STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-02762

vs.

Referee Decision No. 0020947491-02U

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 holding the claimant disqualified from receipt of benefits.

The Commission notes the referee's decision also held the employer's response to the notice of claim was untimely and that, therefore, the employer's account was not eligible for noncharging in connection with the claim. The issue of the timeliness of the employer's response is not before the Commission because the employer has not appealed that portion of the decision; consequently, the only issue before the Commission is the claimant's job separation.

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 referee's pertinent findings of fact state as follows:

> The claimant began working as a Customer Representative Associate for the employer, a Staffing Agency, on June 20, 2013. On October 15, 2013, the claimant was discharged from a client assignment. The employer has a policy in which the employee is required to contact the employer to provide availability for future assignments once an assignment has ended. The claimant did not contact the employer to provide availability after being discharged from the previous client assignment. The claimant quit.

Based on these findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit. Upon review of the record and the arguments on appeal, the Commission concludes that further record development and findings are necessary as to whether the claimant was a temporary employee, day laborer, or leased employee as those terms are used in Section 443.101(10)(b), Florida Statutes; accordingly, that portion of the referee's decision regarding the issue of separation is set aside and the cause is remanded.

The record reflects that the claimant became employed by this employer on June 20, 2013, and was assigned to perform services for a client company. At the time of hire the claimant signed the Employer's Employment Policies and Procedures for Temporary and/or Temp-to-Perm Candidates which states:

> When an assignment ends, I must call [the employer's] office immediately and then on a weekly basis to notify the Company that I am available for other assignments. Failure to do so may result in the termination of my employment with [the employer], and may jeopardize my eligibility for unemployment benefits.

On October 15, 2013, the claimant was advised she was removed from her assignment with the client company, but was told by her supervisor that she was eligible for rehire with the employer. The claimant admitted that she did not call the employer upon separation from the client company, but asserted no one reminded her of the report-back requirement at the time of separation and that, based on her previous experience, believed that maintaining her profile on the employer's website was all that was necessary to advise the employer she was available for work. The employer's witness, however, argued that the claimant should be disqualified from receiving benefits because she effectively quit when she did not follow the employer's policies regarding the requirement to report back to the employer for a new assignment upon the conclusion of an assignment with a client company. The employer also contended that its business practice would have been to contact the claimant at the conclusion of the assignment. This evidence was sufficient, if believed, to create an inference that the claimant had been contacted; however, the claimant's direct testimony indicated she had not been. The referee did not specifically resolve this conflict in the evidence.

The referee accepted the employer's argument as to the policy issue and held the claimant disqualified from receipt of benefits, reasoning that she voluntarily quit her employment with the employer when she failed to report back to the employer for reassignment upon the conclusion of her latest assignment after being advised of her responsibility to do so at the time of hire. The referee, however, did not sufficiently develop the record and determine the nature of the employer, and of the

employment relationship between the claimant and the employer. Therefore, it is unclear what class of employee the claimant was and, thus, whether she was properly held to have quit her employment by failing to report back to the employer for reassignment if she did not receive notice of that responsibility at the conclusion of her assignment.

The evaluation of this case depends on whether the claimant was a temporary employee, day laborer, or a leased employee. Section 443.101(10)(b), Florida Statutes, provides, in pertinent part:

> A temporary or leased employee is deemed to have voluntarily quit employment and is disqualified for benefits . . . if, upon conclusion of his or her latest assignment, the temporary or leased employee, without good cause, failed to contact the temporary help or employee-leasing firm for reassignment, *if the employer advised the temporary or leased employee at the time of hire and that the leased employee is notified also at the time of separation that he or she must report for reassignment upon conclusion of each assignment, regardless of the duration of the assignment, and that reemployment assistance may be denied for failure to report*. For purposes of this section, the time of hire for a day laborer is upon his or her acceptance of the first assignment following completion of an employment application with the labor pool. *The labor pool as defined in s. 448.22(1) must provide notice to the temporary employee upon conclusion of the latest assignment that work is available the next business day and that the temporary employee must report for reassignment the next business day*. The notice must be given by means of a notice printed on the paycheck, written notice included in the pay envelope, or other written notification at the conclusion of the current assignment (emphasis added).

The terms "temporary employee," "day laborer" and "leased employee" are further defined by reference to the type of employer for whom they work. "'Temporary employee' means an employee assigned to work for the clients of a temporary help firm. The term also includes a day laborer performing day labor, as defined in s. 448.22, who is employed by a labor pool as defined in s. 448.22." §443.101(10)(a)2., Fla. Stat. "'Leased employee' means an employee assigned to work for the clients of an employee leasing company regulated under part XI of chapter 468." §443.101(10)(a)3., Fla. Stat.

The terms "temporary help firm," "employee leasing company," and "labor pool" are all defined in the statute, either directly or by reference. A "temporary help firm" is:

> a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects, and includes a labor pool as defined in s. 448.22. The term also includes a firm created by an entity licensed under s. 125.012(6), which hires employees assigned by a union for the purpose of supplementing or supporting the workforce of the temporary help firm's clients. The term does not include employee leasing companies regulated under part XI of chapter 468.

§443.101(10)(a)1., Fla. Stat.

As noted in the definition above, "labor pool" is defined by reference to the Labor Pool Act, specifically Section 448.22, Florida Statutes. An "employee leasing company" is defined by reference to the regulatory provisions regarding such companies, Section 468.520(4)&(5), Florida Statutes.

As the statutory language above indicates, the employee's classification is ultimately determined by the classification of the employer. Thus, under Section 443.101(10)(b), Florida Statutes, if the employer is an "employee leasing company" or a day "labor pool," the employer is required to give an employee notice of its reporting requirement at the time of hire *and* at the time of separation/conclusion of the employee's latest assignment. If, however, the employer is a temporary help firm other than a labor pool, the employer is only required to give an employee notice of its reporting requirement at the time of hire.

In cases involving employers such as the one in this case, the record must be developed, and the decision must specify, the precise relationships among the employer, its client, and the claimant so as to provide a proper classification of the claimant. It is not sufficient to passively allow the parties to characterize themselves. The referee in this case found that the employer was a staffing agency based on the employer's representation. That term is not recognized in Section 443.101(10)(b), Florida Statutes, and the use of that term does not establish whether the claimant was actually a temporary employee, as opposed to a longer term staffing or leased employee, which is key to determining which notice requirements must be satisfied before it can be concluded that the claimant quit by failing to report back to the employer for reassignment.

On remand, the referee should first determine whether the claimant was given notice of the requirement to contact the employer for further assignments at the time of the conclusion of her assignment. If not, the referee must develop the record regarding the specific nature of the employer's business, its relationship with the client at issue, and the claimant's relationship with both. As to the nature of the employer's business, the referee must determine whether the employer is a temporary help firm, labor pool, or leasing company *with respect to this particular claimant*. We note that many large "staffing" employers may provide short-term staffing, long-term staffing, and leasing arrangements within the same employer, and possibly for the same client. Thus, the fact that the employer's business model is primarily temporary staffing does not control if the employer's relationship with the client company through which the claimant was employed was a long-term staffing or leasing arrangement.

Thus, the referee must inquire into such issues as (1) by whom was the claimant initially hired, or contacted for hire; (2) how long did the claimant's assignment last, or was expected to last; and (3) how often was the claimant paid, and how. Temporary help firms typically perform their own recruitment and placement; employee leasing companies may or may not. The expected duration of an assignment is important, because a temporary employee within the meaning of the reemployment assistance act must be one who works in a *temporary* staffing environment. A long-term staffing arrangement, where the duration of an assignment is extended or even potentially permanent, is more akin to a leasing arrangement and is not a temporary help arrangement.[1] Finally, the pay cycle is important, as labor pools often pay on a daily basis, even when a day laborer is on an assignment of some duration. Based on this analysis, the referee should determine whether the claimant was employed as a temporary employee, day laborer, or leased employee, and then determine whether or not the employer was required to give notice at the time the assignment ended.

In addition, the record requires development regarding precisely what the claimant was told at the time of the separation from the client company and details of the claimant's referenced previous "experience" with reporting back to the employer. If, for example, the claimant's prior practice and experience with *this* employer was to report her availability for reassignment by maintaining her profile

[1] We note, however, that in a temp-to-perm placement, where the claimant is given a temporary assignment by the employer to a client company with the possibility of the claimant receiving long-term employment *by the client company* (with the staffing employer typically receiving a recruitment or placement fee) may still be a temporary staffing arrangement.

on the employer's website, she would have satisfied the "report-back" requirement by following this practice with the employer. If, however, this was her prior practice and experience with *other* employers, she would not have satisfied the "report back" requirement by maintaining her profile on the employer's website because this was not the accepted procedure for *this* employer.

The decision of the appeals referee regarding the issue of separation is vacated and remanded for development of the record and additional findings regarding the claimant's classification, and application of the provisions of Section 443.101(10)(b), Florida Statutes, to the facts of the case in light of that finding. That portion of the referee's decision holding the employer's response untimely to the notice of claim remains undisturbed.

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
12/22/2014 ,
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

*27649060 *

Docket No.0020 9474 91-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellee ***EMPLOYER/Appellant***

APPEARANCES 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.

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: CHARGES TO EMPLOYER'S EMPLOYMENT RECORD: Whether benefit payments made to the claimant will be charged to the employment record of the employer, pursuant to Sections 443.101(9); 443.131(3)(a), Florida Statutes; Rules 73B-10.026; 11.018, Florida Administrative Code. (If charges are not at issue on the current claim, the hearing may determine charges on a subsequent claim.)

TIMELINESS OF EMPLOYER'S RESPONSE TO NOTICE OF CLAIM: Whether the employer responded to the notice of claim within 20 days after mailing of the notice, or in the absence of mailing, within 20 days of the delivery of the notice; such that the Agency could consider whether the employers account is relieved of charges, pursuant to Section 443.151(3)(a), Florida Statutes.

Findings of Facts: The claimant began working as a Customer Representative Associate for the employer, a Staffing Agency, on June 20, 2013. On October 15, 2013, the claimant was discharged from a client assignment. The employer has a policy in which the employee is required to contact the employer to provide availability for future assignments once an assignment has ended. The claimant did not contact the employer to provide availability after being discharged from the previous client assignment. The claimant quit.

The employer received the notice of reemployment assistance claim filed on December 21, 2013. The employer representative submitted the completed and sent it to the Department via US mail on January 6, 2014. The employer representative did not receive a confirmation that the form was received.

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.

In the instant case, the claimant was discharged from a client assignment but was still employed with the employer and required to contact the employer to provide availability for future assignments. However, the claimant did not contact the employer to show availability as required by the employer policy. Therefore the claimant quit without good cause and is disqualified for the receipt of benefits.

The law provides that a contributing employer who fails to respond to the notice of claim within twenty days after the mailing date of the notice, or in lieu of mailing, within twenty days after delivery of the notice, may not be relieved of benefit charges to the employer's account. The

employer presented testimony that the response to the notice of claim was attempted to be made online. The testimony presented established that the employer's representative did not receive a confirmation page confirming the Department's receipt of the response to the notice of claim filed. The evidence presented establishes that an attempted response was submitted to the Department. However the response was received by the Department after the twenty day limit. Thus, the employer has failed to demonstrate that the employer's response to the notice of claim was timely.

The law provides that benefits will not be charged to the employment record of a contributory employer who furnishes required notice to the Department when the claimant left the work without good cause attributable to the employer. The record shows that the claimant quit. The evidence presented establishes the claimant quit employment without good cause.

Decision: The determination distributed on April 11, 2014 is REVERSED. The claimant is disqualified from the receipt of benefits beginning October 13, 2013 and until the claimant earns $4675.00. The employer's response to the notice of claim is found untimely.

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 May 27, 2014

Crystal Turner
Appeals Referee

By: Antonia L Spivey

ANTONIA SPIVEY (WATSON), 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 definitif 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.