

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 21-00175

vs.

Referee Decision No. 0047330343-02P

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 Section 2102 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act"), created by Public Law 116-136 (Mar. 27, 2020), as amended by the Continued Assistance for Unemployed Workers Act of 2020 (Dec. 27, 2020), codified at 15 U.S.C. Chapter 116, on the basis that his unemployment was not a direct result of the pandemic. Florida law governs the appeals process for PUA. 15 U.S.C. §9021(c)(5)(B). The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

The referee's decision held the claimant timely appealed the adverse determination. That portion of the referee's decision addressing timeliness is supported by the record and in accord with the law and, therefore, is approved without further comment.

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's appellate review is limited to the issues before the referee and the evidence and other pertinent information contained in the official record.

The referee has the responsibility to develop the hearing record, weigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. 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. The Commission cannot reweigh the evidence and the inferences to be drawn from it. Further, absent extraordinary circumstances, the Commission cannot give credit to testimony contrary to that accepted as true by the referee.

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 also correctly applied the law in deciding the case.

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). 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)(A)(ii)(I). Unemployment must be a direct and immediate result of the pandemic, and not the result of a longer chain of events precipitated or exacerbated by the disaster. 15 U.S.C. §9021(h); 20 C.F.R. §625.5(c).

In this case, the claimant had two different income-producing endeavors in the recent past. First, he had past employment as a car salesman but was discharged from this employment in 2018. Given that this separation long-predated the COVID-19 pandemic, the referee correctly held that the claimant's loss of this employment was not due to the pandemic.

Second, after the claimant's separation from his car sales position in 2018, he began trading in stock options for himself to pay his bills. This was his source of income at the time of the pandemic. He did not have a registered business, work for a company, or provide any services to private individuals or the public.

On his PUA application, the claimant self-certified that he quit his job as a direct result of COVID-19 and explained the pandemic caused him to be unemployed because he was trading stock options and lost all of his capital in the market fall and no longer has capital to use. At the hearing, the claimant testified that he lost his capital due to the stock market crashes on March 9, 12, and 16, 2020. Although the claimant argues that he is eligible for PUA under subparagraph (ii) (quit his job as a direct result of COVID-19), his unemployment is not a direct result of the pandemic because his income-generating investment activities did not constitute "employment," "self-employment," or a "job" within the meaning of Section 2102 of the CARES Act.

The PUA provision does not define terms such as "employment," "self-employment," or "job," but Section 2102(h) of the Act adopts by reference all non-conflicting U.S. Department of Labor regulations for Disaster Unemployment Assistance (DUA), the program after which PUA was modeled. 15 U.S.C. § 9021(h). In the DUA regulations, eligibility for benefits is limited to "an individual [who] is an unemployed worker¹ or an unemployed self-employed individual." 20 C.F.R. §625.2. Self-employment is defined in terms of "the performance of services in the individual's own business, or on the individual's own farm." 20 C.F.R. §625.2(n)&(o). The regulations make clear that the coverage under the Act is for individuals engaged in active performance of services.

¹ "Work" in the context of UI law is understood to refer to covered employment. *Cf.* § 443.1216(a), Fla. Stat.

Likewise, U.S. Department of Labor guidance for PUA assumes that covered self-employment involves the performance of services.² In Unemployment Insurance Program Letter 16-20 (Change 4) issued January 8, 2021, the Department noted:

Self-employed applicants are those who have filed an initial request for PUA and for whom it was determined that *their primary reliance for income is on their performance of services in their own business or farm*. These individuals include independent contractors, gig economy workers, and workers for certain religious entities.

Attachment II at pg. 4 (emphasis added).

Given that the claimant's income at the time of the pandemic was not due to employment or self-employment, he cannot show that his "unemployment" was due to the pandemic. Thus, he is not eligible for PUA benefits.

On appeal, the claimant also complains about the unavailability at the hearing of documents he had previously sent to the Department during the adjudication of his claim. The appeals information brochure sent to all parties with the notice of hearing states as follows: "**If a document you previously submitted is not included with the hearing notice, you must send another copy to the hearing officer and all other addresses on the Notice of Telephone Hearing in order to have the document considered. . . . Only documents received by all parties can be considered, unless the right to view the documents is waived**" (emphasis in original). Accordingly, it was incumbent upon the claimant to resend any documents he desired to use as evidence.

The claimant did not establish he was unemployed, partially unemployed, unable or unavailable to work for any of the pandemic-related reasons set forth in the CARES Act, as codified in 15 U.S.C. §9021(a)(3)(A)(ii)(I). He therefore did not meet the burden of establishing his eligibility for PUA benefits from May 24, 2020, through January 9, 2021, and is liable to repay the \$500 in PUA benefits he received for weeks ending May 30, 2020, through June 20, 2020.³

² Given the PUA language adopting the DUA regulations, it would be surprising if the Department of Labor took a different approach.

³ Based on our review of CONNECT records, it appears that the Department has recouped some or all of the overpayment. This order does not establish additional overpayment or amounts owing, it merely affirms the decision on which the recoupment was based.

The Department's Benefit Payment Control Unit is the appropriate entity to which the claimant should direct questions regarding his overpayment balance. According to the Department's Reemployment Assistance Resource Guide – COVID-19 at pg. 41 (December 1, 2020), "If you have questions regarding an overpayment balance, please contact the Department at 1-833-FL-APPLY (1-833-352-7759)." Available at: http://www.floridajobs.org/docs/default-source/reemployment-assistance-center/new-individual-faq-includes-cares-act-final.pdf?sfvrsn=5f2547b0_83.

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

4/19/2021 ,

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



*191817408 *

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. 0047 3303 43-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

Employer

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:**
- 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.
- 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; 443.1117, Florida Statutes and 20 CFR 615.8 and 20 CFR 625.14

Findings of Fact:

Department records reflect the claimant applied for pandemic unemployment assistance on May 29, 2020 with a weekly benefit amount determination of \$125.00. The Department distributed a determination dated June 26, 2020, that disqualified the claimant due to his unemployment not being a direct result of the pandemic. Department records reflect an appeal was filed via mailed form on June 21, 2020. The claimant has not worked since February 2018, but obtains income by trading stock options. The claimant's unemployment is not a direct result of COVID-19.

Conclusions of Law:

Timeliness

Federal regulations provide an appeal period of 20 days from the date a PUA determination or redetermination is mailed or electronically distributed, or if the determination is not mailed or electronically delivered, within 20 days of the date of delivery.

The claimant's correspondence preference is electronic mail and the claimant received the determination upon searching

within CONNECT. The claimant could not see the actual determination, so he called the Department and the representative read the determination to him and told him how to appeal. He filed an appeal via email to the address he was given, but incorrectly transcribed the email address. He called the Department again and mailed the appeal again on July 21, 2020. The claimant did not receive the determination via his elected method of correspondence and attempted to file an appeal timely. Upon discovery of the mistake he resent his appeal. The appeals referee finds there was good cause attributable to the Department that caused the claimant's appeal to be untimely.

Pandemic Unemployment Assistance

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 claimant's source of income at the time of the pandemic was by way of trading stock options for himself and not providing any services to the public. He lost all his capital because of the stock market changing in March 2020. The claimant's previous employment was not affected by the pandemic as it was too attenuated in time. The reason for the claimant's unemployment is not a direct result of the pandemic and does not qualify under any provisions within the CARES Act and therefore, the claimant is disqualified from benefits.

Overpayment

Federal regulations provide that an individual who received a payment of benefits to which the individual was not entitled must repay the overpaid benefits to the Department. 20 C.F.R. §625.14.

Department records reflect the claimant received benefits in the amount of \$500.00 for the weeks ending May 30 through June 20, 2020. As the claimant's unemployment was not a direct result of the pandemic, the claimant is disqualified from benefits.

Decision:

The determination dated June 26, 2020 finding the claimant disqualified and overpaid is **AFFIRMED**. The claimant is disqualified from benefits from May 24, 2020 through January 9, 2021, and until they earn \$2,125.00.

This determination is modified regarding the language relating to recovery of fraud overpayments as it relates to this particular determination as there is no fraud overpayment attached to this matter Future eligibility shall be determined by an adjudicator.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on January 15, 2021.

L. Seay
Appeals Referee



Valarie L. Washington, 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.

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.