

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 13-07829

vs.

Referee Decision No. 13-67292U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the employer's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision which held the claimant not ineligible for receipt of benefits.

Pursuant to the appeal filed in this case, the Reemployment Assistance Appeals Commission has conducted a complete review of the evidentiary hearing record and decision of the appeals referee. *See* §443.151(4)(c), Fla. Stat. By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record.

The issue before the Commission is whether the claimant is an educational employee 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.

The referee's findings of fact state as follows:

The claimant was employed as a [substitute teacher, substitute paraprofessional, substitute school café, and] substitute dining room [aide] for the school board. The claimant was employed on an [on-call, as-needed] basis for the school term from July 1, 2012, through June 5, 2013, earning wages at a rate of \$7.69 per hour. The claimant was not given assurance of being rehired for the next school term by the end of the school [term,] June 5, 2013.

Based on these findings, the referee held the claimant not ineligible for receipt of benefits. Upon review of the record and the arguments on appeal, the Commission concludes the record was not sufficiently developed; consequently, the case must be remanded.

The referee's conclusions of law state in pertinent part:

It was shown that the claimant was [not] given reasonable assurance of being rehired for the next school term. Consideration has been given to the [documentation, a substitute teacher acknowledgment dated August 1, 2007,] submitted by the employer. The claimant had a break in service from February of 2008 through March of 2012. [Therefore, no nexus] exists between this document and the 2012/2013 school term. It is concluded that the claimant is eligible to receive unemployment benefits.

Section 443.091(3), Florida Statutes, provides that a claimant is not eligible for benefits if he or she is an educational employee on vacation or holiday recess or is claiming benefits between two successive academic years or terms and "if the individual performs those services in the first of those academic years or terms *and* there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution or institution of higher education in the second of those academic years or terms" (emphasis added).

"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(37), Fla. Stat. Accordingly, receipt of a reasonable assurance letter, or other written notification, is not the only manner in which reasonable assurance can be established. Instead, the relevant inquiry is whether, based on past practice and the information provided to the claimant, she was given reasonable assurance that she would be offered substitute assignments during the 2013/2014 school year. The employer must either have a policy or uniform practice or take an action, such as issuing a new contract, letter, or other form of communication, to create a reasonable assurance. A uniform practice is a custom or routine that would reasonably lead the claimant to believe she would be called with assignments in the next school year. To be clear, "reasonable assurance" does not mean a guarantee of future work or a guaranteed number of assignments. Instead, it means a reasonable likelihood that, at some point in the next school year,

the employer will need a substitute to cover an absence and that the claimant will be offered an assignment. Since the employer will almost certainly have absences to cover during the school year, the crux of the issue is whether the claimant remained in the employer's pool of active substitutes eligible for assignments during the 2013/2014 school year.

The record in this case was not developed sufficiently concerning whether the employer has established a policy or uniform practice with regard to carrying-over substitutes from one academic year or term to the next academic year or term. The record was also not developed sufficiently regarding whether the claimant had experienced a prior summer break with the employer such that, based upon past practices, she knew or reasonably should have known that she would remain on the substitute list for the 2013/2014 school year. The record reflects the claimant may have worked for this employer during the terms immediately preceding and following the 2006 summer break. The record further reflects the claimant may have worked for this employer in April of 2012, in which case, she would have worked during the terms immediately preceding and following the 2012 summer break. On remand, the referee is directed to seek clarification regarding the school terms/years in which the claimant has worked for the employer. The referee is also directed to develop the record further regarding the type(s) of services the claimant performed for the employer during those school terms/years. In the event the claimant previously worked for the employer as a substitute during the school terms immediately preceding and following any summer break(s) prior to 2013, the referee is directed to develop the record regarding the method(s) by which the claimant was made aware that her services would continue, or would likely continue, to be used. The referee must then determine whether any policy, uniform or past practice, or action by the employer served to give the claimant a reasonable assurance that she would return to work during the 2013/2014 school year.

The Commission notes that, if it is determined on remand that the claimant had reasonable assurance of returning to work in the 2013/2014 school year and that she is, therefore, ineligible for benefits during the 2013 summer break, evidence must be adduced regarding the date the 2013/2014 school year began. The ineligibility period of a school employee "between terms" who has reasonable assurance of returning to work at the end of the break is not open-ended and indefinite; the period of ineligibility is limited to the duration of the school break. The record as currently developed, however, is silent regarding the date the 2013/2014 summer break ended. On remand, the record must be adequately

developed regarding that date, and the referee's decision must contain specific findings regarding the dates the claimant was "between terms." If it is determined on remand that the claimant is ineligible while between terms on summer break, the decision must specify the dates of the ineligibility period that are consistent with the dates of the employer's summer break.

In addition to the foregoing, the employer's witness, a technician for the substitute system seemed to refer to various records, which were not submitted for the hearing, in order to provide testimony regarding the claimant's employment. On remand, the referee is directed to develop the record further regarding how the technician became aware of the claimant's dates of employment and the circumstances surrounding the claimant's periods of employment. In the absence of such record development, the Commission is unable to determine whether the witness provided competent testimony with respect to those facts. If the parties provide conflicting competent evidence regarding material issues of fact during the supplemental hearing, the referee's decision must acknowledge the conflict and set forth the rationale by which that conflict is resolved. *See Fla. Admin. Code R. 73B-20.025(3)(d).*

Lastly, the record reflects that the employer presented an additional witness, an HR specialist, at the hearing. Although the referee briefly questioned the HR specialist and provided the claimant an opportunity to cross-examine her, the referee did not offer the employer's representative an opportunity to question the HR specialist. On remand, the referee is directed to ensure the parties are given proper opportunities to question all witnesses.

In order to address the issues raised above, the referee's decision is vacated and the case is remanded. On remand, the referee is directed to develop the record in greater detail and render a decision that contains accurate and specific findings of fact and a proper analysis of those facts along with an appropriate credibility determination made in accordance with Florida Administrative Code Rule 73B-20.025(3)(d). Any hearing convened subsequent to this order shall be deemed supplemental, and all evidence currently in the record shall remain in the record.

The decision of the appeals referee is vacated and the case is remanded for further proceedings.

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

11/20/2013 ,

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
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 asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limitè pou ou ranpli apèl la.

Docket No. 2013-67292U

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

CLAIMANT/Appellee

EMPLOYER/Appellant

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3628-0

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:

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

Findings of Fact: The claimant was employed as a substitute teacher/ substitute Para-professional/ substitute school café/ and substitute dining room aid for the school board. The claimant was employed on an on call as needed basis for the school term from July 1, 2012, through June 5, 2013, earning wages at a rate of \$7.69 per hour. The claimant was not given assurance of being rehired for the next school term by the end of the school term; June 5, 2013.

Conclusions 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.

It was shown that the claimant was not not given reasonable assurance of being rehired for the next school term. Consideration has been given to the documentation submitted by the employer; Substitute teacher Acknowledgement dated August 1, 2007. The claimant had a break in service from February of 2008 through March of 2012. Therefore there is no nexus which exists between this document and the 2012/2013 school term. It is concluded that the claimant is eligible to receive unemployment benefits.

Decision: The determination dated July 11, 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 20, 2013.

ABDULLAH
MUHAMMAD
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 definitiv 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 lamèn, 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.

Any questions related to benefits or claim certifications should be referred to the Claims Information Center at 1-800-204-2418. An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.
