

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 22-00514

vs.

Referee Decision No. 0089354382-04

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for consideration of an appeal of the decision of a reemployment assistance appeals referee wherein the claimant, a school crossing guard employed by a city police department, was held ineligible for and overpaid benefits between school terms. 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 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. 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. The referee also correctly applied the law in deciding the case.

The issues before the Commission are whether the claimant, a public employee who performed services to or on behalf of an educational institution, was on vacation or holiday recess or is claiming benefits between two successive academic years or terms and performed services in that capacity during the first year and has a contract to perform or a reasonable assurance of performing such services at the end of the vacation or holiday recess or during the immediately succeeding academic year or term as provided in Section 443.091(3), Florida Statutes; and whether the claimant received any sum as benefits under the reemployment assistance law to which the claimant is not entitled as provided in Section 443.151(6), Florida Statutes.

Section 443.091(3), Florida Statutes, provides, in general, that benefits based on services to or on behalf of an educational institution are not payable between academic terms or during established vacation or holiday breaks if the individual worked for the institution prior to the break and has a reasonable assurance of performing such services in the next term or after the vacation or holiday break. The statute, however, also provides that the benefits in question must be based on services in employment described in Sections 443.1216 (2) and (3), Florida Statutes. Section 443.1216 (2), Florida Statutes, references service performed in the employ of a public employer.

The law does not restrict the applicability of Section 443.091(3), Florida Statutes, to employees of the educational institution itself. Section 443.091(3)(e) specifically references individuals who provide services “to or on behalf” of the school. Read in conjunction with the prior subparagraphs of subsection 443.091(3), this language broadens the reach of the subsection to employees of third parties or independent contractors. *See* U.A.C. Order No. 10-15320 (January 31, 2011) (holding the claimant was ineligible for benefits between school terms where the claimant, an employee of the Crossing Guards Program of the Hillsborough County Sheriff’s Office, performed service “to or on behalf” of a school and had a reasonable assurance she would be employed in the following school year). In this case, the record reflects the claimant provided services, performed in the employ of a public employer, to or on behalf of an educational institution and had reasonable assurance he would be employed as a crossing guard in the following school year.

“Reasonable assurance” is defined by the reemployment assistance law as “a written or verbal agreement, an agreement between an employer and a worker understood through tradition within the trade or occupation, or an agreement defined in an employer’s policy.” *See* §443.036(36), Fla. Stat. “Reasonable assurance” does not mean a guarantee of future work, and it does not require a contract between the parties. *See Vidal v. Reemployment Assistance Appeals Commission*, 96 So. 3d 436 (Fla. 3d DCA 2012); *Brown v. Unemployment Appeals*

Commission, 81 So. 3d 646 (Fla. 1st DCA 2012). *See also* R.A.A.C. Docket No. 19-01483 (December 30, 2019) (holding bus driver employed by an educational institution was ineligible for benefits between terms as he had a reasonable assurance of returning to work after the school break where he acknowledged he was told to report back for recertification and to pick up routes for the next school year).

The claimant argues he did not have a reasonable assurance to return to work because his work as a crossing guard was dependent upon annually taking three hours of training, passing a written test administered by the police department with a score of 85% or above, and passing a practical exam. However, the claimant testified that each year the police department invites him to return as a crossing guard for the following school year and that he has worked as a school crossing guard for each of the successive school years from 2017/2018 through 2020/2021 and currently works as a crossing guard for the 2021/2022 school year. Many school employees work in positions that require certifications of some type. An interpretation of reasonable assurance that excluded employees who must certify or recertify would largely erase this provision from the statute. The U.S. Department of Labor has provided guidance on the federal law on which this provision is based. On the matter of contingencies, the guidance provides that reasonable assurance is defeated only where the contingencies are within the employer's control, i.e., "where the employer has the ability to satisfy the contingency." *Emp. & Train. Admin.*, U.S. Dep't of Labor, Unemp. Ins. Program Letter 5-17 (Dec. 22, 2016) (providing examples).

Based on his history, the claimant had a reasonable assurance of returning and did in fact return to work as a crossing guard for the 2021/2022 school year. He, therefore, was ineligible for regular state employment assistance benefits from the end of the 2020/2021 school term to the beginning of the 2021/2022 school term.

Because the claimant was disqualified from the receipt of benefits between terms and was paid a weekly benefit amount of \$108 for the weeks ending July 10 through August 14, 2021, he was overpaid for those weeks, for a total overpayment of \$648. Department records reflect the employer timely responded to the Notice of Claim; consequently, the overpayment defense set forth in Section 443.151(6)(c), Florida Statutes, is not available in this case.¹ We note, however, that Department

¹ We admit the monetary determinations, the employer's response, and the CONNECT screenshot showing the response was timely and direct the Commission Clerk to mark them into evidence as R.A.A.C. Composite Exhibit No. 1.

records reflect that the overpayments of regular state reemployment assistance for the weeks ending July 10 through August 14, 2021, are listed in CONNECT as “Uncollectible-PAN,” which means the state will not currently refer it to a collection agency or pursue enforcement actions regarding non-fraud state reemployment assistance overpayments.²

The referee's decision is affirmed.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Joseph D. Finnegan, Member

This is to certify that on

5/6/2022

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

² On October 15, 2021, and as directed by Governor Ron DeSantis, the Department submitted a request to Florida’s Chief Financial Officer to indefinitely defer all referrals to collection agencies for all non-fraudulent debts owed by claimants for state reemployment assistance benefits owed for weeks beginning March 1, 2020, through September 4, 2021. The claimant’s overpayment of regular state reemployment assistance benefits falls within the above dates. Consequently, referral to collections for that portion of the overpayment has been indefinitely deferred and *no repayment is being requested at this time.*



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



*264016192 *

Docket No.0089 3543 82-04

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES:

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:

SCHOOL: Whether benefits claimed are based on services to, for, or on behalf of an educational institution for any week commencing during a period between successive academic years or terms, if such services were performed in the first year or term and there is a contract or reasonable assurance that the claimant will perform services in any such capacity for any educational institution in the second academic year or term, pursuant to Sections 443.036(17), (37), and 443.091(3), Florida Statutes.

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

Findings of Fact: The claimant began work as a school crossing guard in August 2017; he worked for the school for each of the successive school years from the 2017/2018 school year, through the 2020/2021. The claimant presently works as the school crossing guard for the 2021/2022 school year which ends in May 2022. The claimant received an annual invitation from a city Police Department to return for work as the school crossing guard for each new school calendar year. The claimant received annual training for the work from the police and he is required to pass an annual examination to be assigned to the work.

The claimant filed his employment assistance benefit application. The claimant's weekly benefit amount (WBA) was established. For the six (6) weeks from July 4, 2021, through the week ended August 14, 2021, the claimant received \$108 gross payable benefits weekly. The claimant received \$648 total benefits.

Conclusion of Law: The law provides that a claimant is ineligible for benefits based on services provided to, for, or on behalf of an educational institution or institution of higher education during periods between successive academic years or regular terms and during vacation or holiday recesses if the claimant performed services to, for, or on behalf of an educational institution or institution of higher education in the first of such years or terms or in the period immediately before the recess and there is a contract or reasonable assurance that the claimant will perform services in any such capacity in any educational institution or institution of higher education during the second year or term, or immediately following the vacation or recess.

The law provides that "reasonable assurance" means a written or verbal agreement or an agreement between an employer and a worker understood through tradition within the trade or occupation or defined in an employer's policy.

The record shows the claim is based on the period from June 6, 2021, through August 14, 2021, which was between the 2020/2021, and the 2021/2022 academic years for the services. The claimant's testimony shows he provided crossing guard services for the school during the 2020/2021, school year. The claimant contended he was eligible for the benefits because he was an employee of the police department and assignment to the school crossing guard work was dependent upon on a passing score to certain police department administered tests. In this case, the claimant's crossing guard work was on behalf of the educational institution. The testimony further shows the claimant had a reasonable assurance that he would perform the crossing guard services for the 2021/2022 school year.

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

The entry into evidence of a transaction history generated by a personal identification number establishing that a certification or claim for one or more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person or by direct deposit via electronic means, constitutes prima facie evidence that the person claimed and received reemployment assistance benefits from the state.

Since the claimant was not entitled to the benefits he received, he is overpaid the benefits her received.

Decision: The determination dated October 26, 2021. is AFFIRMED. The claimant is ineligible from June 6, 2021, through August 14, 2021. The claimant is overpaid.

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

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on March 14, 2022.

E. LOSCHI
Appeals Referee



By:

Kennedy Hall, 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 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-21.003(4), depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, 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 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 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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