

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 22-00946

vs.

Referee Decision No. 0098499480-02

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 holding the claimant not monetarily qualified for regular state reemployment assistance benefits during the benefit year beginning April 3, 2022, through April 2, 2023. 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.

On appeal to the Commission, evidence was submitted that was not previously presented to the referee. The parties were advised prior to the hearing that the hearing was their only opportunity to present all of their evidence in support of their case. Florida Administrative Code Rule 73B-21.011 provides that the Commission can consider newly discovered evidence only upon a showing that it is material to the outcome of the case *and* could not have been discovered prior to the hearing by an exercise of due diligence. The Commission reviewed, but ultimately did not admit, the additional evidence because it does not meet the requirements of the rule.

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 burden of establishing eligibility for benefits rests with the person claiming benefits. *Florida Industrial Commission v. Ciarlante*, 84 So. 2d 1 (Fla. 1955). That burden includes providing a sufficient evidentiary basis for assignment of wages to the particular calendar quarters in the base period. *See Martinez v. Reemployment Assistance Appeals Commission*, 118 So. 3d 878 (Fla. 3d DCA 2013). At the hearing, the claimant acknowledged receiving \$284.62 in wages in the third quarter of 2021 and \$12,670.20 in wages in the fourth quarter of 2021. To be eligible to receive regular state reemployment assistance benefits, the claimant must have a minimum of \$3,400 in wage credits from insured work over two or more quarters in the claimant's base period, and the total wage credits must be at least 1.5 times the credits in the claimant's high quarter, i.e., the quarter with the greatest amount of wages paid. *See* §443.091(1)(g), Fla. Stat.; §443.111(2), Fla. Stat.; §443.036(24), Fla. Stat. The "base period" for a claim is the first four of the last five completed calendar quarters immediately preceding the first day of the claimant's benefit year. §443.036(7), Fla. Stat. Under the facts present in this case, the referee correctly held the claimant not monetarily qualified for receipt of regular state reemployment assistance benefits.

On appeal to the Commission, the claimant proffered additional evidence showing that a portion of the income received in the fourth quarter of 2021 was earned during the third quarter. Had this evidence been provided for the hearing, the claimant would have been able to request that these earnings be recharacterized as third quarter earnings. *See* Fla. Admin. Code R. 73B-11.016 (1)(b); R.A.A.C. Order No. 16-00005 (March 28, 2016).¹ However, our rule does not permit a claimant to mix and match application of the rule. A claimant must treat all wages consistently. In this case, the claimant was credited with \$6,000 in wages for the third quarter that were paid during that quarter as back pay but which were not shown to be earned in that quarter. Without these wages being credited during the third quarter, the claimant could not have qualified monetarily either. Thus, even had we accepted the belated proffer of evidence, the claimant would not have been able to establish monetary qualification.

¹ Available at https://www.floridajobs.org/finalorders/raac_finalorders/16-00005.pdf.

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

8/30/2022

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: Veronica Jones
Deputy Clerk



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



*267311283 *

Docket No.0098 4994 80-02

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.

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.

Issues Involved:

TIMELINESS: Whether a request for rehearing was filed by a party entitled to notice of an adverse determination within fifteen days after mailing of the recommended order to the address of record or, in the absence of mailing, within fifteen days after delivery of the order, pursuant to Florida Administrative Code Rule 73B-10.035(18).

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.

FINDINGS OF FACT: The claimant filed an application for reemployment assistance benefits effective April 3, 2022. On April 6, 2022, the Department issued a monetary determination finding that the claimant was not monetarily eligible to receive benefits because the claimant's total wages was not 1.5 times his high quarter wages. The claimant had 20 days to request a reconsideration. The claimant chose to receive information by electronic means but does not recall receiving an email notification of the determination. The claimant received the determination by US mail approximately the end of April 2022, and the claimant filed a request for reconsideration. On May 23, 2022, the Department issued a determination finding that the claimant's request for reconsideration was untimely.

The Department's monetary determination established a base period of January 1, 2021, to December 31, 2021, and outlined the claimant's wages and employers during the base period. The claimant was not employed by one of the employers during this base period but received back pay from the employer during the base period. The claimant was employed by the second employer and does not dispute the wages as reported by the employer on the monetary determination. The claimant did not earn insured wages from any other employer during the base period.

CONCLUSIONS OF LAW: To qualify for Reemployment Assistance benefits, the claimant must have:
Base period wages for insured work in two or more calendar quarters of the base period; and
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, with a maximum of \$6,325.

The record reflects that the claimant became aware of the monetary determination after the 20 days to request reconsideration. Therefore, the claimant has established good cause for requesting the reconsideration after the 20 days, and the claimant's request is considered timely.

The record also reflects that the claimant does not dispute the monetary determination or provided any additional insured wages for the base period. Accordingly, it is held that the claimant has not established monetary eligibility for this claim.

DECISION: The non-monetary determination of the claim's adjudicator dated May 2, 2022, finding that the claimant's request for monetary reconsideration is untimely, is REVERSED. The claimant's request for monetary reconsideration is timely. The monetary determination dated April 6, 2022, finding that the claimant has not established monetary eligibility for this claim is AFFIRMED. The claimant has not established monetary eligibility for this claim.

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 June 1, 2022.

P. Robinson
Appeals Referee



By:

MONTY CROCKETT, Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.003(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 diskalfiye 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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