

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket Nos. 20-01341
20-01342
20-01343

vs.

Referee Decision Nos. 0044709952-02
0049825382-02
0057718279-02

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This consolidated matter comes before the Commission for consideration of the claimant's appeals of three decisions issued by a reemployment assistance appeals referee. The decisions held the claimant ineligible for benefits on the ground his offshore employment with a cruise line, was not covered under the reemployment assistance law and, consequently, the claimant lacked sufficient wages to establish monetary qualification. The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes, over the claimant's timely appeals of the referee's decisions. For the reasons explained in this order, we affirm.

I.
Procedural History

The claimant filed a claim for benefits on March 20, 2020, which was effective as of March 15, 2020. This application identified base-period employers in Florida, New York, and North Carolina. On April 24, 2020, the Department issued a monetary determination showing that the claimant had no Florida wage credits on which to base a claim for reemployment assistance benefits. The out-of-state wages had not yet been reported to Florida. On May 15, 2020, one day after the appeal deadline, the claimant appealed the initial monetary determination.¹ On June 11, 2020, the Department issued a determination that the claimant's request for monetary reconsideration of the initial monetary determination was untimely. The claimant timely appealed this determination on June 16, 2020.²

¹ This appeal is the subject of Referee Decision 0044709952-02 and R.A.A.C. Docket No. 20-01341.

² This appeal is the subject of Referee Decision 0049825382-02 and R.A.A.C. Docket No. 20-01342.

Meanwhile, on May 8, 2020, the claimant filed another application for benefits effective as of May 3, 2020. On June 8, 2020, the Department issued a second monetary determination corresponding to the May application for benefits. There is no indication in the record that this determination was directly appealed. On July 20, 2020, the Department issued a determination holding that the claimant's request for monetary reconsideration of the initial monetary determination was untimely. The claimant timely appealed this determination on July 27, 2020.³

The appeals were originally scheduled for hearing on August 25, 2020, but were rescheduled due to a lack of a complete notice of issues sent to the claimant, the claimant's counsel's lack of receipt of two of the notices from the claimant, and due to a schedule conflict for counsel. The hearing was held on September 16, 2020, and the referee's decision was issued on September 30, 2020.⁴

II. Jurisdiction of the Referee

An initial issue for the Commission's consideration was whether the referee properly assumed jurisdiction over the merits of the claimant's appeal. As noted above, the claimant appealed three separate determinations: the initial monetary determination, which was appealed one day late, and timely appeals of the two subsequent determinations holding that the claimant's requests for reconsideration were untimely.

In his decision, the referee concluded that he had jurisdiction over the initial appeal of the monetary determination on two grounds: (1) the claimant's subsequent filing of a new claim for benefits constituted an appeal; and (2) the appeal form printed an appeal due date of May 18, 2020. He also apparently accepted the appeals of the determinations denying monetary reconsideration as sufficient to appeal the merits.

As to the timeliness of the appeal of the initial monetary determination, we disagree with the referee's analysis. The filing of a subsequent application for benefits after issuance of a prior determination is not *ipso facto* sufficient to fall within the scope of Florida Administrative Code Rule 73B-20.003(1), and the referee did not identify anything in the claimant's second application that clearly showed specific disagreement with the prior monetary determination. As to the appeal due date printed on the appeal form, the referee made no finding that the claimant delayed the filing of his appeal in reliance on any such information.

³ This appeal is the subject of Referee Decision 0057718279-02 and R.A.A.C. Docket No. 20-01343.

⁴ As discussed below, subsequent to these decisions, the Department issued another monetary determination on November 16, 2020, adding North Carolina and New York wages and holding the claimant monetarily qualified with a weekly benefit amount of \$195.

Moreover, we disagree with the referee's implicit conclusion that the timely appeals of the determinations denying monetary reconsideration on the grounds of untimeliness vested the referee with jurisdiction over the merits of these requests *prior* to any determination as to whether the untimeliness of the reconsideration requests could also be excused. Our review of the administrative record suggests that the claimant's requests for monetary reconsideration, if completed the same day they were commenced, were or could be deemed timely, but without an adequate record and findings, jurisdiction cannot be based on this possibility.

Were these the only adjudication-level events in the record, we would affirm the referee's decision as to the initial appeal on alternative grounds – that the referee lacked jurisdiction over the appeal of the merits of the initial monetary determination – and remand the remaining two appeals for additional hearing as to timeliness of the requests for monetary reconsideration. However, the issuance of the second monetary determination on June 8, 2020, superseded the initial monetary determination given that the specific issue under appeal, whether the claimant's employment with the cruise line was covered employment, was identical. Pursuant to Section 443.151(3)(e)3., Florida Statutes, the issuance of the second monetary determination converted the initial appeal to an appeal of the second monetary determination. The claimant's May 15, 2020 appeal, although untimely as to the initial monetary, must be deemed a timely appeal of the second monetary determination.

III. Merits

The Commission's appellate review is limited to the issues before the referee and the evidence and other pertinent information contained in the official record. 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.

A. Wage Credits

The core issue before the Commission in these cases is whether the claimant was paid sufficient wages for insured work – that is, employment covered by the reemployment assistance law – to establish monetary qualification within the meaning of Section 443.091(1)(g), Florida Statutes. *See also* §443.111(2), Fla. Stat. (“Qualifying Requirements”); §443.1217(1), Fla. Stat. (defining “wages” under the statute as earned from “employment” as defined in §443.1216, Fla. Stat.). *See generally* R.A.A.C. Order No. 14-03153 at pg. 2 (December 30, 2014).⁵ More specifically, these cases are limited to the question of whether the claimant received qualifying wages from the *appellee*. While at the time of this appeal, a separate issue involving the availability of qualifying wages from other states was pending before the Department of Economic Opportunity, that issue is *not* before the Commission in these appeals. *See* §443.151(4)(c), Fla. Stat.; Fla. Admin. Code R. 73B-21.008(1).

The claimant has the burden to show he earned sufficient wages from covered employment. *See His Kids Daycare v. Unemployment Appeals Commission*, 904 So. 2d 477, 479 (Fla. 1st DCA 2005). As part of this burden, the claimant must also show the employment in question is not statutorily *excluded* from coverage. *Id.*

The facts of the case are not in dispute. For much of his employment with the cruise line, the claimant earned wages while performing services onboard a vessel that traveled both inside and outside the boundaries of the State of Florida and the United States. Thus, the narrower issue to be decided in this case is whether the claimant’s work onboard a vessel, operating both inside and outside the United States, is covered employment under Florida’s reemployment assistance law. As to this issue, Section 443.1216, Florida Statutes (defining covered employment) provides that coverage for services performed onboard a vessel depends on, among other things, a showing that the vessel is an *American* one:

(11) The employment subject to this chapter includes all service performed by an officer or member of a crew of an American vessel or American aircraft on, or in connection with, the vessel or aircraft, if the operating office from which the operations of the vessel or aircraft operating inside or both inside and outside the United States is ordinarily and regularly supervised, managed, directed, and controlled within this state.

⁵ Available at http://www.floridajobs.org/finalorders/raac_finalorders/14-03153.pdf.

(13) The following are *exempt* from coverage under this chapter:

(b) Service performed on or in connection with a vessel or aircraft that is *not* an American vessel or American aircraft, if the employee is employed on and in connection with the vessel or aircraft while the vessel or aircraft is outside the United States.

(Emphasis added).⁶ “American vessel’ means any vessel documented or numbered under the laws of the United States.” §443.036(5), Fla. Stat.

Despite having specific notice through the Notice of Hearing that both subsections (11) and (13)(b) were at issue in this case, the claimant provided no evidence at the hearing establishing he performed services for an American vessel. Nor does the claimant challenge the referee’s conclusion that he failed to meet his burden in that regard.

Instead, on appeal, the claimant argues he satisfied the general coverage criteria for service that is not localized within the State of Florida as provided under Section 443.1216(7), Florida Statutes:

The employment subject to this chapter includes an individual’s entire service, performed . . . both inside and outside this state if:

(b) The service is not localized within any state, but some of the service is performed in this state, and:

1. The base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is located within this state; or
2. The base of operations or place from which the service is directed or controlled is not located within any state in which some part of the service is performed, but the individual’s residence is located within this state.

⁶ The Commission interprets these subparagraphs as being the inverse of each other, both plainly requiring that the vessel must be an American vessel to demonstrate coverage.

First, the claimant's reliance on this provision is misplaced where the claimant has not established eligibility under subparagraphs (11) and (13)(b), the vessel-specific provisions, which are controlling. *See, e.g., Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009) (specific statutes covering a particular subject area will control over a statute covering the same subject in general terms).

Even putting that aside, the claimant has not established eligibility under subparagraph (7)(b) either. The claimant argues the provision's criteria are satisfied because 1) some of the services were performed in Florida, and 2) the base of operations is within Florida. While the first assertion is not disputed, the referee made no finding that the base of operations was in Florida, and the claimant does not argue the referee erred in that regard. To establish error, an appellant must, at a minimum, show undisputed record evidence overlooked by the referee establishing such facts, which the claimant has failed to do here. Rather, the request for review does not refer to any record evidence to support a finding that the base of operations was in Florida, nor is the Commission aware of any evidence establishing such a fact on this record. We conclude the referee properly held that the claimant's onboard wages were not from insured work.⁷

B. Hearing Delay

The claimant also asserts on appeal that the delay between his filing of his initial claim in March and his appeals hearing violated 42 U.S.C. §503(a)(1) (providing that a state's administration of benefits be "reasonably calculated to insure full payment of unemployment compensation when due"). Almost every claim filed during the pandemic has experienced some delay due to the extraordinary amount of applications and appeal requests the Department has received during that time. However, the claimant's argument does not take into account the events that were ongoing during this time with respect to his claim and the extent that the claimant's filings triggered them. For example, after filing his initial application, the claimant also filed (1) a subsequent application; (2) a late appeal of the initial monetary determination; and (3) two requests for monetary reconsideration which based on the limited record we have available may (or may not) have been timely. The hearing was also rescheduled from August 25, 2020, to September 16, 2020, in part for the convenience of the claimant and his counsel, who had a schedule conflict.

⁷ While we affirm the referee's conclusion that the claimant was not entitled to wage credits for the period of time he served *aboard ship*, we question the referee's conclusion that wages earned in training or learning performances ashore were covered work. The relevant statutory provision excludes wages for "Service performed on *or in connection with* a vessel . . . that is *not* an American vessel." §443.1216(13)(b), Florida Statutes (second emphasis in original). Under this language, training or preparation ashore solely for services to be performed on a non-American vessel would also be excluded employment. However, because this issue is not material to the outcome of this case, we do not address it further.

Moreover, the claimant also identified (through his benefit applications) out-of-state wages from New York and North Carolina. Multi-state “combined wage” cases involve complex processes for identification and transfer of wage credits, and the process regularly adds several weeks to months to the time needed to make a complete monetary determination as compared to a single-state claim, even when state caseloads are normal. This multi-state claim occurred during a time in which most, if not all, states were overwhelmed with unprecedented numbers of benefit claims while also addressing the challenge of developing and implementing systems for administering several new federal unemployment programs.

There is no indication in the record that the Department deviated from the process by which combined wage claims are resolved, which is established under federal law. R.A.A.C. Docket No. 19-00236, p.2 (May 31, 2019) (setting forth applicable federal regulations).⁸ *See also* R.A.A.C. Docket No. 19-00447, fn.1. (May 31, 2019).⁹

Given all the issues generated by the claimant’s filings, it was administratively inefficient for the Department to schedule an appeal hearing on the initial monetary determination for his March claim while requests for monetary reconsideration were pending. In short, much of the delay in the scheduling of the hearing was due to the fact that the claimant made additional filings that needed to be resolved prior to a hearing.¹⁰ The Department originally scheduled the hearing in these cases for a date less than a month after the claimant’s appeal of the determination denying the second request for monetary reconsideration.¹¹

In any case, the claimant has not specified what specific relief, if any, he is seeking from the Commission, nor can we contemplate any type of relief the Commission would have authority to grant.¹² *See* §443.151(4)(c), Fla. Stat. (discussing the scope of the Commission’s review). *See also Biltmore Constr. Co. v. Fla. Dep’t of Gen. Servs.*, 363 So. 2d 851, 853-54 (Fla. 1st DCA 1978) (“While an administrative agency may exercise quasi-judicial power when authorized by

⁸ Available at http://www.floridajobs.org/finalorders/raac_finalorders/19-00236.pdf.

⁹ Available at http://www.floridajobs.org/finalorders/raac_finalorders/19-00447.pdf.

¹⁰ We do not suggest, of course, that any of these filings were dilatory or inappropriate. To the contrary, the record suggests that the claimant was simply trying to file and provide information necessary to obtain benefits during a period of historic Department workload and substantial strain on the CONNECT system.

¹¹ And as noted above, this hearing was limited to Florida wage credits, as out-of-state wages remained pending.

¹² Compliance with the standard in 42 U.S.C. §503(a)(1) is intended to be reviewed administratively rather than judicially. That is, the authority and responsibility to interpret and apply the standard is *explicitly* delegated to the U.S. Department of Labor.

statute, it may not exercise power which is basically and fundamentally judicial such as the grant of an equitable remedy”). While the claimant asserts that “the arguments of DEO should be considered waived,” the Department was not a party below and has not made any argument with respect to these proceedings.

Accordingly, the claimant having shown no error by the referee in excluding his shipboard wages from covered employment, we affirm the decisions of the referee.

IV. Other Matters

Although not an issue before the Commission in this appeal, the claimant argues he did not receive proper notice to establish a combined wage claim. For the claimant’s benefit, we provide a brief explanation of the combined wage claim process. *See also* R.A.A.C. Docket Nos. 19-00236 and 19-00447, *supra*.

The Department generally determines the possibility of a combined wage claim based on information supplied by a claimant in the application for benefits about base period employment. Because the claimant’s applications listed out-of-state employment in New York and North Carolina in his application for reemployment assistance benefits, the Department sent a request, Form IB-4, to those states for wage and employment information during the claimant’s base period.¹³ Pursuant to federal regulations, Florida must request that other states “transfer” the claimant’s employment and wages during the base period before using such wages to establish a Florida claim. 20 C.F.R. §616.8(a). In order to avoid payment delay, in combined wage cases the Department will typically issue monetary determinations based on then-available information to determine if the claimant may qualify monetarily immediately; if additional wage credits are transferred, a redetermination can be issued. When the Department distributed monetary determinations on April 24, 2020, and June 8, 2020, it had not yet received information showing that wages were transferrable from these states.

Department records, however, reflect that out-of-state wages were subsequently transferred to Florida, triggering a redetermination of the claimant’s monetary qualification for a claim. On November 16, 2020, the Department distributed a Notice of Monetary Determination showing wages had been transferred from New York and North Carolina, which rendered the claimant monetarily qualified for a claim. According to that determination, the claimant was

¹³ While nothing in the application suggests that the claimant could have wages in any other states, the referee noted that, based on the testimony at the evidentiary hearing, the claimant may have wages from this employer from Alaska.

eligible for a weekly benefit amount of \$195 with a maximum benefit amount of \$2,340 in regular reemployment assistance benefits. It does not appear that the claimant appealed that determination, in which case it has become final – subject to redetermination pursuant to Section 443.151(3)(e), Florida Statutes.¹⁴

V. Attorney's Fees

The claimant's Notice of Appeal was filed by a representative for the claimant. Section 443.041, Florida Statutes, provides that a representative for any individual claiming benefits in any proceeding before the Commission shall not receive a fee for such services from the claimant unless the amount of the fee is approved by the Commission. The claimant's representative shall provide the amount, if any, the claimant has agreed to pay for services, the hourly rate charged or other method used to compute the proposed fee, and the nature and extent of the services rendered, not later than fifteen (15) days from the date of this order. *See Fla. Admin. Code R. 73B-21.006(4)*. The Commission reviews requests for approval of attorneys' fees under the standards established in R.A.A.C. Order No. 16-02976 (April 26, 2017).¹⁵

¹⁴ This qualification for state reemployment assistance benefits precludes entitlement to Pandemic Unemployment Assistance (PUA) benefits during that period. 15 U.S.C. §9021(a)(3) (providing that a "covered individual" with respect to PUA entitlement is one who is *not* eligible for regular compensation).

¹⁵ Available at http://www.floridajobs.org/finalorders/raac_finalorders/16-02976.pdf.

**VI.
Conclusion**

The referee's decisions are affirmed. If it has not done so already, the Department is directed to send an IB-4 form to Alaska to determine whether any wages from that state associated with this employer may be transferred.

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

1/29/2021 ,

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



*154761031 *

Docket No.0044 7099 52-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES:

Claimant Representative

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.

WAGE CREDITS: Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

Issues Involved:

WAGE CREDITS: Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

ADDITIONAL WAGE CREDITS: Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

INSURED WORK: Whether services performed by the claimant during the base period constitute "employment," pursuant to Sections 443.036(21), 443.036(27); 443.1216, Florida Statutes.

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.

Case: 0044 7099 52-02; 0049 8253 82-02; 0057 7182 79-02; S. Weinstein

Findings of Fact: The claimant filed a claim for benefits effective March 15, 2020, establishing a base period running from October 2018 through September 2019. A monetary determination was issued on April 24, 2020. The claimant received an email notice and he logged into the Connect system after the monetary determination was issued. He filed an appeal on May 15, 2020, shortly after receiving a copy of the monetary determination in the mail. The monetary determination included an entry for the cruise line (the employer), but it did not show any base period wage credits from that employer.

The claimant filed a claim for benefits on May 8, 2020, establishing a claim effective May 3, 2020. No wage credits were shown on the monetary determination, dated June 8, 2020, issued on that claim.

The claimant worked for the employer from March 17, 2019 to December 10, 2019. He worked as an entertainer on board a cruise ship operated by the employer. In addition to his on-stage entertainment activities, he was considered part of the crew for emergency drills and for other guest services. He was paid \$650 per week, issued semi-monthly, while he was rehearsing in Florida from the beginning of his employment until mid-May 2019. Rehearsals typically ran from 9 am to 6 pm, six days per week. In mid-May 2019 the claimant was transferred to the US west coast for service on board a vessel traveling between Seward, Alaska and Vancouver, British Columbia, with some trips traveling across the Pacific to ports in Asia. Once he got to the ship he was paid \$680 per week, issued bi-weekly. The employer issued the claimant a W-2 for 2019 showing wages of \$17,870.65. The W-2 did not show any deduction for Social Security or Medicare taxes.

Conclusions of Law: To be monetarily eligible for Reemployment Assistance benefits, the claimant must have:

- (a) Base period wages for insured work in two or more calendar quarters of the base period; and
- (b) Total base period wages equaling at least 1.5 times the wages paid during the high quarter of the base period, but not less than \$3400.

The "base period" is the first four of the last five completed calendar quarters immediately preceding the first day of the benefit year. The "high quarter" is the calendar quarter in which the most wages were paid. The weekly benefit amount equals one twenty-sixth of the total wages paid during the high quarter, but not less than \$32 or more than \$275. Available benefits equal twenty-five percent of total base period wages, or a maximum established by law, whichever is less. See, section 443.091(1)(g); 443.111(2), Florida Statutes. The maximum is currently 12 weeks of benefits.

Section 443.036, Florida Statutes, "Definitions," provides in relevant part:

(3) "American aircraft" means an aircraft registered under the laws of the United States.

(4) "American employer" means:

(a) An individual who is a resident of the United States.

(b) A partnership, if two-thirds or more of the partners are residents of the United States.

(c) A trust, if each of the trustees is a resident of the United States.

(d) A corporation organized under the laws of the United States or of any state.

(5) "American vessel" means any vessel documented or numbered under the laws of the United States. The term includes any vessel that is neither documented or numbered under the laws of the United States, nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(27) "Insured work" means employment for employers.

443.1216 Employment.--Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee.

(c) If the services performed during at least one-half of a pay period by an employee for the person employing him or her constitute employment, all of the services performed by the employee during the period are deemed to be employment. If the services performed during more than one-half of the pay period by an employee for the person employing him or her do not constitute employment, all of the services performed by the employee during the period are not deemed to be employment. This paragraph does not apply to services performed in a pay period by an employee for the person employing him or her if any of those services are exempted under paragraph (13)(g).

(7) The employment subject to this chapter includes an individual's entire service, performed inside or both inside and outside this state if:

(a) The service is localized within this state; or

(b) The service is not localized within any state, but some of the service is performed in this state, and:

1. The base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is located within this state; or

2. The base of operations or place from which the service is directed or controlled is not located within any state in which some part of the service is performed, but the individual's residence is located within this state.

(9) Service is deemed to be localized within a state if:

(a) The service is performed entirely inside the state; or

(b) The service is performed both inside and outside the state, but the service performed outside the state is incidental to the individual's service inside the state. Incidental service includes, but is not limited to, service that is temporary or transitory in nature or consists of isolated transactions.

(11) The employment subject to this chapter includes all service performed by an officer or member of a crew of an American vessel or American aircraft on, or in connection with, the vessel or aircraft, if the operating office from which the operations of the vessel or aircraft operating inside or both inside and outside the United States is ordinarily and regularly supervised, managed, directed, and controlled within this state.

(13) The following are exempt from coverage under this chapter:

(b) Service performed on or in connection with a vessel or aircraft that is not an American vessel or American aircraft, if the

employee is employed on and in connection with the vessel or aircraft while the vessel or aircraft is outside the United States.

The Florida Administrative Code provides in relevant part:

73B-11.016 Monetary Determinations.

(1) Computation of Wages.

(a) All employment in the base period reported by an employer or determined by the Department from available information shall be considered in computing the monetary eligibility of a claimant.

(b) Assignment of Wages to Calendar Quarters. Wages will generally be counted as reported by the employer. Upon request by the claimant or employer and for the purpose of determining the claimant's weekly benefit amount and maximum available credits, wages may be assigned to the calendar quarter in which the wages were earned, but can be used in only one base period.

73B-10.0251 Services Performed On or In Connection with a non-American Vessel or Aircraft.

(1) Applicability of exemption for services performed on or in connection with a non-American vessel or aircraft:

(a) Service performed by an employee during a reporting period on or in connection with a non-American vessel or a non-American aircraft is exempt from the definition of employment if such employee is employed by the employer on and in any way connected with the vessel or aircraft while it is outside the United States.

(b) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exemption, and the citizenship or residence of the employer is material only in determining whether the vessel is American. Services performed within the United States on or in connection with a non-American vessel are exempted from employment if the employee is employed by the employer on and in connection with the vessel when it is outside the United States.

(c) Exempt services under this rule are not considered employment for reemployment tax purposes and shall not to be reported on the employer's quarterly report (RT-6).

(2) Definitions:

(a) "Non-American aircraft" means any aircraft that is not an "American aircraft" as defined by section 443.036(3), F.S.

(b) "Non-American vessel" means any vessel that is not an "American vessel" as defined in section 443.036(5), F.S.

Whether or not a claimant has sufficient wage credits is a matter of eligibility. Section 443.091(1)(g), Florida Statutes. The burden of proof to establish eligibility for benefits rests with the person claiming benefits. *Florida Industrial Commission v. Ciarlante*, 84 So. 2d 1 (Fla. 1955).

The three docket numbers created for appeals by the claimant have been consolidated for one decision, much as they were consolidated for the hearing. The earliest monetary determination shows a distribution date of April 24, 2020, with an appeal of May 15, 2020, which would appear to show an appeal that was on the 21st day. However, the documents in the consolidated files reflect that a new claim was filed on May 3, 2020, which would be after the claimant had been advised electronically that he was not monetarily eligible on his claim effective March 15, 2020. That filing on May 3, 2020 can be considered a timely written statement objecting to the determination. Moreover, in the file is a document called a "Monetary Determination Appeal Request" which contains a notation at the bottom, "Appeal by Date: 05/18/2020". Either way, the claimant should be considered to have a timely appeal.

The record reflects that the claimant worked in Florida for the employer from March 20, 2019 to "mid-May" which would be the week ending May 18, 2019. The claimant testified that he was paid semi-monthly, at \$650 per week when he was in

Florida. Consequently, the evidence shows that the claimant earned wages for two weeks in the first quarter of 2019. It was not established when the first paycheck was issued. However, even if those wages were paid in April 2019, they can be assigned to the 1st quarter of 2019, pursuant to sec 73B-11.016(1)b, Florida Administrative Code, quoted above. That means \$1300 in wages can be assigned to the 1st quarter of 2019. The claimant then worked an additional seven weeks in Florida before he was sent out of state. That means \$4,550 in wages for the 2nd quarter of 2019. The rest of the time, the claimant was working entirely outside of the state of Florida. The service was not localized in this state, and since at least some of the service was performed in another state--Alaska--then Florida is not an appropriate alternative place within which to find that the services were localized. Accordingly, none of the wages paid to the claimant after he left the state of Florida can be considered to be Florida wage credits.

The evidence shows, then, that there are \$1300 in wages for the 1st quarter of 2019, and \$4,550 in wages for the 2nd quarter of 2019, for a total of \$5850. However, the high quarter wages, times 1.5, amount to \$6,825, which is greater than the total base period wages. The claim has not met all of the requirements for monetary eligibility.

Since both the 1st and 2nd quarters of 2019 are within the base period of both claims, the one effective March 15, 2020 and the one effective May 3, 2020, the effect of the wages for the work in Florida is the same on both claims. They are both monetarily ineligible due to the high-quarter requirement, when Florida wages alone are considered.

It is possible that a valid claim could be created based on wages in more than one state: a Combined Wage Claim. Such a claim could not be considered for Florida in the absence of any Florida wages. However, with some Florida wages, a Combined Wage Claim can be investigated. A Florida referee cannot order any other state to transfer wages, but that process can be begun pursuant to the "Interstate Arrangement for Combining Wages," 20 CFR 616.

Certain sections of the Florida statutes have been quoted above for completeness' sake. The evidence presented in the hearing does not establish that the vessel on which the claimant performed his services was not an American vessel, but in other reemployment assistance cases that issue has been contested, as well as the issue of what part of the service on board the vessel was within the United States and what part was outside. The lack of deductions for Social Security and Medicare taxes suggests that the employer believed that the claimant's work fell within exemptions similar to those for reemployment assistance/unemployment compensation. However, the evidence does not establish that those sections of the reemployment assistance are controlling in this case.

Decision:

0044 7099 52-02: The monetary determination dated April 24, 2020, finding no base period wage credits, is MODIFIED. The claimant has wage credits of \$1,300 in the 1st quarter of 2019 and \$4,550, in the 2nd quarter of 2019 from the cruise line. However, the finding of no monetary eligibility is AFFIRMED.

0049 8253 82-02: The reconsideration determination dated June 11, 2020, finding that no change to the monetary determination is REVERSED. The monetary determination shall be modified as noted in Docket Number 0044 7099 52-02: The claimant has wage credits of \$1,300 in the 1st quarter of 2019 and \$4,550, in the 2nd quarter of 2019 from the cruise line. However, the finding of no monetary eligibility is AFFIRMED.

0057 7182 79-02: The monetary determination dated June 8, 2020, finding no base period wage credits is modified as noted in Docket Number 0044 7099 52-02: The claimant has wage credits of \$1,300 in the 1st quarter of 2019 and \$4,550, in the 2nd quarter of 2019 from the cruise line. However, the finding of no monetary eligibility is AFFIRMED.

The claimant's representative agreed to provide services to the claimant in this matter for a fee of \$500, to be paid by the claimant. The fee is reasonable and is approved.

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 September 30, 2020.

J. HOUSER
Appeals Referee



By:

Derrick Jones, 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-21.003(4), 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, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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-21.003(4), 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, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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-21.003(4), depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalfye 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, Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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 mesajè 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 Reyannochaj 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.

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.