STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-06006

vs.

Referee Decision No. 0008673010-04U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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 Record Facts

The referee's findings of fact state as follows:

> The claimant was a Public Safety Officer for the [employer]. The claimant arrived at an incident, on December 19, 2012. A police officer, from the jurisdiction where the incident occurred, arrived on the scene and compiled a medical examiner's report. The claimant gave the responding police officer the name of the deceased individual. The claimant then cleared herself off the call, and left the scene. The claimant did not prepare a report regarding the incident, although the claimant pronounced the victim deceased at the scene. The employer subsequently informed the claimant, on or about December 25, 2012, that a report needed to be generated regarding the incident. Additionally, two of the claimant's supervisors repeatedly told the claimant to prepare that incident report. The claimant tried to contact the responding police officer, who compiled the medical examiner's report, for the name of the deceased individual, but could not initially contact that police officer. The claimant left the police officer her cell phone number, so that the police officer could return her call. *The claimant then left for a [two-week] family*

> *vacation. When the claimant returned from vacation, the claimant informed the employer that the police officer had not returned her call.* The claimant was subsequently able to contact the police officer, and completed her report on January 30, 2013. The employer had policies and procedures which addressed preparing incident reports, regardless if the incident occurred within or without the police officer's jurisdiction. The claimant was demoted and on probation for a previous policies and procedures violation, for failure to comply with a direct order from a superior officer, and as a result of the claimant's failure to prepare that incident report, despite receiving numerous directives by supervisory personnel to complete the report, the employer discharged the claimant on April 24, 2013 (emphasis added).

An appeals referee's material findings cannot be overturned if they are supported by competent, substantial evidence. Our review demonstrates that, *except for the italicized findings above which are modified as discussed below*, the referee's findings are supported by competent, substantial evidence. Because of the issues involved in the case, we further expand on the underlying facts demonstrated by the record, which are largely undisputed, except as indicated herein.

On December 19, 2012, the claimant responded to a call at a private residence, located outside the employer's jurisdiction. Emergency Medical Services (EMS) vehicles had also been dispatched. Upon arrival, the claimant determined that the individual was deceased and that no further assistance would be effective. Accordingly, she called off the EMS resources. A corporal with the city police department ("Cpl. B") also responded. Since the incident occurred in his jurisdiction, the claimant gave him her notes, including the name of the decedent. Cpl. B completed a report for his department. Because the incident occurred outside of her jurisdiction, the claimant did not believe she needed to file a report of the incident.

By December 25, 2012, the claimant had been instructed by one of her supervisors, a sergeant, to file a report.[1] Because the claimant was the responding officer who made the determination of death at the scene and released other resources, the employer wanted a report of the incident for its records for liability purposes. According to the claimant's testimony in the internal affairs investigation,

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[1] There is a disagreement in the record evidence as to when the claimant was first ordered to provide a report. Sgt. D testified in the internal affairs investigation that he believed he told the claimant to prepare a report during the evening of December 19, 2013, or the following morning, but if not, then no later than December 22 (her next shift). The claimant testified she did not recall that instruction. For the purposes of our analysis, we assume that the first order was given on December 25.

she called the city's dispatch on December 25, and left a voicemail for Cpl. B on December 28. *The claimant then left on vacation on January 1, 2013.*[2] *On her return from vacation on January 9, 2013, the claimant was again instructed by both of her sergeant supervisors ("Sgt. D" and "Sgt. H") to file a report. She advised them that she had not yet received the information from the corporal.* [The Commission modifies the italicized referee's findings with the more specific findings above].

On January 27, 2013, Sgt. D reported to his superior officer via memorandum that the claimant had still not filed the report. The following morning, January 28, Sgt. H sent the claimant a text message regarding the report:

> **Sgt. H:** Hey I am getting questioned about that ocean gate death. You need to write that report when you work Wednesday.
>
> **Claimant:** Crap. Ok. I never got a return call from, [Cpl. B]? I . . .
>
> **Sgt. H:** Np just please get it done. Sorry to bother ya.
>
> **Claimant:** . . . think that's his name. I'll try again.
>
> **Sgt. H:** K
>
> **Claimant:** It's cool. I just need the info to do the report. I will call again. Does that name sound right?
>
> **Sgt. H:** [Cpl. B] Yes I believe so.
>
> **Claimant:** Cool. Thanks.

[Ex. A5: 85-86].

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[2] The referee's finding the claimant was on vacation for two weeks is based on the claimant's hearing testimony that she was on vacation for "approximately two weeks." [H: 19] The testimony during the internal affairs investigation of both the claimant and her supervising sergeants was that she was on vacation for two shifts, January 3, 2013 and January 6, 2013. Thus, she would have been away from the office from January 1 until her return on January 9. Again, for purposes of our analysis, this difference is not material.

The morning of January 30, 2013, the claimant called the city dispatch again. She asked dispatch to connect her directly through to Cpl. B, who retrieved the information and provided it to the claimant.[3] By 2 p.m. that day, she had drafted the report, but not turned it in, when she was notified that an internal affairs inquiry had commenced. The claimant signed off on the report at 5:29 P.M. that day, and it was signed in as received the following morning.

The employer began an internal affairs investigation regarding the claimant's delay in filing the report. The investigation was conducted by an outside agency, the county sheriff's office. Completed on April 5, 2013, it found that the claimant had failed to comply with a direct order or instruction given by a supervisor or superior officer, and that she had failed to comply with department policy regarding completion of reports and documents. [A5: 59]. Based on these findings, the claimant was terminated effective April 24, 2013. The termination notice stated as follows:

> This memorandum is to advise you that, after careful review of all documents and evidence regarding this Internal Affairs Investigation and much deliberation, effective immediately you are terminated from your employment with the . . . Department of Public Safety. This decision was made based solely upon violations of Departmental Policy as sustained in IA Investigation #2013–AA–0001. Specifically, this decision is based upon your insubordination by failing to comply with several direct orders from two different supervisors and your failure to complete an important incident report in the timeframe required. The fact that your [sic] were recently disciplined for the exact same violations, which resulted in your demotion and being placed on one year probation, only increases my concern if I were to continue your employment. I remain convinced that it is unacceptable for anyone in this agency to disregard the lawful and proper Direct Order of the superior officer. This principle is at the very heart of preserving and maintaining good order and discipline and insubordination of this kind cannot and will not be tolerated.

[Ex. A1].

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[3] Cpl. B testified in the internal affairs investigation that he thought he had provided the decedent's name to the claimant by January 15, 2013. The referee did not make a specific finding as to the date she received the information from Cpl. B, but for the purposes of our review, we accept the claimant's testimony.

Prior to this last incident, the claimant had twice been counseled or disciplined for violating an agency policy. In October 2011, the employer's witness, the former director, observed the claimant driving her vehicle on patrol with a civilian passenger. This conduct violated the employer's "no ride-along" policy adopted in 2008. The claimant told the former director that she had her realtor with her as she was on her way to see a residence when the call came in. The claimant was not issued any formal discipline at that time, but was warned to comply with policy going forward. The former director later learned that the individual was her boyfriend, and that he had ridden along with her several times.[4]

Despite that warning, in June 2012, the claimant was observed driving her patrol vehicle to a call with her boyfriend in the car. This incident resulted in an internal affairs investigation, which found that the claimant had violated the employer's policy. The claimant was demoted from her position of sergeant and placed on a one-year "probation" in June or July 2012. The former director hoped that the demotion and probation would impress on the claimant the seriousness of her responsibility to comply with orders and policies.

Legal Analysis

Based upon his findings, the referee held the claimant was discharged for misconduct connected with work, reasoning in pertinent part:

> The employer's witness provided testimony from two of the claimant's supervisor officers who indicated that they repeatedly directed the claimant to prepare that report of the incident . . . . The claimant's actions demonstrate a violation of a standard of behavior the employer had a right to expect, and show an intentional disregard of the claimant's duties and obligations to the employer. Accordingly, since the claimant was discharged for misconduct connected with work, the claimant should be disqualified from the receipt of reemployment benefits.
>
> Consideration in this case is given to the claimant's contention that the claimant did not violate the employer's policies and procedures when she did not complete the incident report until January 30, 2013. The claimant testified that she tried to contact the responding police officer who compiled the medical examiner's report at the scene in order to obtain the name of the deceased individual. However, she could not initially contact him, and the

[4] This testimony was hearsay, but it is corroborated in part by the claimant's statements in a 2012 internal affairs investigation.

> claimant felt she had no other recourse to obtain the name of the deceased individual other than through that responding police officer. When she ultimately contacted that police officer, she again found out the name of the deceased individual and complied the incident report. The employer testified that the claimant initially had the name of the deceased individual, but gave it to the responding police officer who compiled the medical examiner's report. The employer testified that the claimant could have obtained the name of the deceased individual through other sources, such as that police department's records division. The employer testified [that] any response by a police officer, even out of their jurisdiction, warrants at least some documentation. Additionally, due to the fact that the claimant responded as both a law enforcement officer and a paramedic, and arrived at the scene and pronounced the individual deceased, created an incident where the claimant knew or should have known to prepare a written report of the incident. The claimant knew or should have known that the necessity of compiling such reports are documented in the employer's general policies and procedures and are typically required to be done before the end of the officer's shift. If the completion of the report is important, such as pronouncing someone deceased at a scene, and causes the officer to go beyond his shift in compiling the report, the officer will be paid overtime. The claimant was demoted and placed on a one year probation for failure to comply with a direct order of a superior officer. Several superior officers ordered the claimant numerous times to complete the report, but the claimant did not complete the report until she heard from the responding police officer from the scene of the incident. Therefore, the claimant's contention is respectfully rejected.

We review the referee's conclusions to determine whether the referee correctly applied the reemployment assistance law.

The issue in this case is whether the claimant was discharged for misconduct. §443.101(1)(a), Fla. Stat. As of April 2013, "misconduct" under Florida law was defined as follows:

> "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

> (a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee.
>
> (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
>
> (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
>
> (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
>
> (e) A violation of an employer's rule, unless the claimant can demonstrate that:
>
> 1. He or she did not know, and could not reasonably know, of the rule's requirements;
> 2. The rule is not lawful or not reasonably related to the job environment and performance; or
> 3. The rule is not fairly or consistently enforced.

§443.036(30), Fla. Stat. (2012). Although this case involves an employer policy, the employer did not provide a copy of the policy, and the testimony reflected that a certain degree of discretion and interpretation is required to comply with the policy. Accordingly, we conclude that the policy does not constitute a "rule" within the meaning of subparagraph (e). Therefore, we hold that the referee correctly concluded that this case should be analyzed under subparagraph (a).

The first sentence of this provision, the portion containing the operative definition, was amended by the Legislature in 2011, as follows:

> (a) Conduct demonstrating conscious ~~willful or wanton~~ disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects ~~has a right to expect~~ of his or her employee.~~; or~~

2011 Fla. Laws ch. 235 (Words stricken are deletions; words underlined are additions). The plain language reflects the Legislature intended for amended subparagraph (a) to encompass a broader range of conduct than its predecessor. This interpretation is supported by legislative staff analysis:

> The effect of this change is to reduce the burden of proof on an employer when attempting to prove employee misconduct was the reason for the employment separation . . . the employer must still show that the employee had a level of awareness that their [sic] conduct disregarded the employer's interests or disregarded reasonable standards of behavior that the employer should expect from the employee.

House of Representative Staff Analysis, Bill # CS/BH 7005, p.9. (Feb. 28, 2011).[5] The courts have not yet issued written opinions analyzing the impact of the amendment to subparagraph (a). The Commission, however, has done so on several occasions, and it has concluded that the revised language significantly lowers the degree of mental culpability required in the "conscious disregard" clause of subparagraph (a). *See* R.A.A.C. Order No. 14-00676 (September 25, 2014).

The revised provision contains a standard with two separate and independently analyzed requirements. The employer must prove that the claimant's behavior reflects a conscious disregard of its interests, *and* that the behavior breaches the reasonable standards of behavior the employer has established or otherwise expects. *See* R.A.A.C. Order No. 14-02027 (October 29, 2014).

In considering whether the employer proved the claimant's behavior was misconduct under subparagraph (a), we recognize, as courts have in various contexts, the need for discipline and good order in law enforcement and fire-fighting departments organized in paramilitary fashion. *See Kelley v. Johnson*, 425 U.S. 238, 245-47 (1976); *McMullen v. Carson*, 754 F.2d 936, 938 (11th Cir. 1985). "Discipline is a necessary component of a smoothly-operating police force. Although this necessity of discipline does not rise to the same level as required by the military, . . . discipline must be maintained among police officers during periods of

[5] The staff analysis is available at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7005c.EAC.DOCX&DocumentType=Analysis&BillNumber=7005&Session=2011.

active duty." *Busby v. City of Orlando*, 931 F.2d 764, 774 (11th Cir. 1991), *citing Williams v. Board of Regents*, 629 F.2d 993, 1003 (5th Cir. 1980). The claimant's conduct must be evaluated under both prongs with the employment context in mind.

A. *Conscious Disregard of an Employer's Interests*

The evidence in this case reveals two interests of the employer that were affected by the claimant's delay in compliance with the order to file a report. First, as explained in the former director's testimony, the city had an interest in having a report promptly filed because the claimant had pronounced the subject dead in his residence and canceled EMS services. While there is no indication that the claimant's decisions were in any way erroneous, the significance of her actions, and the need for a report to document the reasons for her decisions, should have been obvious, as the referee recognized. Second, as in any department organized in para-military form, strict adherence to the chain of command, and prompt compliance with orders and policies, is necessary for efficient operations.

The facts are undisputed that the claimant did not provide a report regarding the death until 42 days after the incident, and at least 36 days after being ordered to provide a report. The claimant acknowledged she was told three times by each of her supervising sergeants, albeit on or around the same days, to prepare the report. She advised them, at least after the first instruction, that she had not received the information from Cpl. B. There is no competent, substantial evidence, however, that the claimant asked for specific instructions from her supervisors as to how to address the problem. While the claimant testified that speaking with Cpl. B was the only way she could have received the name of the decedent, the referee rejected this explanation, and we do also. The former director testified as to multiple ways the claimant could have obtained this information. In particular, both the director's testimony at the hearing, and the third-party investigator's questioning of the claimant during the internal affairs investigation, made clear that the claimant could have, with a little more effort, obtained the information herself from the police department records. Moreover, the claimant's testimony reflects only three calls made to Cpl. B: on December 25 or 28, 2012, January 9, 2013, and January 30, 2013.

In reviewing the referee's conclusion that the claimant would have been able to obtain the records through other means, we find the following testimony of the claimant revealing:

> **Lt. S (county sheriff's office):** Okay, did you ever feel the need to drive over to [the city police department] to make contact with anyone to get the information?

> **Claimant:** It's not for me during my patrol shift to, to go out of my area. If my sergeant would have asked me to, I most certainly would have done. On my days off, I, I, I when I leave, I have other responsibilities.
>
> **Lt. S:** I understand.
>
> **Claimant:** I have children, I have soccer
>
> **Lt. S:** While on duty, while on duty
>
> **Claimant:** Sorry.
>
> **Lt. S:** [D]id you find it necessary or find it ah, that it would be prudent to maybe contact your sergeant or tell sergeant, I can get this information if I am allowed to drive to [the city police department]?
>
> **Claimant:** I would, I would think that my sergeant would tell me that, it is not for me [to] tell him.
>
> **Lt. S:** I am saying ask him? Because it is your responsibility to complete the report, is that correct?
>
> **Claimant:** Yes, sir.
>
> **Lt. S:** Okay, so with that being your responsibility, did you feel it would be prudent to just contact him and say Sarge, I need to drive over to [the city PD], I am having difficulty making contact with ah, ah [Cpl. B] over the phone, I need to drive over there, did you think it, did you find it necessary to make that request?
>
> **Claimant:** I didn't make the request, looking back 20/20, being hindsight, thinking 20/20.

[Ex. A5: 152-53].

At the time this incident occurred, the claimant, a former sergeant and individual with 17 years working for the employer, was on probation after demotion for violating an employer policy on two separate occasions, the second time after a direct order. The claimant's limited efforts to comply promptly with the instructions of her supervisors – three times each by her two supervisors – reflected a conscious

decision not to make compliance with the employer's orders a priority. Under the prior version of subparagraph (a), failure to comply with an order after repeated instruction to do so has been held to be misconduct. *Moffat v. Unemployment Appeals Commission*, 33 So. 3d 694, 696-97 (Fla. 1st DCA 2010). We hold that the referee correctly concluded under the amended version of the statute, that the claimant's actions, or lack thereof, reflected a conscious disregard of the employer's interests.

B. *Deliberate Violation or Disregard of the Reasonable Standards of Behavior Which the Employer Expects of His Employee*

In this case, the employer had two reasonable standards of behavior which the claimant could have been expected to comply with. First, the employer reasonably expected prompt compliance with its orders. Second, and more specific to this case, the employer had a policy that, as a general rule, duty reports were expected to be completed by the end of the duty shift involving the incident at issue. The former director acknowledged that there was a degree of discretion necessary to determine whether a report should be written in various situations, and that failure to complete a report by the end of the shift would not immediately result in discipline. Nonetheless, the policy created a reasonable standard of behavior. Inexplicably, once the claimant was advised of the need to complete a report, she exhibited no sense of urgency regarding completion, despite the employer's general expectation of same-shift reporting. It was not until she received a direct requirement to file the report by her next shift – the third time she had been asked by that supervisor alone – that the claimant made the efforts ultimately necessary to get the information required to complete the report. In the context of a law enforcement agency, we hold that the referee correctly concluded the claimant's actions were a deliberate disregard of the employer's reasonable standards of behavior.

At the hearing and on appeal to the Commission, the claimant contends that she was never given an explicit deadline to complete the report until January 28, 2013, and that she complied with that deadline. This contention is unpersuasive in the context of a law enforcement agency. We do not accept the premise that it was the employer's responsibility to give the claimant, who knew the general policy regarding same-shift reporting, spelled out instructions that this report should also be done promptly. Regardless, after the second time the claimant was instructed to complete the report by both her supervisors on January 9, 2013, it should have been obvious that the claimant needed to complete the report immediately.

The claimant further contends that she was told in the January 28, 2013 text message that it was "Np" that she had not prepared the report. This argument overlooks the fact that the claimant's other supervisor had already reported her non-compliance the day before. Further, a two-letter "text-speak" term in the context of a conversation where the supervisor was instructing the claimant a third time to get the report done, and clearly attempting to impress a sense of urgency, is a thin reed indeed. The claimant's position is not meritorious.

The employer argues on appeal that the claimant's prior behavior must be considered in determining whether she engaged in misconduct. By contrast, the claimant contended during the hearing that the "solely" language in the termination document means that only this final incident was considered. The claimant's position parses the discharge document too closely. The document specifically referenced the prior discipline as supporting the conclusion that termination was necessary, and the former director's testimony at the hearing was clear that, while the claimant would not have been discharged absent the failure to comply promptly with the employer's directives to file the report, the employer made the decision to terminate in light of her prior disciplinary record. We conclude that, whether the prior discipline was viewed as merely establishing clear notice to the claimant that her employment was in jeopardy, or as the first two steps in a three-step path to the claimant's discharge, the claimant's failure to comply with orders and policy until January 30, 2013, was misconduct.

The Commission notes that the claimant's Notice of Appeal was filed by a representative for the claimant. Section 443.041, Florida Statutes, provides that a representative for any individual claiming benefits in any proceeding before the Commission shall not receive a fee for such services unless the amount of the fee is approved by the Commission. The claimant's representative shall provide the amount, if any, the claimant has agreed to pay for services, the hourly rate charged or other method used to compute the proposed fee, and the nature and extent of the services rendered, not later than fifteen (15) days from the date of this Order.

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

4/27/2015 ,

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

*34111233 *

Docket No.0008 6730 10-04 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES

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), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

Findings of Fact: The claimant was a Public Safety Officer for the employer,
. The claimant arrived at an incident, on December 19, 2012. A police officer, from the jurisdiction where the incident occurred, arrived on the scene and compiled a medical examiner's report. The claimant gave the responding police officer the name of the deceased individual. The claimant then cleared herself off the call, and left the scene. The claimant did not prepare a report regarding the incident, although the claimant pronounced the victim deceased at the scene. The employer subsequently informed the claimant, on or about December 25, 2012, that a report needed to be generated regarding the incident. Additionally, two of the claimant's supervisors repeatedly told the claimant to prepare that incident report. The claimant tried to contact the responding police officer, who compiled the medical examiner's report, for the name of the deceased individual, but could not initially contact that police officer. The claimant left the police officer her cell phone number, so that the police officer could return her call. The claimant then left for a two week family vacation. When the claimant returned from vacation, the claimant informed the employer that the police officer had not returned her call. The claimant was subsequently able to contact the police officer, and completed her report on January 30, 2013. The employer had policies and procedures which addressed preparing incident reports, regardless if the incident occurred within or without the police officer's jurisdiction. The claimant was demoted and on probation for a previous policies and procedures violation, for failure to comply with a direct order from a superior officer, and as a result of the claimant's failure to prepare that incident report, despite receiving numerous directives by supervisory personnel to complete the report, the employer discharged the claimant on April 24, 2013.

Conclusions of Law: As of June 27, 2011, the Reemployment Assistance Law of Florida defines misconduct connected with work as, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e) A violation of an employer's rule, unless the claimant can demonstrate that:

1. He or she did not know, and could not reasonably know, of the rules requirements;
2. The rule is not lawful or not reasonably related to the job environment and performance; or
3. The rule is not fairly or consistently enforced.

The record shows that the employer discharged the claimant. The burden of proving misconduct is on the employer. Lewis v. Unemployment Appeals Commission, 498 So.2d 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of competent substantial evidence. De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 483 So.2d 413 (Fla. 1986). In this case, the employer met that burden of proof. The employer's witness provided testimony from two of the claimant's supervisor officers who indicated that they repeatedly directed the claimant to prepare that report of the incident. These two supervisor officers did not appear at the hearing. The oral assertions of the two non-appearing supervisors may initially be considered as hearsay. However, their testimony was contained in an internal affairs administrative investigation report which is a record of a regularly conducted business activity regarding such incidents, and is kept in the employer's normal course of business when such incidents occur. Therefore, the internal affairs administrative investigation falls within the business record exception of the hearsay rule, and is therefore admissible and competent to support a finding of fact. See Section 90.803(6), Florida Statutes. The claimant's actions demonstrate a violation of a standard of behavior the employer had a right to expect, and show an intentional disregard of the claimant's duties and obligations to the employer. Accordingly, since the claimant was discharged for misconduct connected with work, the claimant should be disqualified from the receipt of reemployment benefits.

Consideration in this case is given to the claimant's contention that the claimant did not violate the employer's policies and procedures when she did not complete the incident report until January 30, 2013. The claimant testified that she tried to contact the responding police officer who compiled the medical examiner's report at the scene in order to obtain the name of the deceased individual. However, she could not initially contact him, and the claimant felt she had no other recourse to obtain the name of the deceased individual other than through that responding police officer. When she ultimately contacted that police officer, she again found out the name of the deceased individual and complied the incident report. The employer testified that the claimant initially had the name of the deceased individual, but gave it to the responding police officer who compiled the medical examiner's report. The employer testified that the claimant could have obtained the name of the deceased individual through other sources, such as that police department's records division. The employer testified that that any response by a police officer, even out of their jurisdiction, warrants at least some documentation. Additionally, due to the fact that the claimant responded as both a law enforcement officer and a paramedic, and arrived at the scene and pronounced the individual deceased, created an incident where the claimant knew or should have known to prepare a written report of the incident. The claimant knew or should have known that the necessity of compiling such reports are documented in the employer's general policies and procedures and are typically required to be done before the end of the officer's shift. If the completion of the report is important, such as pronouncing someone deceased at a scene, and causes the officer to go beyond his shift in compiling the report, the officer will be paid overtime. The claimant was demoted and placed on a one year probation for failure to comply with a direct order of a superior officer. Several superior officers ordered the claimant numerous times to complete the report, but the claimant did not complete the report until she heard from the responding police officer from the scene of the incident. Therefore, the claimant's contention is respectfully rejected.

Decision: The determination dated September 4, 2013, is AFFIRMED. The claimant is disqualified from receipt of benefits.

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/mailed to the last known address of each interested party on October 23, 2014.

DON HYMAN
Appeals Referee

By: 

YVETTE HARVEY, 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-21.004, 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 distribución/fecha de envìo 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 distribisyon/postaj. Si 20yèm 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.
