

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-07886

vs.

Referee Decision No. 13-74046U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the claimant's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision wherein the claimant was held ineligible for 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 referee's findings of fact state as follows:

The claimant began working for the employer on August 16, 2010, as a teacher. The last day the claimant worked for the employer was June 30, 2013. *The employer informed the claimant on June 30, 2013, she would return to work for the next school year.* However, the claimant failed to renew her teaching certificate by June 30, 2013; the claimant's teaching certificate expired on June 30, 2013. The employer terminated the claimant on July 1, 2013 (emphasis added).

Based on these findings, the referee held the claimant ineligible for receipt of benefits for the weeks ending June 29, 2013, through August 31, 2013. Upon review of the record and the arguments on appeal, the Commission concludes the decision is unsupported by any record evidence and addresses the wrong issue; consequently, the case must be remanded for further proceedings after proper notice to the parties.

A review of the hearing record reveals both parties provided testimony that the claimant was discharged from her employment as a teacher on June 30, 2013, for failing to maintain a required teaching certificate. When questioned regarding whether the claimant had been provided reasonable assurance of returning to work after the summer break in the 2013/2014 school year, both parties testified the claimant was *not* given reasonable assurance of returning to work because her teaching certificate had expired effective June 30, 2013. The record reflects the claimant was given a June 30, 2013, deadline to obtain a valid teaching certificate for the upcoming school year and that, when she failed to do so, she was discharged effective June 30, the date her teaching certificate expired. Accordingly, the above underlined finding of fact that the employer notified the claimant on June 30 that she would return to work in the next school year is inconsistent with the evidence that the claimant was *discharged* on June 30, 2013, and, therefore, is rejected as being wholly unsupported by the record.

In light of the evidence that the claimant was discharged from employment at the end of the 2012/2013 school year, the relevant issue is not whether the claimant had a reasonable assurance of returning to work in the 2013/2014 school year but, instead, whether the claimant was discharged under disqualifying circumstances. Since the referee neglected to obtain a waiver from the parties to address the issue of the claimant's job separation once it became apparent that this case did not involve a school employee on summer break between terms, and failed to address the issue of whether the discharge occurred under disqualifying circumstances, the case must be remanded for further proceedings. After proper notice to the parties that *the issue to be decided is the claimant's separation from employment*, the referee must conduct an additional hearing to develop the record regarding the reason for the claimant's failure to maintain the required teaching certificate. The referee must then determine whether the claimant's failure to maintain the required teaching certificate operates to disqualify her from receipt of benefits under Section 443.101(1)(a) or (13), Florida Statutes.

On remand, the referee must first consider whether the claimant's failure to renew her teaching certificate constitutes disqualifying misconduct as defined by Section 443.036(30), Florida Statutes. In particular, the referee must develop the record regarding the claimant's efforts to renew her teaching certificate prior to its expiration on June 30, 2013, in order to determine whether she is culpable for the failure to renew. For example, if the claimant failed to register for required courses in sufficient time to complete the courses and pass any tests prior to the June 30, 2013, deadline, the claimant's culpability in failing to take the necessary steps to renew her certificate would constitute disqualifying misconduct under subparagraph (a) of Section 443.036(30), Florida Statutes. If, however, she completed the courses, prepared for any test(s), and took the test(s) multiple times but repeatedly failed,

her failure to maintain a teaching certificate would be attributable to inability not constituting misconduct under that subparagraph. *See Gulf County School Board v. Washington*, 567 So. 2d 420 (Fla. 1990) (holding a teacher who was unable to obtain the required teaching certificate after taking and failing the teaching exam four times was discharged for reasons other than misconduct because he was unable to obtain the certification due to his inability to pass the examination and not because of a refusal to adequately prepare for the examination). As currently developed, the record is silent regarding the claimant's efforts to renew her teaching certificate. The claimant's testimony reflects only that she was "not able to get the classes completed and reported by June 30." The claimant, however, was never questioned regarding her efforts to secure the required certification or why she was unable to complete the classes and pass any tests by the deadline. We note that in her closing statement, the employer's witness asserted that the claimant had three years to complete the required course work but failed to do so; therefore, it would also be appropriate to question the claimant regarding the timing of any efforts she made to renew her teaching certificate prior to its expiration.

In addition to a misconduct analysis, the referee must also consider whether the claimant's failure to renew her certificate disqualifies her from receipt of benefits pursuant to Section 443.101(13), Florida Statutes, which became effective May 17, 2013. *See* 2013 Fla. Laws ch. 39. Section 443.101(13), Florida Statutes, provides for disqualification if a claimant is discharged for failure without good cause to maintain a license, registration, or certification required by applicable law necessary for the employee to perform her or his assigned job duties. While disqualification for misconduct under Section 443.101(1)(a), Florida Statutes, requires evidence of the claimant's culpability for her failure to renew her teaching certificate, disqualification under subparagraph (13) does not require any such showing of culpability. Instead, subparagraph (13) is a strict liability provision imposing an open-ended disqualification period in much the same manner as certain eligibility issues. The claimant can only avoid disqualification under this provision if she establishes "good cause" for her failure to renew her teaching certificate. We note that under this provision, legislative or regulatory changes to the criteria for certification effectuated just prior to the June 30, 2013, deadline without sufficient time to comply would constitute good cause for failing to maintain the required certification. However, failing a test or not setting aside the funds necessary to register for and take required courses would not constitute good cause for failing to maintain a required certificate. The record, therefore, must be adequately developed on remand regarding the reason for the claimant's failure to renew her teaching certificate in order to determine whether she bore any culpability for the failure or whether she had good cause that excuses her failure. The Commission notes that a disqualification penalty imposed under this section would only last until such time as the claimant becomes reemployed.

In order to address the foregoing issues, the case is remanded for further proceedings after proper notice to the parties that the issue to be decided is the claimant's separation from employment. The referee must conduct an additional hearing to develop the record regarding the reason for the claimant's failure to maintain the required teaching certificate. The referee must then issue a decision containing an analysis of whether the claimant's failure to maintain a valid teaching certificate constitutes misconduct as defined by the statute and, therefore, operates to disqualify her from receipt of benefits under Section 443.101(1)(a), Florida Statutes. If the record on remand does not reflect the culpability necessary to support a finding of misconduct, the referee must then determine whether the claimant established good cause for her failure to renew her teaching certificate as required to avoid disqualification under Section 443.101(13), Florida Statutes.

The decision of the appeals referee is vacated and the case is remanded for further proceedings after proper notice to the parties of the issue to be decided.

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

2/6/2014,

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

Docket No. **2013-74046U**

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3621-0

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 began working for the employer on August 16, 2010, as a teacher. The last day the claimant worked for the employer was June 30, 2013. The employer informed the claimant on June 30, 2013, she would return to work for the next school year. However, the claimant failed to renew her teaching certificate by June 30, 2013; the claimant's teaching certificate expired on June 30, 2013. The employer terminated the claimant on July 1, 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.

The record reflects the employer gave the claimant reasonable assurance that she would return for the next school year. Therefore, it is concluded the claimant has properly been held ineligible for benefits.

The claimant contended she did not have reasonable assurance she would return for the next school year because the employer terminated her employment. However, the claimant could have returned for the next school year if she renewed her teaching certificate. The claimant had reasonable assurance, but failed to maintain her teaching certificate, which led to her termination. Therefore, the claimant's contention is respectfully rejected.

Decision: The determination dated August 9, 2013, holding the claimant ineligible is affirmed through the week ended August 31, 2013. The adjudicator shall determine future eligibility. The case is referred back to the adjudicator to make a determination on the issue of separation.

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 September 6, 2013.

D. JONES
Appeals Referee

By: 
K. M. MARTIN, 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^{yem} 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 laman, 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.
