

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 20-01088

vs.

Referee Decision No. 0042501213-02P

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This is an appeal of a referee’s decision holding the claimant retroactively ineligible for, and thus overpaid, 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.

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. The referee’s ultimate disposition of the case is also legally correct.

At issue is the claimant’s eligibility for PUA benefits from March 1, 2020, the effective date of her PUA application, through July 16, 2020, the date of the hearing held in this matter. To be eligible for PUA benefits, a claimant must be a “covered individual” as defined by the CARES Act, created by Public Law 116-136 (March 27, 2020), codified at 15 U.S.C. Chapter 116. 15 U.S.C. §9021(a)(3). To be a covered individual, a claimant must not be eligible for regular Florida reemployment assistance benefits or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) benefits under the CARES Act.

15 U.S.C. §9021(a)(3)(A)(i). The CARES Act further provides that PUA coverage extends only to individuals who are 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)(A)(ii)(I). The burden of proof to establish eligibility for benefits rests with the person claiming benefits. *Florida Industrial Commission v. Ciarlante*, 84 So. 2d 1, 4-5 (Fla. 1955). The referee ultimately found that the claimant did not show her unemployment was a direct result of COVID-19 within the meaning of the CARES Act. We agree.

The referee's subsidiary findings that the owner discharged the claimant on March 5, 2020, without providing her a specific reason for doing so and that the employer's business was deemed a nonessential business that was shut down 10 days *after* the claimant's discharge were based on the claimant's own testimony. The claimant further testified that her co-workers were "talking shit about me in a different language," and that when the owner discharged her, he told her "this isn't going to work." While the claimant offered her opinion that she was let go as a result of COVID-19, mere speculation is not competent, substantial evidence as a matter of law. *C.D. v. Dep't of Children & Families*, 974 So. 2d 495, 502 (Fla. 1st DCA 2008). Consequently, on this record, the referee was not required to infer that the claimant was discharged as a *direct* result of COVID-19.^{1 2}

Although not addressed by the referee, Department records demonstrate a second reason the claimant is not eligible for PUA for most of the weeks at issue. After the July 16, 2020 evidentiary hearing occurred in this case, the Department determined that the claimant was eligible for PEUC.³ PEUC is a temporary federal benefits program that provides up to 13 additional weeks of benefits for individuals

¹ We further note that Department records reflect that, according to the claimant's pre-determination statement, she raised a concern that her co-workers were mishandling customer coupons, her coworkers were talking "nasty" about her, she advised the owner of the coupon problem, and shortly thereafter the owner told her "he didn't think it was going to work out" with her. This document was not considered by the referee and is not determinative to the outcome here, which is already adequately supported, but further reflects the claimant's own accounting of events undermines any notion she was discharged as a direct result of COVID-19. We direct the Commission Clerk to mark the claimant's May 14, 2020 statement to the adjudicator as R.A.A.C. Exhibit 1.

² In her request for review, the claimant further asserts an alternative theory that she quit due to fear of catching the COVID-19 virus at the workplace. That theory is neither factually nor legally viable. The referee's finding that she was discharged has not been challenged on appeal and negates a theory that she quit. However, even if the claimant had quit due to such a fear, that is not a designated reason for unemployment giving rise to PUA eligibility. *See* 15 U.S.C. §9021(a)(3)(A)(ii)(I); Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter 16-20, Change 1, p. I-13, #50 (Apr. 27, 2020) (a general fear of exposure to COVID-19 is not a basis for PUA eligibility in the CARES Act).

³ We direct the Commission Clerk to mark the August 12, 2020 PEUC determination as R.A.A.C. Exhibit 2.

who have exhausted their regular reemployment assistance claim after July 1, 2019. 15 U.S.C §9025(b)-(c). PEUC is payable to eligible individuals for weeks of unemployment ending on or after April 4, 2020. 15 U.S.C §9025(g). *See also* Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter 17–20, p. 3 (April 10, 2020). To be eligible for PUA benefits, the claimant cannot be eligible for regular state benefits or PEUC benefits at that time. 15 U.S.C. §9021(a)(3)(A)(i). Department records show PEUC was paid to the claimant for 13 weeks (the week ending April 4, 2020 through the week ending June 27, 2020), at which time the claimant exhausted that program.⁴ Accordingly, during those weeks the claimant is not eligible for PUA.

Finally, we address the claimant's overpayment. Because the claimant was held retroactively ineligible for PUA, any benefits she received are overpayments as a matter of law.⁵ The only factual question is whether the claimant actually received the benefits the Department sent, as reflected in the determination the claimant appealed. At the hearing, the claimant confirmed she received the PUA benefits the Department paid her.

Nevertheless, the claimant's brief contends the case should be remanded because the overpayment issue was not listed on the notice of hearing, and the referee did not get a waiver from the claimant. The brief, however, makes no attempt to demonstrate that the claimant was prejudiced by any errors, nor is any harm to the claimant apparent on the record. Instead, the record reflects that the determination appealed by the claimant clearly showed that she was not only ineligible for PUA but also was held overpaid PUA benefits she was paid in the weekly amount of \$125 for the weeks ending March 14, 2020, through June 6, 2020. At the hearing, the referee indicated that the two issues before him were whether the claimant was eligible for PUA and whether the claimant was overpaid PUA benefits. The claimant made no objection. Moreover, she manifested no lack of preparedness in testifying that she received \$125 for each of the weeks in question. Consequently, on the record and arguments before us, we cannot find that the error was harmful and do not order additional evidentiary proceedings.

⁴ We direct the Commission Clerk to mark the CONNECT Weekly Benefit Details screenshots including the period of March 1, 2020, through July 16, 2020 as R.A.A.C. Exhibit 3.

⁵ While it is the Department's responsibility to calculate any remaining overpayment amount, we note as a practical matter that the claimant's PUA overpayment amount reflected on the June 30, 2020 determination will be minimized by the fact that she was subsequently held eligible for PEUC benefits for most of the weeks at issue, and her PEUC benefit amount of \$207 far exceeded her PUA weekly payments of \$125.

The Reemployment Assistance Appeals Commission has received the request of the claimant's representative for the approval of a fee for work performed on an appeal to the Commission, as required by Section 443.041(2)(a), Florida Statutes, and Florida Administrative Code Rule 73B-21.006(4). The Commission reviews requests for approval of attorneys' fees under the standards established in R.A.A.C. Order No. 16-02976 (April 26, 2017).⁶

Upon consideration of the request in light of the factors established in R.A.A.C. Order No. 16-02976, the Commission approves the requested fee of \$650.⁷

The referee's decision is affirmed through July 16, 2020, the date of the hearing. The Department shall determine eligibility for any subsequent weeks of PUA claimed by the claimant. The claimant has been overpaid \$1,625 in PUA benefits, and the Department, if it has not already done so, is directed to address the coordination of benefits resulting from the overpayment of PUA benefits and the subsequent award of PEUC benefits.

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

11/6/2020 ,

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: Mary Griffin
Deputy Clerk

⁶ Available at http://www.floridajobs.org/finalorders/raac_finalorders/16-02976.pdf.

⁷ While the claimant requests approval of a flat attorney fee of \$650, the letter of retainer attached to the RFR states the claimant was charged a flat fee of \$750.



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



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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. 0042 5012 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.

Findings of Fact: The claimant filed a claim for benefits in March 2020. The claimant's weekly benefit amount was \$125. The claimant received benefit payments from the week ending March 14, 2020, through the week ending June 6, 2020. The claimant was discharged by her employer on March 5, 2020. The employer did not give the claimant any reason for the discharge.

Conclusions 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 that the claimant filed a claim for benefits. The claimant was discharged by her employer 10 days prior to the business being shut down as a result of the pandemic. It has not been shown that the claimant's separation was the direct result of the pandemic. Therefore, the claimant is properly ineligible for the receipt of Pandemic Unemployment Compensation.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments.

The entry into evidence of a transaction history generated by a personal identification number establishing that a certification or claim for one or more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person or by direct deposit via electronic means, constitutes prima facie evidence that the person claimed and received reemployment assistance benefits from the state.

Because the claimant was ineligible for the receipt of benefits, an overpayment has occurred.

The claimant may be eligible for Pandemic Extended Benefits. The claimant should apply for PEUC benefits using the link on their connect web page. The Department shall investigate possible PEUC eligibility.

Decision: The determination dated June 30, 2020, 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 August 11, 2020.

K. LONKANI
Appeals Referee



MONTY CROCKETT, 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 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.

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