STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 13-07472

vs.

Referee Decision No. 13-63218U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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.

Upon appeal of an examiner's determination, a referee schedules a hearing. Parties are advised prior to the hearing that the hearing is their only opportunity to present all of their evidence in support of their case. The appeals referee has responsibility to develop the hearing record, weigh the evidence, resolve conflicts in the evidence, and render a decision supported by competent and substantial evidence. Section 443.151(4)(b)5., Florida Statutes, provides that any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding Section 120.57(1)(c), Florida Statutes, hearsay evidence may support a finding of fact if the party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing and 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.

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.

Our review of the referee's findings of fact shows that they were supported by competent, substantial evidence. This case thus turns on the applicability here of *Doig v. Unemployment Appeals Commission*, 862 So. 2d 76, 79 (Fla. 1st DCA 2003) and *Seneca v. Florida Unemployment Appeals Commission*, 39 So. 3d 385, 388 (Fla. 1st DCA 2010), in which the First District Court of Appeal determined that the disqualification provision in Section 443.101(1)(a), Florida Statutes, does not apply in cases where the claimant was "never completely unemployed." In *Doig*, the claimant quit a part-time job to accept another part-time position that offered better pay and benefits. The claimant in that case immediately began working for the other employer with no gaps in his employment. The Commission disqualified the claimant, as his quitting the first employer was not "attributable to [that] employer." *Id*. at 76. Nonetheless, the court reversed the Commission, because the reemployment assistance statute did not "specifically" address the situation of a claimant leaving one job for another. *Id*. at 77. Subsequently, in *Seneca*, the court held its rationale in *Doig* was applicable where the claimant voluntarily quit his part-time job to accept full-time employment and there were no gaps in his employment.

In this case, the claimant voluntarily quit full-time employment with the appellant employer after accepting a full-time position with another employer. On appeal to the Commission, the employer makes two main arguments. First, the employer asserts that this case is distinguishable from the fact pattern(s) in *Doig* and *Seneca*. Second, the employer argues that the reasoning in *Doig* and *Seneca* should not be applicable to this case.

The employer is correct that neither *Doig* nor *Seneca* involve a case where an employee left one full-time position for another. We note, however, that the employer erroneously contends that in *Doig* the claimant left a part-time position for a full-time position. To the contrary, the fact pattern in *Doig* showed that the

claimant "left one part-time job (with Sears) for another (with Home Depot)." 862 So. 2d at 77. The *Doig* court does cite a prior decision in *Stewart v. Dollar Tree*, 635 So. 2d 73 (Fla. 1st DCA 1994), where a claimant left one part-time job to take another part-time job which could have eventually led to full-time employment. However, the decision in *Doig* did not indicate that it was predicated on the possibility that the job with Home Depot might become full-time. Instead, the court concluded that the claimant "merely left one part-time job for another and was never completely unemployed." 862 So. 2d at 79. In *Seneca*, the First District also relied on the "never completely unemployed" rationale:

> Here, Appellant, like the claimant in *Doig*, merely left his part-time position for another job and was never completely unemployed. 862 So. 2d at 79 (claimant left his part-time position for another part-time position). There were no gaps in Appellant's employment because he left his part-time position on November 30, 2008, for a full-time position that commenced on December 1, 2008. Because Appellant left his part-time job for a full-time job, rather than leaving the part-time position and becoming completely unemployed, the disqualification provision in section 443.101(1)(a) does not apply to this case. *See Doig*, 862 So.2d at 79 (holding that this statute did not apply; concluding that the claimant was incorrectly disqualified from benefits).

39 So. 3d at 388.

Given the court's rationale in *Doig* and *Seneca*, the fact that the claimant here left one full-time position for another full-time position, while a factual distinction, is not a material one. Given the "never completely unemployed" language, the Commission has held previously in several cases that the *Doig*/*Seneca* rationale applies in cases where an employee leaves one full-time position immediately for another. R.A.A.C. Order No. 13-01072 (March 14, 2013); R.A.A.C. Order No. 12-13824 (March 1, 2013); R.A.A.C. Order No. 12-12115 (December 13, 2012). Previously, the First District Court of Appeal had applied the doctrine to a full-time to full-time case, albeit after a concession of error. See *Wible v. Unemployment Appeals Commission*, 40 So. 3d 926, 927 (Fla. 1st DCA 2010).

The employer's argument that the logic of cases such as *Stewart* should not apply to a case such as the one at bar, and its argument regarding the statutory exemption in Section 443.101(1)a.1. (not disqualifying an employee who leaves temporary work to return to prior employment), does have some merit, and, were the Commission writing on a blank slate, would likely be persuasive. The *Doig*/*Seneca* doctrine, however, is an entirely case-made one, and while it has only inferential support in the statutory language, is binding on the Commission nonetheless. In accordance with the rulings in *Doig* and *Seneca*, the Commission is compelled to conclude that the disqualification provision in Section 443.101(1)(a), Florida Statutes, does not apply to this case.

We note that no district court of appeal outside the First District has yet applied this doctrine. Other district courts have held that employees who left one job for another were disqualified when they were separated from the second job. *Ryals v. Unemployment Appeals Commission*, 722 So. 2d 845, 846 (Fla. 2d DCA 1999); *Mills v. Florida Department of Labor and Employment Security*, 398 So. 2d 500 (Fla. 3d DCA 1981). However, these cases do not specify whether or not there was a gap in employment, which is crucial to the *Doig*/*Seneca* analysis. Because the Commission is bound by the First District's decisions in the absence of conflicting precedent, we conclude the referee correctly applied the law.

The Commission understands the significance of the application of the *Doig*/*Seneca* doctrine to this particular employer. The large majority of employers, as contributing employers, may be relieved of charges to their employment records when a claimant voluntarily quits without good cause attributable to the employer, as are the circumstances in this case. *See* §443.131(3)(a)1., Fla. Stat. However, this employer, as a reimbursing employer, cannot be relieved of its obligations to reimburse the Unemployment Compensation Trust Fund for benefits paid to the claimant even though the claimant's quitting work was not attributable to the employer. *See* §443.131(4), Fla. Stat.

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

12/30/2013 ,

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
Suite 240
215 Market Street
Jacksonville FL 32202-2850

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. **2013-63218U** Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellee **EMPLOYER/Appellant**

APPEARANCES: CLAIMANT & EMPLOYER LOCAL OFFICE #: 3652-0

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 Fact: The claimant was employed as a full-time scale house service specialist beginning on March 13, 2006. The claimant received a job offer to work as an architect for another employer. The job offer was for a full-time position. The claimant submitted a letter of resignation on April 8, 2013. The claimant last worked on April 19, 2013. The claimant quit the job April 19, 2013, to accept employment with another employer. The claimant began working for the new employer full-time on April 22, 2013.

Conclusions of Law: The unemployment compensation law provides that a claimant who has voluntarily left work without good cause or has been

discharged by the employing unit for misconduct connected with the work shall be disqualified from receiving benefits.

The record and evidence in this case show that the claimant became separated from this employer to continue employment with another employer. The record shows that the claimant maintained his full-time employment after separating from this full-time employer.

In Seneca v. Florida Unemployment Appeals Commission, 39 So. 3d 385 (Fla. 1st DCA 2010), the court held its rationale in Doig was applicable where the claimant voluntarily quit his part-time job to accept full-time employment and there were no gaps in his employment. The court noted that, like the claimant in Doig, the claimant in Seneca merely left his part-time position for another job and was never completely unemployed. The court therefore, held the claimant was not disqualified under Section 443.101 (1) (a). In this case as in Seneca, the claimant separated from his full-time employer while still maintaining full-time employment. The record shows there were no gaps in the claimant's employment therefore, the claimant is not disqualified from the receipt of benefits.

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

Decision: The determination dated June 24, 2013, is AFFIRMED.

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 August 7, 2013.

NATHALIE HARRIS
Appeals Referee

By: C E DeMoranville
C. E. DE MORANVILLE, 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.