employer.

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<sup>2</sup> We do not address herein the scenario of an employee who cannot work in the position for which he is hired due to an injury but can work in light duty or other positions.

<sup>3</sup> A review of Department of Economic Opportunity records reveals that on July 18, 2019, the Department issued a determination (Issue Identification No. 36217569-01) holding the claimant ineligible for receipt of benefits from June 30, 2019, because he was not able to and available for work as required by law due to disability. The determination was affirmed but modified to hold the claimant ineligible from June 30, 2019, through August 17, 2019, by Referee Decision No. 36217569-02 (August 16, 2019). The claimant did not file an appeal of the referee's decision and the decision became final.

On August 5, 2019, the Department issued a determination (Issue Identification No. 3655416-01) holding the claimant ineligible for receipt of benefits from July 14, 2019, through July 20, 2019, because he was not able to and available for work. By Referee Decision No. 3655416-02 (September 4, 2019), the determination was affirmed but modified to hold the claimant ineligible from July 14, 2019 through August 10, 2019, because he was on a medical leave of absence. The referee's decision was not appealed and became final.

On September 6, 2019, the Department issued another determination (Issue Identification No. 36505408-01) holding the claimant ineligible for receipt of benefits from August 18, 2019, and indefinitely because he was not able to and available for work due to disability. The determination was not appealed and became final.

Accordingly, the claimant was not able to and available for work as required by reemployment assistance law and, hence, is ineligible for receipt of benefits from the commencement of his claim with no date restrictions.

On appeal to the Commission, the employer asserts that the employer's record should not be held chargeable for benefit payments made to the claimant. Charging was not at issue in the hearing before the appeals referee; therefore, the Commission cannot consider the issue of the employer's chargeability.

The decision of the appeals referee is reversed. The claimant is disqualified from receipt of benefits from the week beginning April 28, 2019. As a result of this decision of the Commission, benefits received by the claimant for which the claimant is not entitled may be considered an overpayment subject to recovery, with the specific amount of the overpayment to be calculated by the Department and set forth in a separate overpayment determination.

It is so ordered.

#### REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman  
Thomas D. Epsky, Member  
Joseph D. Finnegan, Member

Frank E. Brown, Chairman, specially concurring,

We have seen a number of cases similar to this one in the last several months, so further explanation may assist referees in applying the leave provision. It is important to have an understanding of how employers are legally required to behave, and how a conscientious and compassionate employer may behave, in circumstances such as those in this case.

When an employer is advised by an employee that he is struggling to meet the physical requirements of the job, especially after a return from injury, the employer may have a duty to respond by discussing potential accommodations under the ADA – the so-called “interactive process.”<sup>4</sup> One such accommodation may be additional leave to receive initial or additional treatment or to begin or continue recovery.<sup>5</sup> Likewise, when an employee suggests he may need additional time off, the employer's responsibility to offer FMLA leave may be triggered.<sup>6</sup>

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<sup>4</sup> See EEOC ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE AMERICANS WITH DISABILITIES ACT, Oct. 17, 2002 at fn. 24 (citing authorities), available at <https://www.eeoc.gov/policy/docs/accommodation.html>.

<sup>5</sup> GUIDANCE, *supra*, at “Leave.”

<sup>6</sup> See, e.g., 29 C.F.R. § 825.303(b).

Given the legal complexity of determining what requests trigger the obligation to discuss or offer additional leave, many employers will proactively do so to ensure compliance with their employment law obligations. Moreover, doing so may be a human resources best practice in the situation. Neither the employer nor employee benefits from risking further exacerbation of an injury. The leave provision should not be interpreted so as to penalize employers who are proactive in their human resources practices. Instead, in reviewing cases under the voluntary leave provision, the issue is not who first raises the specific issue of leave, but rather what necessitates that leave, and whether the claimant agrees to leave. If the claimant first approaches the employer because of an inability to work due to illness or injury, and the employer offers leave as a solution which the claimant accepts, the claimant's contact with the employer is, as a matter of fact and law, the initiation of that leave.

This is to certify that on

12/5/2019,

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: Mary Griffin

Deputy Clerk



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



\*81464814 \*

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**Docket No.0036 1469 23-02**

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

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***CLAIMANT/Appellant***

***EMPLOYER/Appellee***

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APPEARANCES:

Claimant

Employer

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### 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:** LEAVE: Whether the claimant's unemployment is due to a leave of absence voluntarily initiated by the claimant, pursuant to Sections 443.036(29); 443.101(1)(c), Florida Statutes.

**Findings of Fact:** The claimant worked for the employer as a finishing polisher, beginning on July 18, 2017. On April 9, 2019, the claimant collapsed and had to be taken to the hospital. On April 9, 2019, the claimant brought a doctor's note regarding the incident. On April 23, 2019, the claimant presented the chief operation officer with a doctor's note which stipulated that the claimant was to return to work on April 25, 2019. On April 29, 2019, the claimant returned to work. On April 30, 2019, the claimant became ill and the chief operations officer informed the claimant that it was not safe for the claimant to work. On April 30, 2019, the claimant was informed that the claimant could not return to work until the claimant went back to the doctor and was cleared to return to work. The claimant was informed that the claimants job would be held for the claimant until the claimant could return.

**Conclusions of Law:** The law provides that a claimant will be disqualified for benefits for any week of unemployment due to a leave of absence voluntarily initiated by the claimant. As defined in the statute, "leave of absence" means a temporary break in service to an employer, for a specified period of time, during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

The record reflects that the claimant did not apply for leave, and was informed that the claimant could not return until the claimant was cleared medically to return to work. It was further shown that the leave had no set end date. The evidence shows the claimant was informed by the chief operations office that the claimant's job would be held for the claimant until the claimant could return. The record shows that no bona fide leave existed as the claimant did not request the leave. Therefore, the claimant, for purposes of reemployment benefits, is considered to not be on a "bona fide" leave of absence, and he is not disqualified from receiving benefits.

**Decision:** The determination dated July 23, 2019, holding the claimant disqualified from receiving benefits is REVERSED. The claimant is not disqualified from receipt benefits.

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 August 16, 2019.

**G. WRIGHT**  
Appeals Referee



By:

SHAUNDRECIA LOVETT, 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 20<sup>th</sup> 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](http://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](https://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](https://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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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.