

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 20-00975

vs.

Referee Decision No. 0051908813-02P

Employer/-None

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This is an appeal of a referee's decision holding the claimant ineligible for Pandemic Unemployment Assistance ("PUA") under the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act"), created by Public Law 116-136 (March 27, 2020), codified at 15 U.S.C. Chapter 116. Florida law governs the appeals process for PUA. Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter 16-20, Change 1, p. I-14, #54 (Apr. 27, 2020). The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

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.

Two issues are before the Commission. The first issue is whether the claimant was unemployed, partially unemployed, or unable or unavailable to work as a direct result of the COVID-19 public health emergency pursuant to one of the qualifying reasons listed in Section 2102(a)(3) of the CARES Act, codified at 15 U.S.C. §9021(a)(3), and is therefore a "covered individual" as provided by the Act and Title 20, Code of Federal Regulations, Section 625.5(c). The second issue is whether the claimant received any sum as PUA benefits under Section 2102 of the CARES Act, codified at 15 U.S.C. §9021, to which the claimant is not entitled and which the claimant is liable to repay, pursuant to Title 20, Code of Federal Regulations, Section 625.14, and as provided in Section 443.151(6), Florida Statutes.

The referee made the following findings of fact:

The claimant is the sole proprietor of a tax accounting and financial consulting business which he has operated for the last approximately ten years. The nature of the claimant's business provides he meet with clients as to financial consulting, income tax, and financial accounting services primarily for [restaurants and] manufacturing businesses.

The claimant filed a claim for PUA benefits effective April 5, 2020, establishing a weekly benefit amount of \$125. The claimant made a report to claim weeks and received his full benefit amount for the weeks ending April 11, 2020, through May 30, 2020.

Based on these findings, the referee held the claimant ineligible for receipt of PUA benefits and overpaid. 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.

The CARES Act, in defining a "covered individual," includes an enumerated list of COVID-19 reasons for unemployment, which an individual must meet to qualify for PUA. 15 U.S.C. §9021(a)(3)(A)(ii)(I). The final enumerated item authorizes the Secretary of the Department of Labor to establish additional criteria not otherwise contained in the enumerated list. 15 U.S.C. §9021(a)(3)(A)(ii)(I)(kk).

We note that guidance from the U.S. Department of Labor evolved over the course of several months after the CARES Act became law. Just two days before the referee issued the decision in this case, the Secretary extended PUA coverage to self-employed individuals who experience a significant diminution of services because of COVID-19. *See* Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter 16-20, Change 2, p.2 (July 21, 2020) ("UIPL 16-20, Change 2"). Importantly, the CARES Act exclusion from coverage of an individual who has the ability to telework *with pay* found in 15 U.S.C. §9021(a)(3)(B)(i) is not applicable where the individual has experienced a significant diminution of work because of COVID-19, despite his or her ability to telework. UIPL 16-20, Change 2 at p. I-6, #11 (noting, however, that the individual's "benefit amount may be reduced because of income from continued partial employment").

The referee reasoned that, because the claimant had the ability to work remotely through virtual meetings, he was not eligible for PUA. However, the claimant's undisputed testimony established that he nevertheless experienced a significant diminution of services because of COVID-19, and thus comes within the coverage criteria for PUA as clarified in the July 21 guidance referenced above.

The decision of the appeals referee is reversed. If otherwise eligible, the claimant is entitled to benefits through July 17, 2020, the date of the hearing held in this matter. The Department shall determine eligibility for any subsequent weeks of unemployment.

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
10/30/2020,
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



*130792154 *

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. 0051 9088 13-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

PANDEMIC UNEMPLOYMENT ASSISTANCE APPEAL DECISION

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:

Pandemic Unemployment Assistance (PUA): Whether and in what amount Pandemic Unemployment Assistance is payable to the claimant, pursuant to 20 CFR, Chapter V, Section 625 and Section 2102 of the CARES Act of 2020, Public Law (Pub. L.) 116-136.

OVERPAYMENT: Whether the claimant received benefits to which the claimant was not entitled, and if so, whether those benefits are subject to being recovered or recouped by the Department, pursuant to Sections 443.151(6); 443.071(7); 443.1115, Florida Statutes and 20 CFR 615.8.

Findings of Fact: The claimant is the sole proprietor of a tax accounting and financial consulting business which he has operated for the last approximately ten years. The nature of the claimant's business provides he meet with clients as to financial consulting, income tax, and financial accounting services primarily for manufacturing businesses.

The claimant filed a claim for PUA benefits effective April 5, 2020, establishing a weekly benefit amount of \$125. The claimant made a report to claim weeks and received his full benefit amount for the weeks ending April 11, 2020, through May 30, 2020.

Conclusion of Law: In order to be eligible for PUA benefits under the CARES Act, a claimant must be unemployed, partially unemployed, or unable or unavailable to work because:

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the

individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section. 15 U.S.C. §9021(a)(3)

The record reflects the claimant was self-employed at the time he filed for PUA benefits. Consideration was given to the claimant's testimony as to the closure of his client's businesses. The evidence, however, indicates the nature of the claimant's business allows the claimant to work remotely through virtual meetings with the use of the Internet. While the claimant testified as to needing access to the facility and face to face meetings, it is concluded his testimony to such is questionable where the claimant provides financial and tax accounting services. Furthermore, the claimant's testimony to such is unreliable given

the claimant's earlier statement to the Department. An admission against interest occurs when a party admits to a fact and subsequently contradicts that admission in testimony at the hearing. After considering all competent evidence presented, the hearing officer finds the earliest position of the claimant to be more credible. Accordingly, it is concluded that the claimant is not unavailable or unable to work due to COVID-19 and has been properly denied receipt of PUA benefits.

The record reflects the claimant received the benefit payments in the amount of \$1,000 in question in this case. Since the claimant received benefits to which he was not entitled, benefit payments constitute an overpayment and the amount is subject to recovery by the Department.

Decision: The determination dated June 30, 2020, holding the claimant not entitled to PUA benefits and overpaid \$1,000 is AFFIRMED.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on July 23, 2020.

C. MILLER
Appeals Referee



GAIL ALLEN, 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 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, 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 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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