

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Docket No. 20-00638

vs.

Referee Decision No. 0037316677-04U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for review of a referee's decision that dismissed the employer's appeal for lack of jurisdiction on the ground that it was untimely filed.

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 employer timely received the determination dated April 1, 2020. The employer filed an appeal online on April 22, 2020. The employer did not file a timely appeal because the employer could not access the CONNECT system to file an appeal. The employer did not try to fax or send an appeal via U.S. mail so that the appeal would be timely.

Based on these findings, the referee dismissed the employer's appeal for lack of jurisdiction because it was untimely filed. 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 443.151(4)(b), Florida Statutes, requires an appeal of an adverse determination for a hearing before an appeals referee to be filed within 20 days of the date of mailing of the determination or, if the notice is not mailed, within 20 days after the date of delivering the notice. If an appeal is not filed within 20 days, the appeals referee is without jurisdiction to consider the merits of the case. §443.151(3)(c), Fla. Stat.

In this case, the Department of Economic Opportunity (“Department”) issued a Notice of Approval determination. The determination stated that it was distributed to the employer on April 1, 2020, and that the appeal due date was April 21, 2020. The determination further advised the employer how to file an appeal, “FILE AN APPEAL ON-LINE AT connect.myflorida.com OR MAIL TO RA APPEALS; PO BOX 5250 TALLAHASSEE, FL 32314-5250; OR FAX TO (850) 617-6504.”

The Department received the employer’s appeal of the determination through its on-line appeal portal on April 22, 2020, the day after the filing deadline. Accordingly, a hearing was scheduled before an appeals referee. Since the employer’s appeal was, on its face, untimely, the threshold issue at the hearing was whether the referee had jurisdiction to address the merits of the case.

At the hearing, the employer’s witness testified she attempted to access the CONNECT system in order to file a timely, online appeal, and was prevented from doing so by technical problems related to the Department’s CONNECT computer system. She testified the employer had been instructed by the Department to file appeals online, and she tried to call the Department but was unable to establish telephone contact. While the referee found “[t]he employer did not file a timely appeal because the employer could not access the CONNECT system . . .,” the referee dismissed the appeal for lack of jurisdiction.

As of a 2005 amendment, an appeals referee is permitted to consider whether a party has “good cause” for a late-filed appeal. See §443.151(4)(b)3., Fla. Stat.; Ch. 2005–209, §7, Laws of Fla. As explained by the First District Court of Appeal in *Hood v. Unemployment Appeals Commission*, 72 So. 3d 273 (Fla. 1st DCA 2011), the amendment had two effects.

First, the amendment recognized and codified prior case law that established narrow due process exceptions to the jurisdictional time limit, where the delay in filing the notice of appeal was precipitated by some action or inaction of the agency.¹ *Id.* at 276 (and cases cited therein). There is, however, no *personal* good cause

¹ While the cases often refer to actions of the “Commission,” the Commission is not typically involved in the administration of cases at the hearing level in the Office of Appeals. The term “Commission” in these cases is read in context to refer to the reemployment assistance appeals process *in toto*, over which the Commission has legal authority.

exception under the statute. See *Soler v. Reemployment Assistance Appeals Commission*, 143 So. 3d 1152 (Fla. 3d DCA 2014) (and cases cited therein)²; *Yermalayeu v. Reemployment Assistance Appeals Commission*, 114 So. 3d 211 (Fla. 5th DCA 2012). These due process cases were, by 2005, well established in the law.

The second effect of the amendment, as Judge Clark recognized, was to give clear statutory authority for the referees and the Commission to address these due process issues and to give parties an avenue to raise them before the tribunals. *Hood*, 72 So. 3d at 276. In actuality, both the referees and Commission had been doing so in conformity with case directives, but the statutory amendment authorized this practice and put to rest any argument that the administrative agencies lacked legal authority to apply constitutional principles to deviate from the 20-day limitation contained in the statute.

Here, due process considerations require the employer's appeal of the April 1, 2020 Notice of Approval determination to be deemed timely filed. The employer reasonably relied on the availability of the Department's CONNECT system to timely appeal online and attempted to timely appeal the determination, but was prevented from doing so because of technical issues with the Department's CONNECT computer system. The employer was entitled to 20 days to file the appeal, and would have filed a timely appeal but for the unforeseen system problems. While there were other alternatives for filing an appeal, the employer explained they had previously been advised by the Department to file their appeals through the CONNECT portal, they were unable to contact the Department for further instructions, and their un rebutted testimony was that the appeal was late due to the problems with the CONNECT system. Consequently, given the referee's findings, the Commission reverses the referee's holding that the employer's appeal was untimely filed. The case is remanded to a different referee, and on remand, the referee should rule on the merits of the case.

² The *Soler* majority and concurrence discuss the availability of a "good cause" exception, but that debate is actually over semantics. Judge Salter's reference to "good cause" is identical to that of the First District in *Hood*, recognizing the due process exceptions established by the courts. He does not opine that there are *personal* good cause exceptions.

The decision of the appeals referee dismissing the employer's appeal for lack of jurisdiction is reversed. The case is remanded for further proceedings on the merits of the appeal before a different referee.

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

6/18/2020,

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: Benjamin Bonnell

Deputy Clerk



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



*94978368 *

Docket No.0037 3166 77-04

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

CLAIMANT/Appellee

EMPLOYER/Appellant

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.

TIMELINESS: Whether an appeal, request for reconsideration, or request to reopen an appeal was filed within twenty days after mailing of the determination or decision to the adversely affected party's address of record or, in the absence of mailing, within twenty days after delivery, pursuant to Sections 443.151(3); 443.151(4)(b)1., Florida Statutes; Rules 73B-10.022(1); 10.022(5); 10.023(1); 11.017(2); 20.002-007, Florida Administrative Code.

Issues Involved: 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.)

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.

Findings of Fact: The employer timely received the determination dated April 1, 2020. The employer filed an appeal online on April 22, 2020. The employer did not file a timely appeal because the employer could not access the CONNECT system to file an appeal. The employer did not try to fax or send an appeal via U.S. mail so that the appeal would be timely.

Conclusions of Law: The law provides that a determination is final unless an adversely affected party files an appeal or request for reconsideration within twenty days after the mailing date of the determination notice to the party's last-known address or, in lieu of mailing, within twenty days after delivery of the notice.

The record reflects that the employer appealed a determination dated April 1, 2020 on April 22, 2020. The employer's witness testified that she was able to access the determination in CONNECT prior to the due date but did not remember on what date she accessed the determination. Since the employer did not remember on what date she was able to access the determination in CONNECT, the employer's witness did not rebut the presumption that the determination was properly delivered to the employer on April 1, 2020. The employer's witness testified that she was unable to file a timely appeal because she was unable to access CONNECT to file an appeal online until after the due date of the appeal. The employer's witness testified that she did not consider mailing or faxing the appeal because she had always filed appeals online and had been advised by the Department to file appeals online. Since the determination that was timely received by the employer clearly states that appeals may be made via fax and U.S. mail, the employer knew or should have known to fax or mail the appeal so that it would be timely (see Exhibit 1). Since the reason for the late appeal is due to the fault of the employer and not the fault of the Department, the employer's appeal is untimely.

Decision: The appeal is dismissed.

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 May 11, 2020.

S. Morales
Appeals Referee

By:



KIMBERLY MARTIN, 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-21.003(4), 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, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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-21.003(4), 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, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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-21.003(4), 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, Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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 lèt 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.