

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 14-00290

vs.

Referee Decision No. 0020368237-02U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the employer's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision which held the claimant not disqualified from receipt of benefits.

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 within the meaning of Section 443.101(1), Florida Statutes.

The referee's findings of fact state as follows:

The claimant worked as a team member for a restaurant. The claimant worked for the employer from October 2013 through November 13, 2013. The claimant earned \$8.25 per hour and worked approximately 20 hours per week. The claimant accepted work elsewhere with a pay rate of \$9.25 per hour working 40-plus hours per week. The claimant was scheduled to begin his new employment during the second week of December. On October 30, 2013, the claimant gave the general manager his notice of resignation effective for November 13, 2013.

Based on these findings, the referee held the claimant voluntarily left work with good cause attributable to the employing unit. 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.

To voluntarily leave employment for good cause, the cause must be one which would reasonably impel the average able-bodied qualified worker to give up his or her employment

The applicable standards are the standards of reasonableness as applied to the average man or woman, and not to the supersensitive.

Uniweld Products, Inc. v. Industrial Relations Commission, 277 So. 2d 827, 829 (Fla. 4th DCA 1973).

At the hearing before the appeals referee, the claimant testified that he quit his position to accept another job that offered better compensation and additional hours. The referee held the claimant quit with good cause based on the court decisions in *Doig v. Unemployment Appeals Commission*, 862 So. 2d 76 (Fla. 1st DCA 2003) and *Seneca v. Florida Unemployment Appeals Commission*, 39 So. 3d 385 (Fla. 1st DCA 2010).

The First District Court of Appeal has determined that the disqualification provision in Section 443.101(1)(a), Florida Statutes, does not apply in cases where the claimant was "never completely unemployed." In *Doig v. Unemployment Appeals Commission*, 862 So. 2d 76 (Fla. 1st DCA 2003), the claimant quit a part-time job to accept another part-time position that offered better pay and benefits. The claimant in that case immediately began working for the other employer with no gaps in his employment. The Commission disqualified the claimant, as his quitting the first employer was not "attributable to [that] employer." Nonetheless, the court reversed the Commission, because the reemployment assistance statute did not "specifically" address the situation of a claimant leaving one job for another.

In *Seneca v. Florida Unemployment Appeals Commission*, 39 So. 3d 385 (Fla. 1st DCA 2010), the court held its rationale in *Doig* was applicable where the claimant voluntarily quit his part-time job to accept full-time employment and there were no gaps in his employment. The court noted that, like the claimant in *Doig*, the claimant in *Seneca* merely left his part-time position for another job and was never completely unemployed. The court, therefore, held the claimant was not disqualified under Section 443.101(1)(a), Florida Statutes.

The record in this case, however, reflects that the claimant quit working for this employer on November 13, 2013, filed his claim effective November 17, 2013, and did not intend to start working for the new employer until almost a month later. “Total Unemployment” under the reemployment assistance law occurs in “any week during which [a claimant] does not perform any services and for which earned income is not payable to him or her.” §443.036(45)(a), Fla. Stat. Thus, the fact that the claimant had secured a job which he intended to start in the near future did not preclude him from being unemployed in the interim. Under the reemployment assistance definition of “unemployment,” there was a significant gap between the claimant's prior and subsequent employment and, therefore, he was unemployed. Additionally, the claimant did not get hired by the new employer at the time he thought he would because of a hiring freeze; as a result, he ended up being unemployed for almost two months.

The *Doig/Seneca* doctrine permits a party who leaves one job to immediately start another, and subsequently loses the second job through no fault of his own, to obtain reemployment assistance benefits despite voluntarily leaving the first job. The case-made doctrine is designed to prevent a harsh result in circumstances where the claimant was seeking to obtain better employment. Accordingly, the Commission has applied the doctrine in situations where there was a very brief gap between the conclusion of one job and the actual starting date of the next, such as a week or so, which an employee may need to prepare to start the new employment, even though the claimant may have technically been “unemployed” for that brief time. See R.A.A.C. Order No. 13-06577 (September 10, 2013); R.A.A.C. Order No. 13-00153 (March 4, 2013); R.A.A.C. Order No. 12-09087 (September 21, 2012); U.A.C. Order No. 11-02887 (March 31, 2011). The *Doig/Seneca* doctrine was not, however, designed to facilitate the exploitation of the reemployment assistance program, as attempted by the claimant in this case. We hold that *Doig/Seneca* does not permit a claimant to receive benefits during a period between leaving one job and starting the next. Because a claimant is only eligible to receive reemployment assistance benefits if he or she is “unemployed,” see Section 443.111(4)(a), Florida Statutes, the *Doig/Seneca* doctrine is facially inapplicable in such an instance. Under the circumstances of this case, the Commission concludes the claimant voluntarily left work without good cause attributable to the employer as that term is used within the meaning of the reemployment assistance law.

The decision of the appeals referee is reversed. The claimant is disqualified from receipt of benefits for the week ending November 16, 2013, and until he becomes reemployed and earns \$4,675. As a result of this decision of the Commission, benefits received by the claimant for which the claimant is not entitled may be considered an overpayment subject to recovery, with the specific amount of the overpayment to be calculated by the Department and set forth in a separate overpayment determination.

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
6/6/2014,
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: Brandy Follmar
Deputy Clerk



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



*20226053 *

Docket No.0020 3682 37-02

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.

Issues Involved: 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.

Findings of Fact: The claimant worked as a team member for a restaurant. The claimant worked for the employer from October 2013, through November 13, 2013. The claimant

earned \$8.25 per hour and worked approximately 20 hours per week. The claimant accepted work elsewhere with a pay rate of \$9.25 per hour working 40 plus hours per week. The claimant was scheduled to begin his new employment during the second week of December. On October 30, 2013, the claimant gave the general manager his notice of resignation effective for November 13, 2013.

Conclusions of Law: 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.

When deciding whether a separation is due to a quit or a discharge, consideration must be given to the initiating party in the separation. The claimant is considered to have initiated the separation when the claimant gave notice to the employer that he was leaving employment. The record reflects that the claimant quit. The burden of proof is on the claimant who voluntarily quit work to show by a preponderance of the evidence that quitting was with good cause. *Uniweld Products, Inc., v. Industrial Relations Commission*, 277 So.2d 827 (Fla. 4th DCA 1973). It was shown that the claimant quit to accept employment elsewhere earning more pay. The First District Court of Appeals has determined that the disqualification provision in Section 443.101(1)(a) does not apply in cases where the claimant was "never completely unemployed." In *Doig v. Unemployment Appeals Commission*, 862 So.2d 76 (Fla. 1st DCA 2003), the claimant quit a part-time job to accept another part-time position that offered better pay and benefits. The claimant in that case immediately began working for the other employer with no gaps in his employment. The Commission disqualified the claimant, as his quitting the first employer was not "attributable to [that] employer." Nonetheless, the Court reversed the Commission, because the unemployment benefits' statute did not "specifically" address the situation of a claimant leaving one job for another. In a recent case, *Seneca v. Florida Unemployment Appeals Commission*, 35 Fla. L. Weekly D 1375 (Fla. 1st DCA 2010), this Court held its rationale in *Doig* was applicable where the claimant voluntarily quit his part-time job to accept full-time employment and there were no gaps in his employment. The Court noted that, like the claimant in *Doig*, the claimant in *Seneca* merely left his part-time position for another job and was never completely unemployed. The Court, therefore, held the claimant was not disqualified under Section 443.101(1)(a).

In the instant case, the claimant accepted work elsewhere earning more pay and working more hours. It was also shown that the claimant was scheduled to begin work with the other employer immediately with no gaps in employment. As such, the claimant has presented good cause for quitting. Therefore, the claimant is not subject to disqualification.

Decision: The determination dated December 5, 2013, 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 January 3, 2014

SHANTI NELSON
Appeals Referee

By: 

DEMETRIA RIVERS, 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 sòs 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 diskalfye 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.