

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant
DOUGLAS L MILLER

R.A.A.C. Docket No. 19-01917

vs.

Referee Decision No. 0036501219-02U

Employer/-None

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 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. 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.

Federal law requires Florida to assist other states in the recovery of overpaid unemployment benefits by deducting the overpayment from the claimant's subsequent Florida reemployment assistance benefits and paying the deducted amount to the state that overpaid the claimant:

A State *shall* deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously

recovered. The amount so deducted *shall* be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

42 U.S.C. § 503(g) (emphasis added).

The U.S. Department of Labor, the agency charged with administering the federal-state unemployment insurance program at the federal level, has issued guidance for compliance with this provision. Employment & Training Admin., U.S. Dep't of Labor, ET Handbook 392, §IX, 9-12 (2d. ed. 1997), https://oui.doleta.gov/dmstree/handbooks/392/392_2_dir.htm. Under that guidance, if a state has issued an overpayment determination that has become final ("requesting state"), it may request overpayment recovery assistance from another state ("recovering state"). *Id.* at 9-10. The recovering state must then issue a determination notifying the claimant that it will be recovering the overpayment and provide the same opportunity to be heard as applies under the recovering state's law. *Id.* at 10, 11.

The recovering state must offset the claimant's weekly benefit amount "to the same extent as for the same type (fraud or nonfraud) intrastate overpayment; that is, "the recovering state will determine the amount that will be offset under its law." *Id.* However, "the original overpayment determination of the requesting State is not subject to redetermination by the recovering State." *Id.* at 11. Moreover, "[a]ny issues raised concerning the overpayment determination or the outstanding balance to be recovered should be addressed to the requesting State rather than the recovering State." *Id.*

Florida's reemployment assistance program law provides that Florida may enter into reciprocal arrangements with other states (or the federal government) to govern the enforcement of payment obligations. §443.221(3), Fla. Stat. Consequently, Florida has subscribed to a multi-state agreement ("IRORA") to provide for the methods of recovery of improper benefit payments. *See* Interstate Reciprocal Overpayment Recovery Arrangement, Mar. 3, 2013. Under IRORA, the recovering state offsets benefits payable for each week claimed in the amount determined under state law and prepares and forwards no less than once a month a payment representing the amount recovered made payable to the requesting state. *Id.* at 4.

From these authorities it is clear that once overpayment recovery has been requested by another state, Florida, as the recovering state, has a ministerial duty under federal and Florida law to deduct from benefits and send payment to the requesting state, determining only the weekly amount to be deducted based on its own law governing recoupment of benefits.

Turning to the facts of this case, it is undisputed that Indiana issued a determination holding that the claimant was overpaid benefits as the result of fraud, that the determination became final, and that Indiana requested that Florida assist it in recovering the remaining overpayment balance of \$975. The claimant's dispute centers on his allegation that Indiana cancelled its request to Florida to recover the overpayment. Though the appeals referee continued the hearing for the claimant to present documentary evidence to support his testimony on that matter, the claimant never submitted supporting documentation to the referee.

Based on our review of documents in the administrative record¹ we conclude that, while the claimant's assertion is correct that Indiana ultimately cancelled its request for Florida to recoup the overpayment, that fact does not change the outcome of the case under the circumstances. It was not until after Florida had recouped the full amount of the Indiana overpayment that Indiana cancelled its request. The overpayment was recouped from benefits payable for the four-week period from August 4, 2019, through August 31, 2019. It was not until October 8, 2019, that Indiana directed Florida to discontinue recoupment and the directive was limited to discontinuing recoupment only on a going-forward basis. *Indiana specifically directed Florida to remit to Indiana any funds that had already been withheld.* Accordingly, the Department complied with Indiana's request by paying Indiana the \$975 that had already been recouped prior to Indiana's cancelling its request. On this record, the recoupment and remission to Indiana was consistent with federal law and the IRORA.

¹ The Commission issued an order on December 12, 2019, giving notice of its intent to take official notice of documents in the administrative record and gave the claimant 10 days to file any objection to its taking official notice of these documents. Having received no response or objection from the claimant, the Commission accepts these documents into the evidentiary record. These documents include the November 1, 2019 UI-ICON print-out, which confirms that Indiana cancelled its recoupment request on October 8, 2019, directing Florida to discontinue recoupment going forward and to remit to Indiana any funds that had already been withheld; CONNECT transaction details for the benefit weeks ending August 10, 2019, August 17, 2019, August 24, 2019, and August 31, 2019, reflecting out-of-state overpayment offsets totaling \$975; a copy of State of Florida Warrant No. 04-0352739-0, dated October 11, 2019, and paid to the order of the State of Indiana DWD Trust Fund Accounting in the amount of \$1,657; and an Indiana IRORA Reconciliation document reflecting that \$975 of the \$1,657 remitted to Indiana was attributable to the claimant.

We now turn to the application of Florida's law governing recoupment. Florida's reemployment assistance program law generally authorizes recoupment of benefits to recover overpayments. §443.151(6), Fla. Stat. However, the law provides a defense which permits temporary waiver under certain circumstances:

Recoupment from future benefits is not permitted if the benefits are received by any person without fault on the person's part and recoupment would defeat the purpose of this chapter or would be inequitable and against good conscience.

§443.151(6)(d), Fla. Stat. Stated differently, the statute requires proof of the following two elements:

- (1) that the claimant bears no fault for the overpayment; *and*
- (2) *either*
 - a. that recoupment of the overpayment would defeat the purpose of the reemployment assistance law, *or*
 - b. that it would be inequitable and against good conscience.

Because this defense is an exception to the Department's authority to recoup overpayments, the claimant bears the burden of proving both prongs of the defense. *See Unemployment Appeals Commission v. Comer*, 504 So. 2d 760, 761 (Fla. 1987). If the claimant fails to prove either prong, the defense is not applicable, and the Department may recoup the overpayment.

In this case, the claimant has not challenged the referee's conclusion that he did not meet his burden of establishing the elements of the defense because he did not show he was without fault for the overpayment. Indeed, the record affirmatively shows that he was at fault for the overpayment. Indiana's August 10, 2018 determination, which was entered as an exhibit, reflects the claimant was overpaid benefits because he knowingly failed to disclose material facts that would have impacted his qualification, eligibility, or benefit amount when he failed to disclose his earnings while claiming benefits on a 2017 claim. Moreover, the claimant has acknowledged he received and did not appeal the overpayment determination. Accordingly, the sole defense to recoupment provided for in Florida law is not applicable here. *See R.A.A.C. Order No. 12-13265* (February 13, 2013).

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

1/15/2020 ,

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

**STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

Suite 101, Rhyne Bldg.
2740 Centerview Drive
Tallahassee, FL 32399-4151

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Claimant/Appellant

R.A.A.C. Docket No. 19-01917

DOUGLAS L MILLER
216 MANTH AVE
COCOA FL 32927

NOTICE OF ORDER

Enclosed is a copy of the order of the Reemployment Assistance Appeals Commission. This order will become final unless appealed to a District Court of Appeal within 30 calendar days of the date the order was filed. Judicial review is an appellate review process similar to that conducted by the Commission and does not involve another hearing, trial or taking of evidence. Judicial review is commenced by filing one copy of a notice of appeal with the clerk of the Commission at the above address and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. A notice of appeal should be submitted by mail, courier service or by hand delivery. Court rules do not authorize the filing of a judicial appeal by fax, through the D.E.O. or Commission's Internet filing systems, or by e-mail. A notice of appeal is filed on the date received by the Commission or Court. **You should reference the R.A.A.C. Docket Number (not the Social Security Number) on any Notice of Appeal filed. The time to appeal this order to court is not tolled or extended by any other determination, decision or order. Please note that the appellate court will not have jurisdiction over determinations or decisions issued by another state which may have formed part of the basis for the Commission's decision herein.**

Employer/-None

Benefits Payment Section
Other copies mailed to:

Date of Mailing

See attached for Spanish and Creole translations of this Notice.
Ver adjunto para las traducciones al Español y Creole de este Aviso.
Konsilte vèsyon an panyòl ak kreyòl ki tache avèk Notifikasyon sa a.

DEPARTMENT OF ECONOMIC OPPORTUNITY
BENEFIT PAYMENT CONTROL
PO DRAWER 5150
TALLAHASSEE FL 32314-5150

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This is to certify that on

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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



*82778424 *

Docket No.0036 5012 19-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES:

Department

Claimant

BPC Staff

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: BENEFIT RECOUPMENT: Whether an overpayment of unemployment compensation benefits paid to the claimant by Florida or another state is subject to recoupment by the Florida Department, pursuant to Section 443.151(6), 443.221(3), Florida Statutes; Public Law 99-272.

Findings of Fact: The claimant filed a claim for reemployment assistance benefits in the State of Florida during the week of July 28, 2019 with a gross reemployment assistance weekly benefit amount of \$275.00. Prior to August 10, 2018, the claimant had a claim for unemployment benefits in the State of Indiana for a gross weekly benefit amount of \$150.00. On August 10, 2018, a representative from the