

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 15-03796

vs.

Referee Decision No. 0026232070-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the Department of Economic Opportunity's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision holding that the claimant did not make a false or fraudulent representation for the purpose of obtaining benefits and did not receive reemployment assistance to which he was not entitled and is liable to repay.

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. The Commission's review is generally limited to the evidence and issues before the referee and contained in the official record.

The issues before the Commission are whether the claimant made a false or fraudulent representation for the purpose of obtaining benefits contrary to the provisions of the reemployment assistance law as provided in Sections 443.101(6) and 443.071, Florida Statutes, and whether the claimant received any sum as benefits to which the claimant is not entitled as provided in Section 443.151(6), Florida Statutes.

The referee's findings of fact state as follows:

The claimant filed a claim for reemployment assistance benefits effective December 8, 2013, and received a weekly benefit amount of \$275. The claimant began training with [the employer] on February 24, 2014, for a customer service position. The claimant was in training from February 24, 2014, through April 12, 2014. The training was classroom-based, and the claimant did not

interact with any of the employer's customers. At the completion of the training, the claimant was required to take a test in which passing was a requirement for employment. During the training, the claimant was compensated for his time. The claimant passed the test and began working for the employer on April 13, 2014.

The claimant did not receive any money from the employer for the first few weeks. The claimant did not report the amount of money he was receiving from the employer during his training because he needed the benefits to support his family.

The claimant received benefit payments of \$275 for the weeks ending February 22, 2014, through April 12, 2014, for a total of \$2,200 in reemployment assistance benefits.

Based on these findings, the referee held the claimant did not make a false or fraudulent representation for the purpose of obtaining benefits and did not receive any sum as benefits under the reemployment assistance law to which he is not entitled, relying upon the Commission's decision in R.A.A.C. Order No. 14-02784 (August 13, 2014). Upon review of the record and the arguments on appeal, the Commission affirms that portion of the referee's decision holding the claimant did not commit fraud. The Commission concludes, however, that the portion of the referee's decision holding the claimant was not overpaid benefits is not in accord with the law; therefore, that portion of the referee's decision is reversed.

Overpayment

In R.A.A.C. Order No. 14-02784 (August 13, 2014), the Commission addressed the fairly common situation where an employee (1) starts new employment and begins a short training period; (2) discovers, during that training period, that the work is not what was anticipated or represented, was beyond the employee's capability, or was, for other reasons, work that may be unsuitable for the employee; and (3) resigns before any actual services are performed other than in a training environment. In such cases, the issue before the Commission is whether the claimant "has voluntarily left *work* without good cause attributable to his or her employing unit" within the meaning of Section 443.101(1)(a), Florida Statutes (emphasis added). The term "work" is not defined in Chapter 443, but because "employment," a term used to determine types of work covered under the reemployment assistance law in Section 443.1216, Florida Statutes, is defined in Section 443.036(21), Florida Statutes, we apply that definition: "Employment' means a service subject to this chapter under s. 443.1216 which is performed by an employee for the person employing him or her." Our precedent holds that an

individual who has yet to perform valuable services for an employer has not yet commenced work within the meaning of Section 443.101(1)(a), Florida Statutes, and therefore is not subject to disqualification under that section for resigning. *See, e.g.*, R.A.A.C. Order No. 15-03176 (September 28, 2015); R.A.A.C. Order No. 15-02728 (September 10, 2015). Our holdings in these cases are based primarily on the statutory language requiring that “services” be performed for “employment” to exist, but also draw guidance from court cases in similar situations reflecting a public policy of encouraging employees to seek employment opportunities when unemployed, without being punitive when such situations turn out to be different than expected, and potentially unsuitable. *See, e.g., Vajda v. Unemployment Appeals Commission*, 610 So. 2d 645 (Fla. 3d DCA 1992) (holding employee separated due to health when she discovered that job exacerbated pre-existing condition); *Belcher v. Unemployment Appeals Commission*, 882 So. 2d 486 (Fla. 5th DCA 2004) (holding employee quit due to health when she could not perform physical labor that employer had failed to disclose was a job requirement). In our training cases, we have held that a resignation prior to the commencement of services is more appropriately analyzed under the statutory provision addressing failure to accept an offer of suitable work, Section 443.101(2), Florida Statutes, in which the Legislature created specific standards for determining whether a claimant should be disqualified for refusing to accept work. Significantly, our adoption of the definition of “employment” as equivalent to “work” for Section 443.101(1)(a) has to date involved training cases where the “employment” was with an “employer” – in short, the work was “insured work.” *See* §443.036(27), Fla. Stat.

By contrast, the issue in this case is not disqualification under Section 443.101(1)(a), Florida Statutes, but eligibility under Sections 443.091(1) and 443.111(4), Florida Statutes. Under those provisions, to be eligible for benefits for a particular week after initial eligibility has been established, a claimant must show that he or she was either totally or partially “unemployed” within the meaning of Section 443.036(44)(a), Florida Statutes:

An individual is “totally unemployed” in any week during which he or she does not perform any services and for which earned income is not payable to him or her. An individual is “partially unemployed” in any week of less than full-time work if the earned income payable to him or her for that week is less than his or her weekly benefit amount. The Department of Economic Opportunity may adopt rules prescribing distinctions in the procedures for unemployed individuals based on total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work.

Because the claimant must prove he or she is unemployed as a condition of eligibility, to be totally unemployed the claimant must establish that neither of the conjunctive conditions are applicable: that is, the claimant must establish that he or she has neither earned income that week nor performed services. *See* R.A.A.C. Order No. 14-03313 (January 16, 2015). The referee correctly concluded on this record that the claimant had not “performed services” for an employer. The referee also concluded that the claimant had no “earned income,” which is defined as:

[G]ross remuneration derived from work, professional service, or self-employment. The term includes commissions, bonuses, back pay awards, and the cash value of all remuneration paid in a medium other than cash. The term does not include income derived from invested capital or ownership of property.

§443.036(16), Fla. Stat.

While the referee understandably concluded, given the use of the word “work” in this definition, that the Commission would also apply the same rationale used in our training cases under Section 443.101(1)(a), Florida Statutes, we observe three significant differences between the uses of the word “work” in Section 443.101(1)(a) and Section 443.036(16), Florida Statutes. First, “earned income” contains no specific requirement, express or implied, that the work be “insured work.” Second, inferring a limitation on the word “work” in the definition of earned income that such work must be for performing services would make the separate inclusion of “performing services” in the definition of total unemployment somewhat redundant, since it is written in the conjunctive. Third, while public policy favors a less rigorous application of the definition of “work” in Section 443.101(1)(a), Florida Statutes, to avoid a result inconsistent with the statutory intent, no such policy exists here to exclude income earned from training from the definition of “earned income” under Section 443.036(21), Florida Statutes. Stated more simply, nothing in the statutory scheme or public policy suggests that an employee should be able to accrue duplicative training pay and reemployment assistance benefits for the same week.

Accordingly, we interpret the term “work” in the definition of “earned income” more broadly to mean labor of any type performed for compensation. This interpretation is consistent, as we understand it, with the Department’s traditional interpretation. Under this definition of work, training pay constitutes earned income.

Based on the record below, from the claim week ending March 1, 2014, through the claim week ending April 12, 2014, the claimant earned more than his weekly benefit amount in employer-paid training, and was thus neither totally unemployed nor partially unemployed, leaving him ineligible for benefits for the weeks. However, the claimant received \$275.00 in benefits for each of those weeks. Therefore, the claimant has been overpaid in the amount of \$1,925.00.

Fraud

The Commission has held that reemployment assistance benefits fraud occurs when (1) the claimant actually worked and earned wages¹ during the period in question; (2) the claimant made a false report to the Department; (3) the claimant actually received the benefits to which he was not entitled; and (4) the claimant's action was intentional, rather than inadvertent. R.A.A.C. Order No. 15-02214 (July 27, 2015). The last element requires a specific intent to misrepresent in order to gain benefits.

In this case, the record established the elements for fraud as outlined above, at least based on the specific questions asked by the Department and the information the claimant provided. The claimant did not indicate that he was confused about the meaning of the questions asked by the Department. Instead, he stated that he was struggling financially, did not receive any earnings from his training until three weeks later,² and did not deny he had to repay the benefits. Ordinarily, the record would be sufficient to support a fraud finding. However, due to the unique legal issue in this case, the Commission's past precedent which the referee reasonably, although ultimately incorrectly, relied upon to conclude that the income the claimant received was not "earned income" within the meaning of the statute, and additional facts of this case,³ we conclude imposition of a fraud penalty here would be unjust. However, we resolve any ambiguity today and hold that the Department's interpretation is consistent with the statutory regime and public policy, and that any intentional failure to disclose training pay as required by the Department will potentially subject a party to a fraud sanction.

¹ The term "wages" in our precedent has been used in a generic sense. We clarify that it refers to "earned income" within the meaning of Section 443.036(16), Florida Statutes, rather than the statutory definition of wages for FICA purposes in the Internal Revenue Code, 26 U.S.C. §3121(a).

² The record reflects his first week of training was compensated on March 10, 2014.

³ There was no indication that the claimant made false statements on any claims after his training period ended and he began regular performance of services.

That portion of the referee's decision holding the claimant did not commit fraud is affirmed. That portion of the referee's decision holding the claimant was not overpaid is reversed. The claimant has been overpaid \$1,925.00 in benefits.

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

2/25/2016,

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: Ebony Porter
Deputy Clerk



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



*44765858 *

Docket No.0026 2320 70-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

BPC Staff

Claimant

DECISION OF APPEALS REFEREE

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved:

REEMPLOYMENT ASSISTANCE: Whether the claimant was totally or partially unemployed, pursuant to Sections 443.036(44); 443.111(4), Florida Statutes.

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.

Findings of Fact: The claimant filed a claim for reemployment assistance benefits effective December 8, 2013, and received a weekly benefit amount of \$275. The claimant began training with the employer, _____, on February 24, 2014, for a customer service position. The claimant was in training from February 24, 2014, through April 12, 2014. The training was classroom-based, and the claimant did not interact with any of the employer's customers. At the completion of the training, the claimant was required to take a test in which passing was a requirement for employment. During the training, the claimant was compensated for his time. The claimant passed the test and began working for the employer on April 13, 2014.

The claimant did not receive any money from the employer for the first few weeks. The claimant did not report the amount of money he was receiving from the employer during his training because he needed the benefits to support his family.

The claimant received benefit payments of \$275 for the weeks ending February 22, 2014, through April 12, 2014, for a total of \$2,200 in reemployment assistance benefits.

Conclusions of Law: The law provides that a claimant is "totally unemployed" in any week during which no services are performed and for which earned income is not payable.

The record shows the claimant provided un rebutted testimony to show he was participating in a classroom training course for the employer, and the completion and passing of the final test was required before the claimant could be hired to perform services for the employer. The Reemployment Assistance Appeals Commission has excluded mere training from the definition of employment because there is no indication that an employee is performing valuable service to the employer during that time. In R.A.A.C. Order No. 14-02784, the Commission held the claimant was never employed by the employer since the claimant did not actually "perform any services" for the benefit of the employer. In this instant case, the claimant did not perform services for the employer during the weeks ending February 22, 2014, through April 12, 2014, because he merely participated in classroom training and did not interact with any customers, which would have been the claimant's core responsibilities in a customer service position. According to the Florida Statutes s. 443.036(16), "earned income" means gross remuneration derived from work, professional service, or self-employment. As such, since the claimant did not perform any services for the employer during the weeks in question, the money paid to the claimant is not considered "earned income" as defined by the Florida Statutes. Therefore, the claimant is considered "totally unemployed" for the weeks ending February 22, 2014, through April 12, 2014. Accordingly, the claimant is eligible for benefits for the weeks ending February 22, 2014, through April 12, 2014.

To establish fraud in cases involving unreported wages, it must be shown that the claimant earned income during the time period in question, made a false report to the Department, claimed benefits to which the claimant was not entitled, and that the act was intentional and not merely inadvertent. The record shows the claimant failed to report the money he received during his training with the employer. However, since the claimant was "totally unemployed" while he trained for his prospective employer, the claimant's failure to report any money received during that time does not meet the criteria outlined above to establish fraud in this case. Therefore, the claimant did not commit fraud. Accordingly, the claimant is qualified for benefits.

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 record shows the claimant is entitled to benefits for the weeks ending February 22, 2014, through April 12, 2014; therefore, the claimant is not overpaid.

Decision: The determination dated June 22, 2015 is REVERSED. The claimant is eligible for benefits for the weeks ending February 22, 2014, through April 12, 2014. The portion of the determination holding the overpayment as a result of fraud is REVERSED. The claimant is qualified for benefits. The claimant is not overpaid.

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 August 7, 2015.

J. SOETE
Appeals Referee

By: 

MONTY CROCKETT, 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 envío marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.004, el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante rembolsar esos beneficios. La cantidad específica de cualquier sobrepago [pago excesivo de beneficios] será calculada por la Agencia y establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden.

Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [*docket number*] y el número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat 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.

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