STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 15-00807

vs.

Referee Decision No. 0024537925-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS

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, that he received reemployment assistance to which he was not entitled and is liable to repay, and the employer's account 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 referee's findings of fact state as follows:

> The claimant was employed as an x-ray technician for the employer from September 2010 through November 3, 2014. The employer has a progressive disciplinary policy wherein employees can receive multiple verbal and written warnings prior to termination. On March 15, 2013, the claimant mislabeled a patient's hand and x-rayed the incorrect hand. On June 3, 2013, the claimant failed to respond to a call to report to a worksite. On August 20, 2013, the claimant failed to properly document multiple pieces of information on company paperwork. The claimant had been previously warned about how to document these types of information. The claimant received a verbal warning for the incident on August 20, 2013. On September 7, 2014, the claimant received a call from the employer to go to a separate facility and x-ray a patient. The employer has a policy stating that once a technician receives a call to perform an x-ray,

> they have approximately half an hour to leave their house and report to the worksite. The claimant did not leave to report to the call until an hour and fifteen minutes after receiving the call. The claimant received a written warning on September 8, 2014, for the incident on September 7, 2014. On September 17, 2014, the claimant received a final written warning for failing to record a trip he made to a nursing home such that the employer could bill Medicare properly. The claimant had received a verbal warning for this type of error previously.
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> On November 2, 2014, the claimant used his company vehicle to shop for groceries at the end of his shift. The claimant had verbal permission from the owner of the employer to use his vehicle to do so as long as no extra miles were placed on the vehicle. Prior to November 2, 2014, another employee's shift had been moved and the claimant was required to provide the company vehicle to that employee at the end of the claimant's shift. The claimant was unaware that another employee's schedule had been changed in a manner that required the claimant to have the vehicle ready to give to the other employee at the end of the claimant's shift. The claimant did not have the vehicle ready to give to the other employee. The claimant was discharged on November 3, 2014, for this final incident after multiple warnings.
>
> The claimant filed a claim for benefits on November 29, 2014. The claimant's weekly benefit amount was $275. The claimant claimed the week ending November 29, 2014, for benefits, and received $275 in total in benefits from the Department.

Based on these findings, the referee held the claimant was discharged for misconduct connected with work. In so holding, the referee resolved material conflicts in evidence in favor of the employer. The referee's pertinent conclusions of law were as follows:

> The record reflects that the claimant was discharged for multiple violations of different employer rules over the course of 2013 and 2014. Accumulated violations of the employer's interests over the course of employment can show misconduct even if the final incident leading to the discharge was not misconduct. C. F. Industries, Inc. v. Long, 364 So. 2d 864 (Fla. 2d DCA 1978); Mason v. Load King Mfg. Co., 758 So. 2d 649 (Fla. 2000). The claimant provided unrebutted testimony stating that he had verbal

> permission to use his vehicle [for] limited personal use, and that he was unaware that the other employee's schedule had been adjusted. Therefore, the final incident on November 2, 2014, is not reasoned to be misconduct. However, the record reflects that the claimant's numerous violations of employer policies and procedures between 2013 and 2014, most after a previous verbal warning for the same or a similar issue, constitute violations of the employer's interests. Under subparagraph (b) of the aforementioned statute, the claimant's actions constitute misconduct. The claimant is disqualified from the receipt of benefits.

Section 443.036(29), Florida Statutes, states that misconduct connected with work, "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 a 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. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; or theft of employer property or property of a customer or invitee of the employer.
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> (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.
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> (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) 1. A violation of an employer's rule, unless the claimant can demonstrate that:
>
> a. He or she did not know, and could not reasonably know, of the rule's requirements;
>
> b. The rule is not lawful or not reasonably related to the job environment and performance; or
>
> c. The rule is not fairly or consistently enforced.
>
> 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

In this poor performance case, subparagraphs (a), (b), and (e) are potentially implicated.

On appeal to the Commission, the claimant contends that the findings were not sufficient to establish misconduct because the referee failed to make sufficient findings regarding the claimant's culpability under the law for the various incidents for which he was disciplined. We agree with the claimant that the findings are insufficient. However, because our review does not demonstrate that the employer's evidence could not support findings sufficient to establish misconduct, and because the referee did not adequately develop the record, we remand the case for additional consideration as discussed herein.

One of the fundamental principles of reemployment assistance benefits law is that good faith poor performance is not misconduct. The leading case, *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 256-57, 296 N.W. 636 (Wis. 1941), explained the analysis as follows:

> The element of willfulness is found in both intentional violations of standards of behavior which an employer has a right to expect of his employees, and carelessness of such degree as to manifest equal culpability; but that mere inefficiency, the failure to do a good job because of inability or incapacity, ordinary negligence in isolated cases, good faith errors in judgment, and inadvertencies are not to be deemed "misconduct."

Boynton Cab has been cited in at least 42 states, including nine times in Florida. Prior to the 2011 amendment to the definition of misconduct, it was well established as law in Florida. *Lucido v. Unemployment Appeals Commission*, 862 So. 2d 913 (Fla. 4th DCA 2004); *Pereira v. Unemployment Appeals Commission*, 745 So. 2d 573

(Fla. 5th DCA 1999) (repeated instances of ineptitude did not constitute misconduct); *Doyle v. Florida Unemployment Appeals Commission*, 635 So. 2d 1028 (Fla. 2d DCA 1994) (bank cashier's inability to keep her cash drawer in balance was not misconduct where she made an effort to comply with procedure); *Clifford v. Mile Marker 82 Limited Partnership*, 623 So. 2d 632 (Fla. 3d DCA 1993) (claimant's admitted inability to perform tasks within the time deemed adequate only gave rise to an inference that he was physically unable or generally incompetent, which is not misconduct); *Smith v. Krugman-Kadi*, 547 So. 2d 677 (Fla. 1st DCA 1989).

The countervailing principle developed in the law is that substandard performance due to a sustained lack of effort or care is misconduct. *Rycraft v. United Technologies*, 449 So. 2d 382 (Fla. 4th DCA 1984), involved an engineer who worked for the employer for 11 years. Due to his good work, the claimant was promoted twice. After his second promotion, the claimant received poor performance appraisals and was reprimanded for frequent tardiness. He mired himself in clerical tasks rather than the job at hand, failed to work with a plan to get him back on track, and eventually accepted a voluntary demotion. After the demotion, the claimant still had a high error rate, arrived to work late, wasted time on clerical tasks, and read the want ads at work. The court found the claimant's failure to conform to a reduced expectation of performance indicated an intentional and substantial disregard of the employer's interests such as to constitute misconduct. The court also noted the cost to the employer of having its other employees straighten out the claimant's mistakes. It stated, "[w]hile inefficiency or sub-standard performance are not misconduct where they result from inability, a different result obtains where a capable employee refuses to perform. An employee's refusal to apply himself where he is able can evidence an intentional and substantial disregard of the employer's interests." 449 So. 2d at 383. *See also Bozzo v. Safelite Glass Corporation*, 654 So. 2d 1042 (Fla. 3d DCA 1995); *Brownstein v. Hartwell Enterprises, Inc.*, 647 So. 2d 1004 (Fla. 3d DCA 1994); *Sassi v. Five Star Productions*, 623 So. 2d 864 (Fla. 4th DCA 1993).

In determining whether poor performance is due to good faith errors or indifference to expectations, *Odom v. Unemployment Appeals Commission*, 586 So. 2d 504 (Fla. 5th DCA 1991), is instructive. *Odom* involved a forklift operator who was discharged for repeated significant discrepancies in counting truckloads of merchandise after being given specific instructions following previous incidents of miscounting. In concluding Odom's discharge was for misconduct, the court stated that small discrepancies could be overlooked as ordinary errors, but large discrepancies could not. *Id.* at 506. Indeed, the errors in *Odom* suggested that the employee was not merely making mistakes but was failing to do his work as required.

In 2011, the Florida Legislature significantly modified the definition of misconduct as relevant to this case by amending the language of subparagraph (a) to lower the required degree of mental fault, eliminating one alternative from subparagraph (b), and by adding subparagraph (e). Subparagraphs (a) and (b) were amended 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~~
>
> (b) Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, ~~or evil design~~ 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.

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. *See* House of Representatives Staff Analysis, Bill # CS/HB 7005, p.9 (Feb. 28, 2011).[1] The analysis also states the term "evil design" was removed from subparagraph (b) because it found the term unclear as to how an employer could prove an employee had an "evil design" and what might constitute that term.

The revised version of subparagraph (a) contains two separate and independently analyzed requirements: whether the claimant's behavior reflects a conscious disregard of the employer's interests *and* whether the behavior was a deliberate breach of the reasonable standards of behavior the employer has established or otherwise expects. *See* R.A.A.C. Order No. 14-02027 (October 29, 2014). As the Commission has held in several cases, the revised language significantly lowers the degree of mental culpability required in the "conscious disregard" clause. *See* R.A.A.C. Order No. 14-00676 at 3 (September 25, 2014). By contrast, the amendment to subparagraph (b), removing the phrase "or evil design," did not significantly alter the subparagraph.

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[1] *Florida House of Representatives Staff Analysis CS/HB 7005:* http://www.flsenate.gov/Session/Bill/2011/7005/Analyses/h7005a.FTC.PDF.

Subparagraph (e) "expresses the legislative intent that a claimant may be disqualified from benefits where it is established he or she committed a 'violation of an employer's rule.'" *Crespo v. Florida Reemployment Assistance Appeals Commission*, 128 So. 3d 49 (Fla. 3d DCA 2012). Once the employer has shown a violation, the claimant bears the burden to establish one of the three defenses. *Crespo*, *supra*; *Critical Intervention Servs. v. Reemployment Assistance Appeals Commission*, 106 So. 3d 63, 66 (Fla. 1st DCA 2013). The amendment of the definition of misconduct in 2011 has made a violation of a policy subject to disqualification in situations where it would not have been so prior to the amendment. *Alvarez v. Reemployment Assistance Appeals Commission*, 121 So. 2d 69, 70-71 (Fla. 3d DCA 2013). The Commission has held that a specific, uniformly applied step-based progressive discipline policy may constitute a "rule" within the meaning of subparagraph (e), if (1) the policy indicates what conduct is subject to discipline under the rule (which it can do by reference to other rules or standards); (2) it indicates the range of disciplinary actions for each offense; and (3) it ensures that an employee is disciplined only for actions for which the employee can be held culpable. *See* R.A.A.C. Order No. 14-01455 (August 22, 2014). In such a case, the employer must prove by competent evidence each incident that resulted in a step of progressive discipline. *Accord* R.A.A.C. Order No. 13-04616 (August 5, 2013) (applying similar requirement to cumulative discipline system). However, in this case, the record before us does not indicate that the claimant was discharged by virtue of a progressive disciplinary policy that would constitute a rule under the reemployment assistance law.

The Commission has concluded that the 2011 amendments did not fundamentally alter the doctrine that poor performance by itself is not misconduct, a position that has been confirmed at least implicitly by one court. *Hernandez v. Reemployment Assistance Appeals Commission*, 114 So. 3d 407 (Fla. 3d DCA 2013). Instead, the Commission has found that some of the standards established in prior case law may not be as broadly applicable.[2]

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[2] For example, in R.A.A.C. Order No. 14-02817 (December 2, 2014), the Commission made the following observation about the court's rationale in *Doyle*, *supra*: "We also conclude that statutory amendments have superseded *Doyle* to the extent it quotes *Spalding v. Florida Industrial Commission*, 154 So. 2d 334, 339 (Fla. 3d DCA 1963), for the proposition that 'inattention' does not constitute misconduct. While mere inattention may not constitute 'willful or wanton disregard' under the prior version of the definition of misconduct, it may very well constitute 'conscious disregard' and thus constitute disqualifying misconduct under the current statute."

The decision below does not reflect that the referee sufficiently developed the record and analyzed the facts consistent with these principles. We emphasize that poor performance cases often turn on inferences that must be drawn carefully from well-developed evidentiary records and factual findings as to why performance was poor or mistakes were made. Merely showing a pattern of errors and mistakes is not sufficient to establish misconduct; the referee must address *why* these mistakes were made. On the other hand, asking an employee if he was "working to the best of his ability" provides conclusory testimony that is not sufficient on its own to make a dispositive finding.

We recognize that discerning the ultimate cause of errors is one of the more challenging tasks a referee must perform, and there is no uniform approach that will always suffice. Nonetheless, there are some common factors that arise in such cases that the referee should explore, analyze, and apply as appropriate in cases involving a discharge caused by a failure to perform duties satisfactorily:

(1) What is the employee's history of training, performance, counseling, and warning with respect to the tasks he was expected to perform? Did the record establish that the claimant was routinely capable of performing the task(s) correctly? Alternatively, did the claimant's performance improve after warning, then subsequently fall back to unacceptable levels?

(2) How difficult is the task(s) at issue? More complex tasks are harder to perform correctly; therefore, error is likely to occur more often even if an appropriate effort is made.

(3) How serious were the mistakes, and what were their consequences or potential consequences? Particularly with respect to the issue of negligence, an employee should exercise greater care in performing duties that have more serious consequences if performed erroneously.

(4) What was the degree of the performance failure? Did the claimant make minor errors when performing a task, or did the claimant fail to complete a known and obvious step? For example, in R.A.A.C. Order No. 14-04236 (November 24, 2014), *aff'd per curiam*, No. 1D15-101 (Fla. 1st DCA July 24, 2015), the Commission affirmed the referee's disqualification of the claimant, an experienced painter, for failing to perform known steps or tasks during his work. *Odom*, *supra*, also demonstrates the significance of major errors in determining culpability.

(5) What are the capabilities and work experience of the claimant? How do they compare with other employees who successfully perform the same work?

(6) Why do the parties think the mistakes or other problems occurred? What is the basis for that belief?

In determining the cause of performance failures, an understanding of the specific tasks the claimant was required to perform is also helpful. The referee should try to determine exactly what the claimant was supposed to do, and what s/he did wrong, or failed to do.

In this case, the record reflects that the final incident was the claimant's failure to have a company vehicle ready to be picked up at the right time. However, the referee correctly found, based on the claimant's unrebutted testimony, that the claimant had limited permission to use the vehicle, and that he did not have it ready due to a change in pickup time of which he was unaware. Instead, the referee correctly concluded that the issue of misconduct depended upon the claimant's disciplinary record regarding performance issues. While the referee's *basic* findings are supported, the referee's ultimate findings and conclusions do not reflect that the referee analyzed the claimant's performance issues under the appropriate legal standards. Accordingly, we remand the case for a supplemental hearing to develop the record regarding the claimant's performance history in more detail, and the entry of a new decision containing ultimate findings regarding the cause of the performance issues and addressing the issue of whether, given the claimant's performance record, he was discharged for misconduct based on the standards enunciated herein.

The decision of the appeals referee is vacated and the case is remanded for further proceedings.

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 8/27/2015, 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: Kady Ross
Deputy Clerk

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

*39162202 *

Docket No.0024 5379 25-02 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), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

Issues Involved: OVERPAYMENT: Whether the claimant received benefits to which the claimant was not entitled, and if so, whether those benefits are subject to being recovered or recouped by the Department, pursuant to Sections 443.151(6); 443.071(7),443.1115; 443.1117, Florida Statutes and 20 CFR 615.8.

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.)

Findings of Fact: The claimant was employed as an x-ray technician for the employer from September 2010 through November 3, 2014. The employer has a progressive disciplinary policy wherein employees can receive multiple verbal and written warnings prior to termination. On March 15, 2013, the claimant mislabeled a patient's hand and x-rayed the incorrect hand. On June 3, 2013, the claimant failed to respond to a call to report to a worksite. On August 20, 2013 the claimant failed to properly document multiple pieces of information on company paperwork. The claimant had been previously warned about how to document these types of information. The claimant received a verbal warning for the incident on August 20, 2013. On September 7, 2014, the claimant received a call from the employer to go to a separate facility and x-ray a patient. The employer has a policy stating that once a technician receives a call to perform an x-ray, they have approximately half an hour to leave their house and report to the worksite. The claimant did not leave to report to the call until an hour and fifteen minutes after receiving the call. The claimant received a written warning on September 8, 2014 for the incident on September 7, 2014. On September 17, 2014, the claimant received a final written warning for failing to record a trip he made to a nursing home such that the employer could bill Medicare properly. The claimant had received a verbal warning for this type of error previously.

On November 2, 2014, the claimant used his company vehicle to shop for groceries at the end of his shift. The claimant had verbal permission from the owner of the employer to use his vehicle to do so as long as no extra miles were placed on the vehicle. Prior to November 2, 2014, another employee's shift had been moved and the claimant was required to provide the company vehicle to that employee at the end of the claimant's shift. The claimant was unaware that another employee's schedule had been changed in a manner that required the claimant to have the vehicle ready to give to the other employee at the end of the claimant's shift. The claimant did not have the vehicle ready to give to the other employee. The claimant was discharged on November 3, 2014 for this final incident after multiple warnings.

The claimant filed a claim for benefits on November 29, 2014. The claimant's weekly benefit amount was $275. The claimant claimed the week ending November 29, 2014 for benefits, and received $275 in total in benefits from the Department.

Conclusions of Law: As of May 17, 2013, 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. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; theft of employer property or property of a customer or invitee of the employer.

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. 1. A violation of an employer's rule, unless the claimant can demonstrate that:

a. He or she did not know, and could not reasonably know, of the rule's requirements;

b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. In Order Number 2003-10946 (December 9, 2003), the Commission set forth factors to be considered in resolving credibility questions. These factors include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the employer to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

The record reflects that the claimant was discharged for multiple violations of different employer rules over the course of 2013 and 2014. Accumulated violations of the employer's interests over the course of employment can show misconduct even if the final incident leading to the discharge was not misconduct. C. F. Industries, Inc. v. Long, 364 So.2d 864 (Fla. 2d DCA 1978); Mason v. Load King Mfg. Co., 758 So.2d 649 (Fla. 2000). The claimant provided unrebutted testimony stating that he had verbal permission to use his vehicle to limited personal use, and that he was unaware that the other employee's schedule had been adjusted. Therefore, the final incident on November 2, 2014 is not reasoned to be misconduct. However, the record reflects that the claimant's numerous violations of employer policies and procedures between 2013 and 2014, most after a previous verbal warning for the same or a similar issue, constitute violations of the employer's interests. Under subparagraph (b) of the aforementioned statute, the claimant's actions constitute misconduct. The claimant is disqualified from the receipt of benefits.

The law provides that benefits will not be charged to the employment record of a contributing employer who furnishes required notice to the Department when the claimant was discharged for misconduct connected with the work.

The claimant was discharged for misconduct. The employer shall not be charged.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments.

The claimant received benefits. The claimant is disqualified from the receipt of benefits. Those benefits are subject to recovery.

Decision: The determination dated January 22, 2015 is AFFIRMED. The claimant is disqualified from the receipt of benefits from November 2, 2014, and for the five following weeks, and until the claimant earns $4,675. The employer shall not be charged. An overpayment has been generated that is subject to recovery.

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 February 17, 2015.

J. CARPENTER
Appeals Referee

By: 

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 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.
