

**STATE OF FLORIDA**  
**REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 17-02350

vs.

Referee Decision No. 0031177928-04U

Employer/Appellant

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**ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

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

The Commission's review is generally limited to the issues before the referee and the evidence and other pertinent information contained in the official record. Parties are advised prior to the appeals hearing before the referee that the hearing is their only opportunity to present evidence in support of their position in the case. The referee has the responsibility to develop the hearing record, weigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. The Commission reviews the evidentiary and administrative record and the referee's decision to determine whether the referee followed the proper procedures, adequately developed the evidentiary record, made appropriate and properly supported findings, and properly applied the reemployment assistance law established by the Florida Legislature. The Commission cannot reweigh the evidence and the inferences to be drawn from it. Further, absent extraordinary circumstances, the Commission cannot give credit to testimony contrary to that accepted as true by the referee.

Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes that the referee sufficiently followed the proper procedures and the case does not require reopening or remanding for further proceedings. The referee's material findings are supported by competent, substantial evidence in the record. The referee also correctly applied the law in deciding the case.

The only issue listed on the notice of hearing and the decision was “LEAVE: Whether the claimant’s unemployment is due to a leave of absence voluntarily initiated by the claimant.” Here, the employer, an employee leasing company, put the claimant on a mandatory leave of absence. Even if the claimant wanted to return to work, the employer leasing company indicated it was unwilling to place the claimant on an assignment until he is released with 100% clearance. The courts have held that a leave of absence is not voluntarily initiated by an employee where he or she is placed on a leave of absence by the employer, when the claimant does not agree to the leave because s/he is otherwise willing to work in some capacity. *Hardy v. Florida Unemployment Appeals Commission*, 764 So. 2d 684 (Fla. 1st DCA 2000); *Horvath v. Southwest Airlines Co.*, 761 So. 2d 1250 (Fla. 1st DCA 2000).<sup>1</sup>

From the record, it is not clear what the extent of the claimant’s injuries were or the impairments he had. If not already addressed, the department is directed to review whether the claimant is able and available to work with his injury.

The employer also raises the issue of the claimant’s receipt of workers’ compensation benefits. Section 443.101(3)(c), Florida Statutes, provides:

An individual shall be disqualified for benefits:

(3) For any week with respect to which he or she is receiving or has received remuneration in the form of:

(c) Compensation for temporary total disability or permanent total disability under the workers' compensation law of any state or under a similar law of the United States.

If the remuneration referred to in this subsection is less than the benefits that would otherwise be due under this chapter, an individual who is otherwise eligible is entitled to receive for that week benefits reduced by the amount of the remuneration.

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<sup>1</sup> *Horvath, Hardy, and Shu v. Unemployment Appeals Commission*, 710 So. 2d 108 (Fla. 4th DCA 1998) were wrongly decided *to the extent* that they hold that a leave occurring as a result of the operation of a validly ratified collective bargaining agreement is not “voluntary” as a matter of law, because the decisions gave no consideration whatsoever to the legal rights and duties imposed by controlling federal law under the National Labor Relations Act. Such a provision is not in front of us in this case, however.

The Department is directed to investigate the “Other Pay and Benefit” issue to determine the type of workers’ compensation that is being received and the impact, if any, on the claimant’s reemployment assistance benefits. For example:

A. *Temporary Partial Disability Benefits* - These benefits will not affect a claim for reemployment assistance benefits.<sup>2</sup>

B. *Temporary Total Disability Benefits* - These benefits, *if received*, reduce a claimant's weekly reemployment assistance benefit, dollar for dollar. §443.101(3)(c), Fla. Stat. *See also* §440.15(10)(a), Fla. Stat.<sup>3</sup>

C. *Permanent Total Disability Benefits* - These benefits, *if received*, reduce a claimant's weekly reemployment assistance benefit, dollar for dollar. §443.101(3)(c), Fla. Stat. *See also* §440.15(10)(a), Fla. Stat.<sup>4</sup>

D. *Permanent Impairment Benefits* – These benefits are provided by workers' compensation law to compensate an individual for lost earning capacity, and *not* as a direct replacement for weekly wages. §440.15(3), Fla. Stat. Accordingly, they *do not* affect the receipt of reemployment assistance benefits.

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<sup>2</sup> However, reemployment assistance benefits are primary, and will reduce the payable workers' compensation benefits of this type dollar for dollar. §440.15(10)(b), Fla. Stat. This adjustment is to be made by the workers’ compensation carrier, not in the reemployment assistance program.

<sup>3</sup> Section 440.15(10)(a), Florida Statutes, completely disqualifies a worker’s compensation claimant for these benefits for any week for which s/he receives reemployment assistance benefits. Because these two provisions are not fully coordinated legally, the workers’ compensation carrier/administrator and the Department will both have to evaluate benefits.

<sup>4</sup> *See* footnote 2, above.

The referee's decision, which was limited to the issue of "leave," is affirmed. If it has not already done so, the Department is directed to review the Able and Available issue and the Other Pay and Benefit issue.

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

11/30/2017 ,

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: Benjamin Bonnell

Deputy Clerk



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



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**Docket No.0031 1779 28-04**

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

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***CLAIMANT/Appellee***

***EMPLOYER/Appellant***

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APPEARANCES:

Claimant

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### 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:** LEAVE: Whether the claimant's unemployment is due to a leave of absence voluntarily initiated by the claimant, pursuant to Sections 443.036(29); 443.101(1)(c), Florida Statutes.

**Findings of Fact:**The employer is an employee leasing company and the claimant last worked for the employer's client company, \_\_\_\_\_, beginning on July 30, 2016. The claimant last worked as a concrete driver, until he was injured while operating the client company's vehicle.

The claimant was involved in a motor vehicle accident on June 5, 2017. The claimant suffered injury to his arm and back. As a result of his condition, the claimant could not return to work. On or about June 12, 2017, the employer placed the claimant on a medical leave until his condition improves. The claimant filed a claim for workers' compensation on June 21, 2017. Since that time, the claimant has been receiving workers' compensation benefits. The claimant will be allowed to return as

an active employee to the employee leasing company when the claimant's doctor releases the claimant.

**Conclusion of Law:** The law provides that a claimant will be disqualified for benefits for any week of unemployment due to a leave of absence voluntarily initiated by the claimant. As defined in the statute, "leave of absence" means a temporary break in service to an employer, for a specified period of time during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

The record and evidence in this case shows that the claimant is on a mandatory leave of absence initiated by the employer.

The courts have held that a leave of absence is not voluntarily initiated by an employee where he or she is placed on leave by the employer. The court in *Hardy v. Florida Unemployment Appeals Commission*, 764 So.2d 684 (Fla. 1st DCA 2000), and *Horvath v. Southwest Airlines Co.*, 761 So.2d 1250 (Fla. 1st DCA 2000), held that, if a claimant is placed on a leave of absence because of pregnancy based on the employer's policy, the claimant did not initiate the leave of absence and is entitled to benefits. Also, in *Shu v. Unemployment Appeals Commission*, 710 So.2d 108 (Fla. 4th DCA 1998), the court held that a pregnant letter carrier did not voluntarily initiate her leave of absence when she requested light duty work and the employer placed her on a leave of absence because it had no light duty work available. The cited cases are dispositive. The claimant in the instant case was placed on a leave of absence because the claimant's medical condition prevented the claimant from performing the required job duties. The claimant did not voluntarily initiate the leave of absence; therefore, the claimant is not disqualified from the receipt of benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The Reemployment Assistance Appeals Commission has 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.

**Decision:** The determination of the claims adjudicator dated July 5, 2017, is **AFFIRMED**, through the date of the hearing, August 3, 2017. The claims adjudicator will determine subsequent eligibility.

Evidence adduced at the hearing reflects that the claimant may have a medical condition which restricts the claimant's ability to work. The Department is requested to investigate the claimant's availability in order to determine the claimant's eligibility for benefits.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the department and set forth in a separate overpayment determination, unless specified in this decision. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on August 4, 2017.

**A. LOUIS**  
Appeals Referee

By:



DAVID HILLEGAS, 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 20<sup>th</sup> 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](https://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 the last five digits of the 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.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

**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 reembolsar 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](https://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 los últimos cinco dígitos del 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.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

**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](https://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 senk dènye chif nimewo sekirite sosyal demandè a 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.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

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