

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 16-01219

vs.

Referee Decision No. 0027710385-04U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of an appeal of the decision of a reemployment assistance appeals referee pursuant to Section 443.151(4)(c), Florida Statutes. The referee's decision stated that a request for review should specify any and all allegations of error with respect to the referee's decision, and that allegations of error not specifically set forth in the request for review may be considered waived.

On appeal to the Commission, evidence was submitted that was not previously presented to the referee. The parties were advised prior to the hearing that the hearing was their only opportunity to present all of their evidence in support of their case. Florida Administrative Code Rule 73B-22.005 provides that the Commission can consider newly discovered evidence only upon a showing that it is material to the outcome of the case *and* could not have been discovered prior to the hearing by an exercise of due diligence. The Commission reviewed this evidence as a proffer, but for the reasons below concludes the evidence is not material to the outcome of the case, and also concludes that the employer should have been aware prior to the hearing that the evidence would have been necessary. Accordingly, it is not formally admitted into the record.

Upon appeal of an examiner's determination, a referee schedules a hearing. Parties are advised prior to the hearing that the hearing is their only opportunity to present all of their evidence in support of their case. The appeals referee has the responsibility to develop the hearing record, weigh the evidence, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. The Commission's review is generally limited to the evidence and issues before the referee and contained in the official record. A decision of an appeals referee cannot be overturned by the Commission if the referee's material findings are supported by competent, substantial evidence and the decision comports with the legal standards

established by the Florida Legislature. The Commission cannot reweigh the evidence or consider additional evidence that a party could have reasonably been expected to present to the referee during the hearing. Additionally, it is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. Absent extraordinary circumstances, the Commission cannot substitute its judgment and overturn a referee's conflict resolution.

The referee made the following findings of fact:

The claimant was employed as a housekeeper by the employer, a property management company, from February 11, 2011, through December 10, 2015. The claimant was injured on the job and had a workers' compensation claim pending against her employer. Despite injury, the claimant continued working for the employer. On or about December 10, 2015, the claimant was working her scheduled shift when she was summoned to the human resources office. The claimant was told to speak with her attorney and to leave the premises. The claimant was told she would no longer be working for the employer and was told to gather her belongings and to turn in her keys. The claimant did not work for the employer after December 10, 2015. The claimant settled her workers' compensation claim on or about December 28, 2015, and a signed resignation letter dated December 28, 2015, effective December 10, 2015, was allegedly submitted to the employer with the settlement. The claimant did not resign and was willing to continue working. The claimant stopped working because the employer sent her home and told her she was no longer employed with the company effective December 10, 2015. The claimant filed a claim for reemployment assistance benefits with an effective date of December 20, 2015.

Based on these findings, the referee held that the claimant was discharged for reasons other than misconduct. On review, we affirm, because the referee's findings (with limited modifications¹) are supported by competent, substantial evidence and because the referee correctly applied the law.

¹ The referee's finding that the claimant began working for the employer on February 11, 2011, is corrected to reflect the claimant began working for the employer on January 11, 2011. The finding that a signed resignation letter dated December 28, 2015, and effective December 10, 2015, was allegedly submitted to the employer with the workers' compensation settlement is corrected to reflect that a resignation form dated December 28, 2015, effective December 10, 2015, and allegedly signed by the claimant was submitted to the employer with the workers' compensation settlement.

On appeal to the Commission, the employer's representative asserts that the claimant was not truthful in her testimony. The record, however, contains no basis for overturning the referee's credibility determination. The record reveals the referee's resolution of conflicting evidence in favor of the claimant is supported by the testimony of the parties.

The employer's representative also requests that the hearing be reopened to allow the employer to present additional documents and the testimony of an additional witness to rebut unspecified "surprise" testimony presented by the claimant. We conclude, for the reasons discussed below, that remanding for additional evidence on these issues is unnecessary because the employer cannot adequately demonstrate surprise, and because the evidence it could potentially offer on remand would not change the outcome of this case.

As to the issue of surprise, our review of the record reveals that the employer's representative did not request a continuance to present additional documents or witnesses to rebut the claimant's testimony at the hearing, which parties often do when confronted by surprise testimony.² The record further reveals that the claimant's testimony that she was discharged by the employer's witnesses on December 10, 2015, when called into the office, informed that she was no longer employed, and instructed to gather her belongings and leave is consistent with the statement the claimant provided the Department's claims adjudicator in her fact-finding questionnaire. Since the employer was provided a copy of the claimant's fact-finding questionnaire with the notice of hearing, her testimony regarding how the separation occurred cannot be reasonably characterized as surprise evidence.

It is true that additional evidence in this case could shed further light on what agreements were reached (and when) *between the claimant's and employer's workers' compensation attorneys*, and on whether the purported resignation document of the claimant was actually signed by her. On the particular facts of this case, however, there is no version of such evidence that would convert the claimant's separation to a voluntary resignation.

² We do not suggest that such a step is an absolute prerequisite to establishing surprise as a basis for additional proceedings; it is merely a factor that is examined in determining whether good cause has been shown. If such a request is made, the referee must give consideration as to whether the employer has shown a proper basis for a continuance, and the referee's ruling on this issue is reviewed under the abuse of discretion standard.

Even if additional evidence established that, on December 10, 2015, the claimant's and employer's workers' compensation attorneys reached a preliminary settlement of the pending workers' compensation claim that either implicitly or explicitly contemplated a resignation, the record evidence is clear that the claimant was not aware of that settlement, or at least its specifics, at the time she was asked to leave by the employer. She had not been able to talk to her attorney. The record further establishes that the formal agreement, which contains no provision regarding the claimant voluntarily quitting her employment, was not signed until December 28, 2015. Moreover, even if the formal agreement did contain a resignation provision, or the employer were to competently establish that the claimant executed the resignation form provided for the hearing, the claimant's believed testimony demonstrated that she had already been anticipatorily discharged on December 10, 2015, when notified by the employer's witnesses she was no longer employed and instructed to leave. Accordingly, she had no position from which to voluntarily resign when she executed an agreement on December 28, 2015, to settle her workers' compensation claim. The employer cannot convert a discharge into a voluntary quit by having the claimant sign a retroactive resignation form more than two weeks after the separation has already occurred.³

The Commission has recognized and regularly applies the general rule that an employee who voluntarily resigns her employment in order to obtain a settlement of a workers' compensation claim, despite being physically able to continue performing available work with the employer, has resigned under disqualifying circumstances. See R.A.A.C. Order No. 15-02275 (December 7, 2105),⁴ citing *Lake v. Unemployment Appeals Commission*, 931 So. 2d 1065 (Fla. 4th DCA 2006). However, the Commission will not extend *Lake* to a situation where a claimant is discharged, directly or constructively, *prior* to execution of some kind of formal agreement⁵ to settle her workers' compensation case.

³ In a somewhat similar workers' compensation case, we held that an individual who was not permitted to return to work pending negotiation of a workers' compensation settlement despite being medically released may have been constructively discharged, in which case the resignation language in an agreement would not be controlling. R.A.A.C. Order No. 15-01768 (June 1, 2015). Additionally, a resignation in an agreement does not control if the separation has already occurred. R.A.A.C. Order No. 14-02952 (August 15, 2014).

⁴ Available at http://www.floridajobs.org/finalorders/raac_finalorders/15-02275.pdf.

⁵ Such an agreement must, at a minimum, (1) be reduced to writing, (2) include the essential terms of the settlement, and (3) be signed by the parties or their authorized representatives. A mediation settlement agreement or stipulation that meets these requirements is sufficient even if additional or more formal documentation, such as a general release, is subsequently executed consistent with the prior agreement.

Finally, on appeal to the Commission, the employer asserts the claimant is not unemployed and requests that the Department investigate whether the claimant reported her earnings when claiming benefits. A review of Department records reveals the claimant claimed and received full benefits during the months of January, March, and May 2015. If the employer has information regarding the claimant providing services for which earned income is payable during any of those months, it should provide such information to the Department for investigation and adjudication of whether the claimant was totally or partially unemployed when claiming benefits.

A review of the record reveals the claimant was represented by an attorney at the hearing conducted in this matter. While the appeals referee did inquire as to whether the claimant was being charged a fee for representation at the hearings and the amount of any fee, the referee failed to address the proposed fee of \$250 in her decision. A claimant's representative in proceedings before an appeals referee may not charge or receive for those services a fee for more than an amount approved by the referee. §443.041(2)(a), Fla. Stat. A claimant's representative in proceedings before an appeals referee is required to disclose the proposed fee to the referee on the record or by post hearing motion, *and the referee is required to approve, reduce or deny the fee by written order.* Fla. Admin. Code R. 73B-20.009. In order to avoid additional post-hearing requests, the Commission hereby approves the claimant's attorneys' fees for the hearing.

The referee's decision is affirmed. The claimant is not disqualified from receipt of benefits as a result of this claim. If otherwise eligible, the claimant is entitled to benefits. The employer's record shall be charged with its proportionate share of benefits paid in connection with this claim.

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
8/29/2016 ,
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: Kimberley Pena
Deputy Clerk



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



*50866296 *

Docket No.0027 7103 85-04

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant Representative

Employer

Claimant

DECISION OF APPEALS REFEREE

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

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

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

Issues Involved:

SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

TIMELINESS: Whether an appeal, request for reconsideration, or request to reopen an appeal was filed within twenty days after mailing of the determination or decision to the adversely affected party's address of record or, in the absence of mailing, within twenty days after delivery, pursuant to Sections 443.151(3); 443.151(4)(b)1., Florida Statutes; Rules 73B-10.022(1); 10.022(5); 10.023(1); 11.017(2); 20.002-007, Florida Administrative Code.

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.)

THE SPANISH TRANSLATION IS PROVIDED FOR REASONS OF CONVENIENCE ONLY. THE ENGLISH VERSION IS THE OFFICIAL DECISION.

LA TRADUCCIÓN AL ESPAÑOL SE FACILITA SOLAMENTE CON PROPÓSITOS DE ASISTENCIA. LA VERSIÓN EN INGLÉS ES LA DECISIÓN OFICIAL.

Jurisdictional Issue (Timeliness): The Department distributed multiple determinations regarding the claimant's eligibility on January 12, 2016 -- a notice of approval and a notice of disqualification to the claimant both of which the claimant timely received. The claimant's native language is Spanish, and the Spanish instructions advised that an appeal was due on the date shown above - however, no date is shown on the page with the aforementioned instruction. The claimant became confused by the contradictory determinations as well as the appeal instructions regarding the due date, as there was no date provided on the page. The claimant filed an appeal to the adverse determination on February 22, 2016.

The law provides that a determination is final unless an adversely affected party files an appeal or request for reconsideration within twenty days after the mailing date of the determination notice to the party's last-known address or, in lieu of mailing, within twenty days after delivery of the notice. However, courts have held that when multiple determinations on the same or related issue(s) are mailed in close proximity to one another, due process and fundamental fairness concerns warrant an exception to the otherwise "iron-clad" timeliness rule because the determinations are often so "inextricably intertwined" that confusion can arise regarding the appeal deadline. See Assam v. Florida Unemployment Appeals Commission, 871 So.2d 978, 981 (Fla. 3d DCA 2004); Nelson v. Unemployment Appeals Commission, 880 So.2d 1232 (Fla. 2d DCA 2004); Arensen v. Florida Unemployment Appeals Commission, 48 So. 3d 936, 940 (Fla. 1st DCA 2010).

Cuestión de competencia (Oportunidad): El Departamento distribuye múltiples determinaciones respecto a la elegibilidad del reclamante el 12 de enero 2016 - un aviso de aprobación y un aviso de inhabilitación para el reclamante ambos de los cuales el reclamante recibió oportuna. el idioma nativo del demandante es español, y las instrucciones de España aconseja que un recurso se debía en la fecha indicada arriba - sin embargo, ninguna fecha se muestra en la página con la instrucción antes mencionada. El reclamante se confundió por las determinaciones contradictorias, así como las instrucciones de apelación con respecto a la fecha de vencimiento, ya que no había fecha proporcionada en la página. El demandante presentó una apelación a la determinación adversa el 22 de febrero de 2016.

La ley dispone que la determinación es definitiva a menos que una parte adversamente afectada presenta una apelación o solicitud de reconsideración dentro de los veinte días después de la fecha de envío de la notificación de la determinación a la última dirección conocida de la parte o, en lugar de envío por correo, dentro de los veinte días después del parto del aviso. Sin embargo, los tribunales han sostenido que cuando múltiples determinaciones de la misma especie o de tema (s) se envían por correo en estrecha proximidad entre sí, debido proceso y las preocupaciones fundamentales de equidad

justifican una excepción a la regla de la puntualidad de otro modo "férrea", porque las determinaciones son a menudo tan "indisolublemente unido" que la confusión puede surgir en relación con el plazo de apelación. Ver *Assam v Desempleo de Florida Comisión de Apelación*, 871 So.2d 978, 981 (Fla 3d DCA 2004.); . *Nelson v desempleo Comisión de Apelación*, 880 So.2d 1232 (2d DCA Fla., 2004); *Arensen v. El desempleo de la Florida Comisión de Apelación*, 48 So. 3d 936, 940 (Fla. 1 de DCA 2010).

In the instant matter, the record reflects the claimant received multiple determinations distributed on the same date relating to the issue of her eligibility - one approving the claimant for benefits and one disqualifying the claimant from benefits, and both instructing the claimant that an appeal due date was shown above , but neither had a date on the page. It is reasonable under the facts presented that the claimant became confused as to the necessity of an appeal given the conflicting determinations as well as confused as to the due date of an appeal given the erroneous instruction that a due date was shown above when no due date was printed on the second page of the determination. It is in the interest of due process that the claimant's appeal be treated as timely filed. Accordingly, the claimant's appeal in the instant matter is timely filed.

En el presente asunto, en el expediente consta que el demandante recibió múltiples determinaciones distribuidos en la misma fecha relativas a la emisión de su elegibilidad - uno que se aprueba el solicitante de beneficios y uno descalificar al reclamante de beneficios, y ambos instruyendo al reclamante de que una fecha de vencimiento de apelación se demostró anteriormente, pero ninguno de ellos tenía una fecha en la página. Es razonable bajo los hechos presentados que el demandante se confundió en cuanto a la necesidad de un recurso dado las determinaciones en conflicto, así como confundido en cuanto a la fecha de vencimiento de un recurso dado la instrucción errónea de que una fecha de vencimiento se muestra arriba cuando no hay fecha de vencimiento fue impreso en la segunda página de la determinación. Es en el interés del debido proceso que el recurso del reclamante ser tratado como presentada a tiempo. En consecuencia, el recurso de la demandante en el presente asunto se presentó a tiempo.

Findings of Fact: The claimant was employed as a housekeeper by the employer, a property management company, from February 11, 2011 through December 10, 2015. The claimant was injured on the job and had a worker's compensation claim pending against her employer. Despite injury, the claimant continued working for the employer. On or about December 10, 2015, the claimant was working her scheduled shift when she was summoned to the human resources office. The claimant was told to speak with her attorney and to leave the premises. The claimant was told she would no longer be working for the employer and was told to gather her belongings and to turn in her keys. The claimant did not work for the employer after December 10, 2015. The claimant settled her worker's compensation claim on or about December 28, 2015 and a signed resignation letter dated December 28, 2015 effective December 10, 2015 was allegedly submitted to the employer with the settlement. The claimant did not resign and was willing to continue working. The claimant stopped working because the employer sent her home and told her she was no longer employed with the company effective December 10, 2015. The claimant filed a claim for reemployment assistance benefits with an effective date of December 20, 2015.

Determinación de Hechos: El demandante fue empleado como un ama de casa por el empleador, una compañía de gestión de la propiedad, del 11 de febrero de 2011 hasta el 10 de diciembre de 2015. El reclamante se injurió en el trabajo y tenía un reclamo de compensación del trabajador pendiente en contra de su empleador. A pesar de la lesión, el demandante siguió trabajando para el empleador. En o alrededor del 10 de diciembre de de 2015, el demandante estaba trabajando su turno programado cuando fue convocado a la oficina de recursos humanos. A éste se le dijo que hablara con su abogado y salir de las instalaciones. A éste se le dijo que ya no estaría trabajando para el empleador y se le dijo a recoger sus pertenencias y entregar las llaves. El demandante no trabajó para el empleador después del 10 de diciembre de 2015. El demandante se estableció un reclamo de compensación de su trabajador de aproximadamente el 28 de diciembre de 2015 y una carta de renuncia firmada de 28 de diciembre, el año 2015 a partir del 10 de diciembre de 2015 es supuestamente presentó al empleador el asentamiento. El reclamante no renunció y estaba dispuesto a seguir trabajando. El demandante ha dejado de funcionar debido a que el empleador envió a su casa y le dijo que ya no se emplea con la empresa a partir del 10 de diciembre de 2015. El reclamante presentó un reclamo por beneficios de asistencia de reemplazo con fecha efectiva del 20 de diciembre de 2015.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause or was discharged for

misconduct connected with the work will be disqualified for benefits.

The Reemployment Assistance Law of Florida defines "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. 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.

An employee is considered discharged if the words and actions of the employer would logically lead a prudent person to believe he or she has been terminated from the job. LeDew v. Unemployment Appeals Commission, 456 So.2d 1219 (Fla. 1st DCA 1984).

Conclusiones de la Ley: La ley estipula que un reclamante quien voluntariamente dejó el trabajo sin buena causa o fue despedido por mala conducta en conexión al trabajo será descalificado para beneficios.

A partir de Mayo 17, 2013, la Ley de la Florida de Asistencia de Reempleo define la mala conducta en conexión al trabajo de la siguiente manera, pero no se limita a, lo siguiente, lo cual no puede interpretarse como 'pari materia' uno con el otro:

a. Conducta demostrando el ignorar conscientemente los intereses del empleador y que sea una violación deliberada o el ignorar los estándares razonables de comportamiento que el empleador espera de sus empleados. Dicha conducta puede incluir, pero no se limita a, danos intencionales a una propiedad del empleador que resulte en danos de más de \$50; robo de propiedad del empleador, de un cliente o un invitado del empleador.

b. Descuido o negligencia o repetición de esto hasta el punto que manifieste culpabilidad, o intenciones ilegales, o demuestra el ignorar intencional y sustancialmente los intereses del empleador o de las responsabilidades y obligaciones del empleado hacia su empleador.

c. Ausencia o tardanza crónica hecha deliberadamente en violación de una política conocida del empleador o una o más ausencias sin autorización después de una amonestación por escrito o una advertencia relacionada a más de una ausencia sin autorización.

d. Una violación intencional y deliberada de un estándar o regulación de este estado por un empleado de un empleador con licencia o certificado por el estado, dicha violación le causaría al empleador el ser sancionado o la suspensión de dicha licencia o certificado de parte del estado.

e. 1. Una violación de las normas del empleador, a menos que demuestre lo siguiente:

a. El o ella no sabía, y razonablemente no podía saber, de las normas y requisitos;

b. La norma no es legal o no es razonable en relación al ambiente y desempeño del trabajo; o

c. La norma no es justa o no se aplica consistentemente.

2. Dichas prácticas pueden incluir, pero no se limitan a, cometer asalto criminal o agresión contra otro empleado, o en un cliente o invitado del empleador; o cometer abuso o negligencia de un paciente, residente, persona con discapacidad, personas de edad avanzada, o un niño en su o su atención profesional.

Un empleado es considerado despedido si las palabras y acciones del empleador lógicamente llevan a una persona prudente a creer que él o ella ha sido despedido/a del trabajo. LeDew v. Unemployment Appeals Commission, 456 So.2d 1219 (Fla. 1st DCA 1984).

The record herein reflects the employer discharged the claimant when the employer told the claimant to leave, collect her things, and turn in her keys. In cases of discharge, the burden is on the employer to establish that the discharge was for misconduct connected with work. No evidence was presented to establish the claimant was discharged for misconduct connected with the work, and therefore the employer did not meet the burden of proof. The claimant is thus not subject to disqualification.

The law provides that benefits will not be charged to the employment record of a contributory employer who furnishes required notice to the Department when the claimant left the work without good cause attributable to the employer, was discharged for misconduct connected with the work, refused without good cause an offer of suitable work from the employer, was discharged from work for violating any criminal law punishable by imprisonment or for any dishonest act in connection with the work, refused an offer of suitable work because of the distance to the employment due to a change of residence by the claimant, became separated as a direct result of a natural disaster declared pursuant to the Disaster Relief Act of 1974 and the Disaster Relief and Emergency Assistance Amendments of 1988, or was discharged for unsatisfactory performance during an initial probationary period that did not exceed ninety calendar days and of which the claimant was informed during the first seven days of work.

La ley estipula que beneficios no serán cobrados al registro del empleo de un empleador contribuyente quien proporcione al Departamento notificación requerida cuando el/la reclamante dejó el trabajo sin buena causa atribuible al empleador, fue despedido/a por mala conducta en conexión al trabajo, rechazó, sin buena causa, una oferta de trabajo adecuado del empleador, fue despedido del trabajo por violar cualquier ley criminal castigable con prisión, o por cualquier acto deshonesto en conexión al trabajo, rechazó una oferta de trabajo adecuado por la distancia al lugar de empleo debido a un cambio de residencia del reclamante, se separó como resultado directo de un desastre natural declarado conforme a la Ley de Asistencia en caso de Desastres 1974 y Enmiendas de Asistencia por Emergencia y Socorro en caso de Desastre 1988, o fue despedido/a por desempeño insatisfactorio de trabajo durante el periodo inicial de prueba que no excedió más de 90 días del calendario y del cual el/la reclamante fue informado/a durante los primeros siete días de trabajo.

The record herein establishes the claimant was discharged for reasons other than misconduct connected with the work and is thus not subject to disqualification from the receipt of benefits pursuant to Florida law. As such, the employer has not met the requirements of law for non-charging and therefore the employer's account is subject to charges for benefits paid to the claimant in connection with this claim.

El registro en el presente documento establece que el demandante fue despedido por razones que no sean mala conducta relacionada con el trabajo y por lo tanto no está sujeto a la descalificación de la recepción de beneficios en virtud de la ley de Florida. Como tal, el empleador no ha cumplido con los requisitos de la ley para los no-carga y por lo tanto la cuenta del empleador está sujeto a cargos por beneficios pagados a la demandante en relación con esta alegación.

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 Reemployment Assistance Appeals 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 claimant to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the claimant.

Al Oficial de Audiencias se le presento testimonio conflictivo referente a los asuntos de hecho relevantes y está encargado de resolver estos conflictos. En Orden Numero 2003-10946 (Diciembre 9, 2003), la Comisión estableció factores a ser considerados al resolver cuestiones de credibilidad. Estos factores incluyen la capacidad y oportunidad del testigo de observar el evento o acto en cuestión; cualquier declaración inconsistente proporcionada por el testigo; prejuicio del testigo o falta de prejuicio; la contradicción de la versión de los eventos del testigo basada en otras pruebas, o si es consistente con otras pruebas; la profunda improbabilidad de la versión de los eventos del testigo; y el comportamiento del testigo. Al

considerar estos factores, el Oficial de Audiencias determina que el testimonio del reclamante tiene más credibilidad. Por lo tanto, conflictos importantes en las pruebas son resueltos a favor del reclamante.

Decision: The claimant's appeal is timely filed.

The determination of the claims adjudicator dated January 12, 2016 which held the claimant disqualified from the receipt of benefits based on a finding the claimant quit without good cause attributable to the employer and held the employer's account not chargeable for benefits paid to the claimant in connection with the instant claim is, **REVERSED and MODIFIED** to hold the claimant was discharged for reasons other than misconduct connected with the work and thus the claimant is not subject to disqualification from the receipt of benefits pursuant to Florida law. It is held the employer's account is subject to charges for benefits paid in connection with this claim.

Decisión: La apelación de la demandante está presentada en plazo.

La determinación del adjudicador de reclamaciones con fecha 12 de enero del 2016 indicando que el reclamante no tiene derecho a recibir los beneficios basado en que el reclamante renunció sin buena causa atribuible al empleador y celebró la cuenta del empleador no imponible para las prestaciones pagadas al demandante en relación con la afirmación de instantánea está, **INVIERTE y MODIFICA** para establecer que el reclamante fue despedido por razones distintas a la mala conducta relacionada con el trabajo y por lo tanto el reclamante no está sujeto a la descalificación para recibir los beneficios en virtud de la ley de Florida. Se lleva a cabo la cuenta del empleador está sujeto a cargos por beneficios pagados en relación con esta alegación.

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 March 23, 2016.

P. Chance
Appeals Referee

By: 

CLAUDETTE SILVERA, 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 departman.

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 lèt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak nimewo sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.