

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-00132

vs.

Referee Decision No. 0001176958-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the claimant's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision wherein the claimant was held disqualified from receipt of benefits and the employer's account was noncharged.

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. By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record.

The issue before the Commission is whether the claimant voluntarily left work without good cause attributable to the employing unit or was discharged by the employer for misconduct connected with work within the meaning of Section 443.101(1), Florida Statutes.

Section 443.101(1)(a), Florida Statutes, denies payment of benefits to persons who voluntarily leave a job, unless the leaving was for good cause attributable to the employer which would compel a reasonable employee to cease working; due to the claimant's personal illness or disability that required separation; or to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. Furthermore, the courts have created an exception for claimants who quit one job in order to take another job. *Seneca v. Florida Unemployment Appeals Commission*, 39 So. 3d 385 (Fla. 1st DCA 2010).

In the case at hand, the referee held the claimant voluntarily left work without good cause attributable to the employing unit and was, therefore, disqualified from receipt of benefits. At the hearing before the appeals referee, the claimant presented evidence establishing that his wife had a serious illness requiring surgery and that his son had a permanent disability. The record reflects the claimant made reasonable attempts to obtain leave under the Family and Medical Leave Act (FMLA) but his wife's doctor would not provide the claimant with a medical timeline, which the claimant needed to complete the required FMLA paperwork. As a result, the claimant was unable to obtain FMLA leave.

Although the referee found the claimant could not get his wife's doctor to provide a timeline concerning his wife's surgery, she concluded the claimant quit without good cause because he failed to complete the FMLA paperwork. The Commission declines to hold the claimant responsible for delays caused by his wife's doctor. *Accord Logalbo v. Unemployment Appeals Commission*, 79 So. 3d 936 (Fla. 1st DCA 2012). Under the facts of this case, we conclude the claimant quit due to a family emergency.

While the Commission agrees with the referee that the claimant's quitting was not attributable to the employer, we are compelled by *Ramirez v. Reemployment Assistance Appeals Commission*, 135 So. 3d 408 (Fla. 1st DCA 2014), *Andres v. Florida Unemployment Appeals Commission*, 888 So. 2d 119 (Fla. 4th DCA 2004), and *Szniatkiewicz v. Unemployment Appeals Commission*, 864 So. 2d 498 (Fla. 4th DCA 2004) to conclude that the claimant's circumstances are encompassed by the statutory exception for good cause attributable to illness or disability. *See* §443.101(1)(a)1., Fla. Stat. Accordingly, that portion of the referee's decision which holds the claimant disqualified from receipt of benefits is reversed. Because the claimant's quitting was not attributable to the employer, the Commission affirms that portion of the referee's decision noncharging the employer's account.

The decision of the appeals referee is reversed in part and affirmed in part. If otherwise eligible, the claimant is entitled to benefits. The employer's account is relieved of charges in connection with this claim.

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

5/27/2014,

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: Kimberley Pena

Deputy Clerk



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



*18204079 *

Docket No.0001 1769 58-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

Employer

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.

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); 443.036(30), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

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.

Finding of Fact: The claimant initiated a claim for benefits effective September 15, 2013, with a weekly benefit amount of \$275.00. A determination was issued October 10, 2013, that disqualified the claimant for receipt of benefits based on his separation from the employer. The claimant attempted to file an appeal on the Internet but the system would not allow him to do so. The claimant sent an appeal by mail on October 17, 2013, that was delivered on October 22, 2013 to the Department. The claimant did not hear anything concerning the appeal and contacted the Department on October 30, 2013. The claimant was advised at that time that no appeal had been received. The claimant faxed the appeal on November 1, 2013. The claimant worked for this employer from January 1, 2012, until September 14, 2013, as a designer/copy editor. The claimant's wife was ill, his brother, in New York, had a stroke and he has special needs adopted child. The claimant drove 90 miles one way to work which he had been doing since June 5, 2012. The claimant spoke with the director of human resources concerning the issues that he was experiencing. The claimant was given family medical leave paperwork for his wife's doctor to complete. The employer advised the claimant that he could be eligible for 12 weeks under the family medical leave but the doctor would need to complete the paperwork and return it to the employer. The claimant could not get his wife's doctor to give a timeline concerning his wife's surgery. The claimant did not return family medical leave paperwork to the employer. The claimant left a letter of resignation for the employer on September 14, 2013. The claimant quit.

Conclusion 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 law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that temporarily terminated the claimant's work within the previous 6 calendar months, or to relocate due to a military connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification. The claimant's appeal was timely filed. The record reflects that the claimant voluntarily quit. In order to avoid disqualification a person that voluntarily quits employment must show that the reason for leaving was with good cause attributable to the employer or due to illness or disability of the individual requiring separation. No evidence was presented to indicate that the employer violated any of the claimant's terms of employment. No evidence was presented to indicate that the claimant's health required the claimant to quit. The record further reveals that the employer gave the claimant family medical leave paperwork to have completed but the claimant did not return the completed paperwork. Since the claimant left employment for reasons other than those listed above, Florida Reemployment Assistance law requires disqualification. Although the claimant's reasons for leaving the job may have been personally compelling, they do not meet the qualification requirements for Reemployment Assistance benefits. Therefore, the claimant is disqualified for receipt of benefits based on his separation from the employer.

Decision: The claimant's appeal was timely filed. The determination dated October 10, 2013, disqualifying the claimant for receipt of benefits based on his separation from the employer and relieving the employer's account of charges, is affirmed.

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 to the last known address of each interested party on November 25, 2013

MARGARET RIGGINS
Appeals Referee

By: 

FATIAH IVORY, 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 mailing date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.004, 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, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (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 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.

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 fecha 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-21.004, 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, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (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 el 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.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20^{yèm} jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.004, 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, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (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 mesaje 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 nimewo 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.

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.