STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-05313

vs.

Referee Decision No. 13-17907U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

I.
Introduction

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

By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record. A decision of an appeals referee cannot be overturned by the Commission if the referee's material findings are supported by competent and substantial evidence and the decision comports with the legal standards established by the Florida Legislature. The Commission cannot reweigh the evidence or consider additional evidence that a party could have reasonably been expected to present to the referee during the hearing. Additionally, it is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. Absent extraordinary circumstances, the Commission cannot substitute its judgment and overturn a referee's conflict resolution.

The 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 to the referee. Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes that no legal basis exists to reopen or supplement the record by the acceptance of any additional evidence sent to the Commission or to remand the case for further proceedings.

II.
The Decision Below

The referee made detailed findings of fact based on the evidence offered at the hearing. The findings recount numerous instances during the claimant's employment in which either the claimant's supervisor or a co-worker made comments of a sexual nature to the claimant, or made sexually suggestive gestures. The referee found that in May 2012, the behavior escalated. The claimant's supervisor threw candy down the front of the claimant's shirt and said, "Score!", while the co-worker began sexually propositioning the claimant multiple times per week, which advances the claimant rejected. The referee further found as follows:

> On June 8, 2012, the claimant looked through the employee handbook and noticed that she could go to human resources with a sexual harassment complaint. The claimant reported to the human resources coordinator and explained that she had been harassed by a co-worker and her supervisor and that it had been going on for a long time. The claimant expressed that she did not report any previous incidents as she feared losing her job and retaliation from her co-workers. The human resources manager asked the claimant for a statement describing the incidents and [a] list of witnesses who were aware of the harassment. The claimant told the human resources manager that she was unsure of how she wanted to proceed and asked that the human resources manager say nothing at that time. The human resources manager and the claimant agreed that the claimant would think about her course of action and report to the human resources manager on Monday, June 11, 2012. On the morning of June 11, 2012, the claimant told the human resources manager that she did not wish to file a sexual harassment charge. Later that day, the claimant told the human resources manager that she was going to consult with a lawyer about her rights. The human resources manager informed the claimant that the president of the company would have to be informed of the situation. The claimant agreed and stated that she would return to work and mind her own business as long as there were no further instances of harassment or retaliation resultant from reporting the issue. The human resources manager told the president that allegations of harassment had been made by a female employee against the two male employees in question but did not mention the name of the claimant or that the harassment was sexual in nature. The president called the two employees into his office and told them that a complaint of

> harassment had been made and that any harassment must stop immediately and that any future harassment would result in termination of employment. On June 12, 2012, the claimant gave a letter of resignation to the human resources manager effective immediately. When the president was made aware of the details of the allegations, the two male employees in question were terminated.

On review of the record, the Commission concludes that the referee's findings of fact are supported by competent, substantial evidence and an appropriate credibility determination, and thus must be affirmed.

Based on these findings of fact, the referee made the following material conclusions:

> The claimant's unrebutted testimony established that her co-worker's actions were certainly unacceptable and created a hostile and uncomfortable work environment. And while the claimant may have feared retaliation or losing her job as result of reporting the conduct of her co-workers, by not doing so she did not provide the employer an opportunity to address and resolve her concerns. The human resource manager did not take immediate action in reporting the claimant's allegations at the request of the claimant. Additionally the claimant informed the human resource manager that she wished to attempt to continue work as long as no further instances occurred. At that point, the human resource manager made the president aware of the issue as much as she could without exposing the claimant's identity. The claimant did not provide the employer an opportunity to remedy her concerns in the attempt to preserve her employment. Therefore, it cannot be determined that the claimant left her employment with good cause attributable to the employing unit. Accordingly, the claimant is disqualified for the receipt of benefits.

III.
Issues on Appeal

On appeal to the Commission, the claimant makes three major arguments worthy of discussion. First, she contends that the referee applied an erroneous legal standard for good cause by concluding that the claimant failed to preserve her employment. Second, the claimant contends that under the facts of the case, the employer had adequate notice and opportunity to cure the harassment, but failed to do so. Third, the claimant contends that the referee erroneously handled certain evidentiary issues which prevented the claimant from introducing additional probative evidence. We address each of these issues in turn.

IV.
Analysis

The claimant's initial argument on appeal to the Commission is that the referee erred in concluding that she did not leave her employment with "good cause attributable to the employer" because he concluded that the claimant quit prior to allowing the employer an opportunity to remedy her concerns. Thus, the referee concluded the claimant failed to attempt to preserve her employment. The claimant contends that the referee erred in applying a requirement that the claimant attempt to resolve her concerns before resigning.

It is well-established that "whenever feasible, an individual is expected to expend reasonable efforts to preserve his employment." *Glenn v. Unemployment Appeals Commission*, 516 So. 2d 88, 89 (Fla. 3d DCA 1987). The standard has been applied in numerous cases where an employee failed to utilize an internal grievance or other procedure to resolve the issues affecting his or her employment, or to attempt to resolve workplace concerns by further discussion with his employer. *Morales v. Unemployment Appeals Commission*, 43 So. 3d 157, 158 (Fla. 3d DCA 2010); *Lawnco Servs., Inc. v. Unemployment Appeals Commission*, 946 So. 2d 586 (Fla. 4th DCA 2006); *Klesh v. Unemployment Appeals Commission*, 441 So. 2d 1126 (Fla. 1st DCA 1983). However, a claimant is not required to exhaust a procedure in circumstances where it would be futile to do so. *Schenk v. Unemployment Appeals Commission*, 868 So. 2d 1239, 1241 (Fla. 4th DCA 2004); *Grossman v. Jewish Community Center*, 704 So. 2d 714, 717 (Fla. 4th DCA 1998).

This doctrine has been applied to hostile environment cases, including those involving sexual harassment, by both the courts and the Commission. In *Rivera v. Unemployment Appeals Commission*, 99 So. 3d 505 (Fla. 3d DCA 2011), the court's analysis included the issue of preservation of employment. The Court concluded

that, when the employer advised her that it was not taking any further action on her harassment complaint because it could not corroborate her assertions, the claimant had appropriately attempted to preserve her employment before quitting. Likewise, the Commission has applied this test in cases. *See* R.A.A.C. Order No. 13-06892 (December 3, 2013); U.A.C. Order No. 12-01947 (March 23, 2012); U.A.C. No. 10-08280 (September 3, 2010).

In other cases, the court or Commission has considered the issues of whether the claimant brought the allegations of harassment to the employer's attention, and gave the employer an adequate opportunity to address them, to be part of the initial showing of good cause. For example, in *Craven v. Unemployment Appeals Commission*, 55 So. 3d 650, 653 (Fla. 1st DCA 2011), the court accepted the principle that a claimant's failure to provide sufficient opportunity for the employer to address harassment could be grounds for disqualification, while remanding the case for additional fact-finding as to that issue. In *Brown v. Unemployment Appeals Commission*, 633 So. 2d 36 (Fla. 5th DCA 1994) (en banc), the claimant's refusal to cooperate in an investigation of her complaints, along with her refusal to return to work after the employer had arranged a transfer away from the alleged harasser, meant she had not established good cause attributable to the employer. In *Yaeger v. Unemployment Appeals Commission*, 786 So. 2d 48 (Fla. 3d DCA 2001), the court held that the claimant had established good cause when she had formally complained to the employer and it had finished its investigation without indicating it was taking any further action.

The requirement of attempting to address harassment with the employer is also consistent with Title VII and Florida Civil Rights Act analysis. Under those laws, in cases where the harassment is conducted by a co-worker or other non-supervisory individual, the employee must prove negligence on the part of the employer. *Vance v. Ball State University*, 133 S.Ct. 2434 (2013). In other words, the employer is liable for permitting a hostile environment if "the employer knew or should have known of the offensive conduct, but failed to take prompt remedial action." *Henson v. City of Dundee*, 682 F.2d 897, 905 (11th Cir. 1982). In cases involving environmental harassment by supervisors that does not result in a tangible employment action, an employer may avoid liability if it has adopted a properly communicated policy prohibiting sexual harassment and a procedure for reporting such conduct, and an employee fails to take advantage of the opportunity to report harassing behavior by a supervisor. *See generally Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

Regardless of which analysis is used, Florida courts have uniformly held that the issue of whether a claimant brought the harassment to the attention of the employer and gave the employer a reasonable opportunity to engage in remedial action must be considered in determining whether a claimant who resigned from employment is qualified for benefits. Thus, the referee correctly applied Florida law on this issue.

The claimant's second argument that we address is whether the referee erred in concluding the claimant did not give the employer an adequate opportunity to correct the harassment. The claimant appears to be making two alternative points. First, she appears to contend that the employer had notice of the harassment many months before she actually went to the human resources manager because her supervisor, who was one of the individuals who harassed her, was also a designated individual to whom she could report harassment. Second, she contends that the employer had adequate time after she complained to the human resources manager, but failed to take appropriate steps in compliance with its policy.

As to the first contention regarding notice, the claimant appears to rely on the complaint procedure outlined in the employer's sexual harassment policy. [Ex. E, p. 3]. The relevant portion of the policy states:

> All employees are urged to report any behavior in the workplace that they feel constitutes harassment. If you feel this situation exists currently or has existed in the past, please contact your supervisor. You may also contact J. P., President, or the HR Administrator [address and phone omitted].[1]

The claimant contends that, because her supervisor was one of the harassers, and was present on occasions when her co-worker harassed her, "no reporting by [the claimant] should have even been necessary, as [her] superior was already well-aware of the harassment." [Appellant's Request for Review ("RFR") at p. 3]. The Commission is aware of no court which has held that the mere fact that *one* of the multiple individuals to whom an employee may direct a claim of harassment is, himself, an alleged harasser, constitutes notice under a sexual harassment policy. The claimant cites no case support for this proposition.

[1] We note that the reporting structure in the employer's policy is a fairly common design.

In its guidance[2] issued after the *Faragher* and *Ellerth* decisions, the EEOC addressed the importance of an employer providing *multiple* potential avenues of reporting alleged harassment precisely because an employee's direct supervisor might be the harasser. *See* Guidance at §V.1.C. "Effective Complaint Process." As the EEOC logically noted, if an employer's policy requires an individual to report to her direct supervisor without any alternative reporting options, the policy will not provide an effective remedy in cases where the supervisor is the harasser. Since *Faragher* and *Ellerth* were cases *involving* harassment by supervisors, it strains logic to suggest that an employer has notice of supervisory harassment merely because the supervisor is one of the individuals to whom an employee may report. If this were the law, surely the Supreme Court and the EEOC would have so stated, particularly in *Faragher* when the Supreme Court discussed the insufficiency of the city's policy because it did not advise the plaintiff that she could bypass her supervisor in the complaint process. 524 U.S. at 808.

In *Madray v. Publix Supermarkets, Inc.*, 208 F.3d 1290 (11th Cir. 2001), the claimant was harassed by her store manager. The employer's harassment policy advised employees to report incidents of harassment to the store manager, the district manager (the store manager's supervisor) or the human resources office. In that case, the plaintiff did not contend that the mere fact that her store manager was a harasser automatically gave notice to the company, but the Commission has little doubt that, if this were the law, the Eleventh Circuit would have addressed it. Indeed, based on *Madray*, Judge Zloch of the Southern District rejected the same argument that the claimant here makes. *Scott v. Publix Supermarkets, Inc.*, 2008 U.S. Dist. LEXIS 57799 (S.D. Fla. July 28, 2008). The facts found by the referee in this case demonstrate that the claimant had no difficulty in determining, after she reviewed the policy, to whom she should report the harassment. Thus, we reject the claimant's contention that the employer should be charged with notice before the claimant went to human resources.

The claimant's alternative argument fails because it relies on a view of the facts contrary to those found by the referee or to those testified to by the employer's witnesses, who were deemed more credible by the referee. For example, while the claimant testified that she did not ask the human resources manager on Friday, June 8, not to discuss her complaint with anyone for the time being, the manager testified that she did. This is just one of several material facts on which the witnesses disagreed.

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[2] *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*, No. 915.002 (June 18, 1999) (hereinafter "Guidance"), available at http://www.eeoc.gov/policy/docs/harassment.html.

The closest case to the argument the claimant makes herein is *Yaeger*, *supra*, in which the court held that the claimant had given the employer a reasonable opportunity to address her complaints when she stopped working only three days after filing a formal complaint with the employer, and resigned a week after filing the complaint. *Yaeger*, however is materially distinguishable from the facts of this case. In *Yaeger*, the claimant had informally brought the issue to the attention of the boss' son-in-law, who was in charge of the location in the boss' absence, several months before her formal complaint. Further, the employer had already completed its investigation by the time of the claimant's resignation without any indication that it had taken, or would take, any further preventative action. Indeed, despite the fact that Yaeger had filed a formal complaint, *the employer had not even confirmed to the claimant that it was undertaking an investigation*. Most significantly, Yaeger did not request the employer to wait while she considered whether she would proceed, did not subsequently advise the employer that she did *not* want to file a complaint, and/or give only limited permission for the human resources manager to report the concerns confidentiality.

The facts of this case demonstrate that the human resources manager attempted to advise the claimant and comply with her wishes to the extent practical. While it is true that an employer may be required to investigate serious allegations of harassment even if an employee does not wish to pursue a complaint, it is also true that an employer should give consideration to an employee's wishes as to how to proceed to the extent feasible. *See* Guidance at §V.1.C. "Confidentiality"; *See also Torres v. Pisano***,** 116 F.3d 625, 638-39 (2d Cir. 1997). Contrary to the claimant's assertions that the employer was required under its policy to "launch an immediate investigation" (RFR at 3), the employer's policy stated that it would take "appropriate action immediately." The referee's findings reflect that the human resources manager handled the complaint appropriately and reasonably under recognized best practices, which include taking into account a complaining employee's wishes, and there was nothing unreasonable about asking the claimant (who was upset at the time of the initial interview) to take the weekend to think about how she wanted to proceed and to provide a description of the events and to identify witnesses, which would facilitate an investigation. When the human resources manager concluded that some report needed to be made to the president, she took practical steps to protect the identity of the claimant, as the claimant requested. Ironically, when the claimant resigned and the human resources manager was free to report the specifics of the allegation to the president, the individuals involved were immediately fired. The referee's findings make it

abundantly clear that the delay in addressing the harassment was due to the claimant's own choices in how to proceed, and while these initial choices were understandable, her abrupt decision to resign after talking to a lawyer without giving the employer a full opportunity to address the work environment was unreasonable.[3]

Finally, the claimant makes a series of arguments regarding the referee's handling of evidence. She contends that the referee erred in admitting the first two pages of the employer's sexual harassment policy; in admitting the employer's proffered sworn statements; and in "improperly rephrase[ing] questions by the claimant's counsel of his own initiative, without witnesses voicing confusion over objection, resulting in material evidence being unjustly excluded." [RFR at 5].

The Commission finds no merit in the first assertion. The employer's sexual harassment policy was clearly relevant in this case and it was not necessary for the employer to raise specific issues as to each of the various provisions for the document to be admitted into evidence in its entirety. However, by the time the entire exhibit was offered, the claimant's lawyer had already opened the door by inquiring of the claimant about issues such as monitoring and training, which were contained on one of the contested pages. Furthermore, the claimant had been asked whether she reviewed the policy in cross-examination by the employer and admitted that she had an opportunity to review the document at hiring. Accordingly, the objection was without merit.

[3] The claimant makes other contentions on appeal regarding the employer's alleged failure to follow its own policy, including its alleged failure to monitor, and provide training. These arguments fail to take into account the testimony of the employer's witnesses regarding these issues. Both the human resources manager and the president testified that the office was laid out in an open environment with managers walking through daily. Further, although the human resources manager acknowledged that no general training had been provided during the claimant's employment, she provided unrebutted testimony that the policy was discussed with employees during orientation. The claimant's arguments on these and other issues with respect to the policy overstate the actual language of the policy. We note, however, that the controlling factor is not whether the employer strictly complied with the specific language of the policy, but whether the employer exercised reasonable care in "correcting promptly any sexually harassing behavior." *Faragher*, 524 U.S. at 807. Indeed, the *Faragher* defense does not always require an employer to even have such a policy. *Id.*

As to the second assertion, the evidentiary standard of the reemployment assistance law after the 2011 amendments permits a party to introduce unsworn witness statements under the "residual" hearsay exception.[4] However, the Commission has held that, where the identity of the author of the statements is redacted, the statements may not be relied upon for a material finding of fact unless it is established that the other party was aware of the identity of the declarant(s) prior to the hearing. R.A.A.C. Order No. 13-05485 (October 7, 2013). Additionally, the introduction of an excerpt of a statement is generally not warranted unless the opposing party has had an opportunity to review the statement in its entirety. To the extent the receipt of the documents into evidence was in error, however, it was harmless. It appears the primary purpose of the introduction of the sworn statements was to contend that the claimant was a willing participant in the sexually-charged conversation in the office and the referee made no such findings. To the contrary, the referee concluded that the claimant's testimony that she did not welcome this behavior was "un-rebutted," which would not have been the case had the referee accepted the documents as probative.

We also find no error in the referee's conduct of the examination. Reemployment assistance appeals hearings do not rigidly follow the traditional adversarial model of litigation utilized in courts and other administrative proceedings. Under federal and state law, the referee is charged with the responsibility of developing the record, which includes the primary responsibility for adducing the relevant testimony. While our review on appeal is hampered by the failure of the claimant to identify specific questions rather than a general time citation to CDs she received (which are not the method of storage in the Department's records), we find no instances where the claimant was materially deprived of the opportunity to present relevant evidence. To the extent the claimant is referring to the instances where the referee rephrased the claimant's counsel's questions to J. P., we conclude the referee acted within his discretion to develop the record and control the proceedings.

In summary, our review reflects that the referee's findings were supported by competent, substantial evidence and his conclusions were in accordance with the law. Accordingly, we affirm the referee's decision.

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[4] Chapter 2011-235, Laws of Florida, amended Section 443.151(4)(b)5.c., Florida Statutes, by adding subparts (I)-(II). This provision now states that "[n]otwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if: (I) The party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing; and (II) The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence."

The Commission notes that 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 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.

The referee's decision is affirmed.

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

2/18/2014 ,

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: Kady Thomas
Deputy Clerk

DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
MSC 344 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

IMPORTANT:	For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
IMPORTANTE:	Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
ENPÒTAN:	Pou yon intèpret asisté ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tàn, paské tàn limité pou ou ranpli apèl la.

Docket No. **2013-17907U** Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellee **EMPLOYER/Appellant**

APPEARANCES: CLAIMANT & EMPLOYER LOCAL OFFICE #: 3667-0

DECISION OF APPEALS REFEREE

Important appeal rights are explained at the end of this decision.
Derechos de apelación importantes son explicados al final de esta decisión.
Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved:
SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(30), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

Findings of Facts: The claimant worked in sales for a aerospace procurement company from December 26, 2011, through June 12, 2012. The claimant received an employee handbook at the time of hire. In March 2012, the claimant's co-worker asked the claimant for her cellular phone and said, "you should have naked pictures in here. I bet you do." In March 2012, the claimant's supervisor, a team supervisor, referred to the claimant as "smash" and "smashley" and made masturbating motions while speaking to and looking at the claimant. In April 2012, a co-worker asked the claimant to show her legs and stated, "Nice dress, why don't you

show me what's under it," and gestured a motion of pulling the dress up her legs. In a separate incident in April 2012, the team supervisor came out of his office holding his crotch area, looked at the claimant and stated, "What are you looking at?" A female co-worker told the claimant that she had a similar experience with a male co-worker and that after she reported it to the team supervisor it was made into a joke among the men in the office. In April 2012, while outside in the smoking area, the wind blew the claimant's dress against her body and the team supervisor stated, "I can see you butt crack," and a co-worker motioned to take a picture of the claimant's butt. In May 2012, the claimant's co-worker gave the claimant a note which stated, "I used to be a massage therapist. Come to my house for a naked massage." The claimant told the co-worker that these type of notes were unacceptable and offensive. In May 2012, the team supervisor threw candy down the front of the claimant's shirt, laughed and stated, "Score!" The claimant stated, "I can't believe you just did that." Near the end of May 2012, the claimant's co-worker asked the claimant to have sex with him approximately two times per week. The claimant refused and told the co-worker to stop asking her this question. On June 8, 2012, the claimant looked through the employee handbook and noticed that she could go to human resources with a sexual harassment complaint. The claimant reported to the human resources coordinator and explained that she had been harassed by a co-worker and her supervisor and that it had been going on for a long time. The claimant expressed that she did not report any previous incidents as she feared losing her job and retaliation from her co-workers. The human resources manager asked the claimant for a statement describing the incidents and list of witnesses who were aware of the harassment. The claimant told the human resources manager that she was unsure of how she wanted to proceed and asked that the human resources manager say nothing at that time. The human resources manager and the claimant agreed that the claimant would think about her course of action and report to the human resources manager on Monday, June 11, 2012. On the morning of June 11, 2012, the claimant told the human resources manager that she did not wish to file a sexual harassment

charge. Later that day, the claimant told the human resources manager that she was going to consult a lawyer about her rights. The human resources manager informed the claimant that the president of the company would have to be informed of the situation. The claimant agreed and stated that she would return to work and mind her own business as long as there were no further instances of harassment or retaliation resultant from reporting the issue. The human resources manager told the president that allegations of harassment had been made by a female employee against the two male employees in question but did not mention the name of the claimant or that the harassment was sexual in nature. The president called the two employees into his office and told them that a complaint of harassment had been made and that any harassment must stop immediately and that any future harassment would result in termination of employment. On June 12, 2012, the claimant gave a letter of resignation to the human resources manager effective immediately. When the president was made aware of the details of the allegations, the two male employees in question were terminated.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that temporarily terminated the claimant's work within the previous 6 calendar months, or to relocate due to a military-connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification.

The record reflects that the claimant quit. The burden of proof is on the claimant who voluntarily quit work to show by a preponderance of the evidence that quitting was with good cause. Uniweld Products, Inc., v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973).

The claimant's un-rebutted testimony established that her co-workers' actions were certainly unacceptable and created a hostile and uncomfortable work environment. And while the claimant may have feared retaliation or losing her job as a result of reporting the conduct of her co-workers, by not doing so she did not provide the employer an opportunity to address and resolve her concerns. The human resource manager did not take immediate action in reporting the claimant's allegations at the request of the claimant. Additionally, the claimant informed the human resource manager that she wished to attempt to continue work as long as no further instances occurred. At that point, the human resource manager made the president aware of the issue as much as she could without exposing the claimant's identity. The claimant did not provide the employer an opportunity to remedy her concerns in the attempt to preserve her employment. Therefore, it cannot be determined that the claimant left her employment with good cause attributable to the employing unit. Accordingly, the claimant is disqualified for the receipt of benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The Reemployment Assistance Appeals Commission set forth factors to be considered in resolving credibility questions. These include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the employer to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

Decision: The determination dated February 15, 2013, is REVERSED. The claimant is disqualified for the receipt of benefits from June 10, 2012, and until she earns $1,819.

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 mailed to the last known address of each interested party on May 29, 2013.

MATTHEW YAGER
Appeals Referee

By: Robyn L Deak
ROBYN L. DEAK, 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 mailing date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.004, filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Department and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown below 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 https://iap.floridajobs.org/ or by writing to the address at the top of this decision. The date the confirmation number is generated will be the filing date of a request for reopening on the Appeals Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); **https://raaciap.floridajobs.org/.** If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la fecha marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.004, el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante rembolsar esos beneficios. La cantidad específica de cualquier sobrepago [*pago excesivo de beneficios*] será calculada por la Agencia y

establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden. Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en https://iap.floridajobs.org/ o escribiendo a la dirección en la parte superior de esta decisión. La fecha en que se genera el número de confirmación será la fecha de registro de una solicitud de reapertura realizada en el Sitio Web de la Oficina de Apelaciones.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Desempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); **https://raaciap.floridajobs.org/.** Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [*docket number*] y el número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

ENPÒTAN – DWA DAPÈL: Desizyon sa a ap definitif sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20^{yèm} jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.004, depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, https://iap.floridajobs.org/ oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat yo pwodui nimewo konfimasyon an se va dat yo prezante demann nan pou reouvri kòz la sou Sitwèb Apèl la.

Yon pati ki te asiste seyans la epi ki pat satisfè desizyon yo te pran an gen dwa mande yon revizyon nan men Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); **https://raaciap.floridajobs.org/.** Si ou voye l pa lapòs, dat ki sou tenb la ap dat ou depoze apèl la. Si ou depoze apèl la sou yon sitwèb, ou fakse li, bay li men nan lamen, oswa voye li pa yon sèvis mesajri ki pa Sèvis Lapòs Lèzetazini (*United States Postal Service*), oswa voye li pa Entènèt, dat ki sou resi a se va dat depo a. Pou evite reta, mete nimewo rejis la (*docket number*) avèk nimewo sekirite sosyal moun k ap fè demann lan. Yon pati k ap mande revizyon dwe presize nenpòt ki alegasyon erè nan kad desizyon abit la, epi bay baz reyèl oubyen legal pou apiye alegasyon sa yo. Yo p ap pran an konsiderasyon alegasyon erè ki pa byen presize nan demann pou revizyon an.