STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-08008

vs.

Referee Decision No. 13-73699U

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 disqualified from receipt of benefits and the employer's account was noncharged.

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 worked full-time as a regional sales leader for an electronics repair company from May 1, 2011, until June 27, 2013. On June 17, 2013, the claimant and his supervisor had a disagreement. On June 26, 2013, the claimant informed his supervisor that he had 30 days to replace him. The claimant offered to train his replacement. The supervisor tried unsuccessfully to persuade the claimant to change his mind and stay with the company. On June 26, 2013, the supervisor learned that the claimant and a co-worker had filed for a limited liability company which offered the same services as the employer. The claimant's new company had an operational website "just like" the employer's [website]. The new company website contained contact information and had received 317 followers. On June 27, 2013, the supervisor discharged the claimant for operating a competing business while still employed for the employer.

Based on these findings, the referee held that the claimant voluntarily left work without good cause attributable to the employing unit, and is, therefore, disqualified from receipt of benefits as of July 21, 2013. The referee further held the claimant was discharged for misconduct prior to the effective date of his resignation and is, therefore, disqualified from receipt of benefits from June 23, 2013, through July 20, 2013. 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.

On appeal to the Commission, the claimant asserts he did not receive notice of the September 9, 2013 hearing for Appeals Referee Case No. 2013-73699U. A review of the record reflects five appeals referee cases were addressed during the September 9 hearing. The record further reflects that, although the claimant acknowledged he received "several" notices and had arranged for a witness to testify, he was not specifically asked whether he received the notice of hearing for Appeals Referee Case No. 2013-73699U. Further, his responses to the referee's inquiries regarding his receipt of documents do not conclusively refute his assertion on appeal to the Commission that he did not receive that notice. Accordingly, the Commission is unable to determine whether the claimant's right to due process of law was violated. Florida Administrative Code Rule 73B-20.015(3), states:

> (3) Waiver. If the appeals referee fails to provide notice in the manner set forth in this section, or if the notice provided is defective in any other way, and all improperly noticed parties nevertheless appear at the hearing, the referee shall inquire whether such parties are willing to waive their rights set forth in subsections (1) and (2). If the appeals referee obtains informed and intelligent consent from all parties who were not properly noticed, the referee may proceed with the hearing. If any party refuses to consent to waiver, the referee shall continue the hearing and provide proper notice of the rescheduled hearing to all parties.

In order to ensure the claimant is afforded an opportunity to exercise all of his rights in relation to the hearing process, this case is remanded.

In addition to the foregoing, the referee's conclusions of law state in pertinent part:

> The record reflects that the claimant was the moving party in the separation. Therefore, the claimant is considered to have voluntarily 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). It was shown that the claimant quit when [he] informed his supervisor that he had thirty days to replace him. The evidence indicates that the claimant's decision to quit was due to a personality conflict with his supervisor and because he wanted to establish his own company. A person who has voluntarily left work has the burden of establishing he or she left under circumstances that would cause the average, reasonable person to leave gainful employment. The average employee has, or should have, a modicum of tolerance and an ability to endure a certain level of friction between the supervisor and the employee. *Uniweld Products, Inc*., *supra*. While the claimant may have had compelling reasons for quitting, it has not been shown that the decision to quit would cause the average, reasonable person to leave gainful employment or that it was impelled by any action on the part of the employer. Accordingly, the claimant remains disqualified from the receipt of reemployment assistance benefits as of the week beginning July 21, 2013. The employment record of the employer will not be charged for benefits for this period.
The record reflects that the claimant was discharged prior to the effective date of his resignation. Section 443.101(1)(a)3, Florida Statues, provides: When an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharged the individual for reasons other than misconduct prior to the date the voluntary quit was to take effect, the individual, if otherwise entitled, will receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit . . . .

The record reflects the claimant was discharged for operating a competing business while still employed for the employer. A worker's primary loyalty is to the employer. The claimant knew, or should have known, that establishing and operating a competitive business while still employed for the employer could lead to dismissal. The claimant's actions demonstrate a conscious and intentional disregard of the employer's interests and show a deliberate violation and/or disregard of the reasonable standards of behavior the employer has a right to expect. The claimant's actions have been shown to meet the statutory criteria for misconduct as outlined in [subparagraph] (a) of the statute above. Accordingly, since the claimant was discharged for misconduct, as

> that term is used in the reemployment assistance law, the claimant remains disqualified for the receipt of reemployment assistance benefits from the week beginning June 23, 2013, through July 20, 2013, and until the claimant earns $4,675. The employment record of the employer will not be charged for benefits for this period.

The referee concluded that, as a result of having been discharged on June 27, 2013, for misconduct connected with work, the claimant is disqualified from June 23 *through July 20, 2013*, and until he earns $4,675. The referee further concluded that, as a result of quitting his employment without good cause attributable to the employer, the claimant is disqualified from July 21, 2013.[1] While the effect of the disqualifications imposed by the referee's decision might be similar to the effect of the disqualification the claimant will face if he was discharged for misconduct connected with work on June 27 *or* if he quit without good cause attributable to the employer effective on July 26 (according to the employer), the two potential grounds for disqualification must nevertheless be addressed separately as discussed below. If the claimant is disqualified, the effective date of the disqualification could matter when determining whether he has earned sufficient remuneration to overcome the disqualification.

The disqualification period for a claimant who is discharged for misconduct connected with work is not stopped by the effective date of a resignation. Section 443.101(1)(a)3., Florida Statutes, states:

> When an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for *reasons other than misconduct* prior to the date the voluntary quit was to take effect, the individual, if otherwise entitled, will receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit (emphasis added).

[1] The Commission recognizes, therefore, that the referee did disqualify the claimant from June 23, 2013, through July 20, 2013, and then going forward.

This statutory provision does *not* provide a basis for awarding benefits to an individual who has provided notice to the employer of his or her intent to voluntarily leave work and is discharged *for misconduct* during the notice period. To the contrary, if a claimant is discharged for misconduct connected with work during a notice period then, pursuant to Section 443.101(1)(a)2., Florida Statutes, he is disqualified from the week in which he was discharged and until he overcomes the statutory penalty for being discharged for misconduct. Section 443.101(1)(a)2., provides:

> Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks immediately following that week, as determined by the department in each case according to the circumstances or the seriousness of the misconduct, under the department's rules adopted for determinations of disqualification for benefits for misconduct.

Therefore, if the claimant in this case was discharged for misconduct connected with work on June 27, 2013, then he would be disqualified until he overcomes the statutory penalty, and the reason for his subsequent resignation (i.e., whether he left work with good cause attributable to the employer) would become irrelevant. If, however, the employer does not establish the claimant was discharged on June 27 for misconduct connected with work, the claimant will be subject to disqualification as of the effective date of his resignation if he quit without good cause attributable to the employer. Since the effective date of the disqualification is material for purposes of determining when the disqualification ends, the referee must examine the separation as well as the resignation separately.[2]

[2] While a determination that the separation was for misconduct might moot the reason for the resignation, in the interests of facilitating further appellate review, the referee should conduct both analyses to avoid the need for further remand if the Commission or a district court of appeal overturned a determination of misconduct.

Effective May 17, 2013, Section 443.036(30), Florida Statutes, states that misconduct connected with work, "irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other":

> (a) Conduct demonstrating a conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; or theft of employer property or property of a customer or invitee of the employer.
>
> (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
>
> (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
>
> (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
>
> (e)1. A violation of an employer's rule, unless the claimant can demonstrate that:
>
> a. He or she did not know, and could not reasonably know, of the rule's requirements;
>
> b. The rule is not lawful or not reasonably related to the job environment and performance; or
>
> c. The rule is not fairly or consistently enforced.
>
> 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

In this case, the record was not developed sufficiently to determine whether the claimant was discharged for misconduct connected with work on June 27, 2013. At the hearing before the appeals referee, the employer's president/owner testified the claimant was discharged for violating the employer's non-compete policy. The employer, however, did not submit a copy of the policy for the hearing. It is axiomatic that, in establishing the violation of a policy, the employer should provide a copy of the policy and enter it into the record at the hearing. Because the employer failed to submit the policy at issue in this case, the employer presented insufficient evidence to establish the claimant violated a rule/policy. Accordingly, the employer failed to establish the claimant's actions amounted to misconduct under subparagraph (e) of Section 443.036(30), Florida Statutes. In the event the employer provides a copy of its non-compete policy for the next hearing, the referee must then evaluate the facts of this case against the provisions of subparagraph (e) and must also consider the requirements of Section 542.335(1), Florida Statutes (stating, in part, that a restrictive covenant must be set forth in writing and be signed by the person against whom enforcement is sought).

Even in the absence of a written policy, however, an employee's actions may amount to misconduct if the employee tortiously interfered with the employer's business or violated his/her duty of loyalty to the employer. *See generally Kohlhauff v. Florida Unemployment Appeals Commission*, 646 So. 2d 799 (Fla. 2d DCA 1994). "While in the absence of [a non-compete agreement], there is normally nothing improper with an agent or employee terminating the employment relationship and proceeding to compete with his former principal or employer, there nevertheless exists during the ongoing relationship a common law duty not to engage in disloyal acts in anticipation of future competition." *Insurance Field Services, Inc. v. White & White Inspection and Audit Service, Inc.*, 384 So. 2d 303 (Fla. 5th DCA 1980); *Harlee v. Professional Service Industries, Inc.*, 619 So. 2d 298 (Fla. 3d DCA 1992). "Disloyal acts" include not only actual unauthorized competition with the employer while employed, but also include actions designed to facilitate future competition that wrongfully impair the employer's business interests, such as soliciting the employer's employees or customers while still employed by the employer. *Insurance Field Services*, 384 So. 2d at 308 (employee breached his duty of loyalty by securing the services of his employer's field agents and stealing his employer's customers while still employed).

"Mere preparation" to open a competing business, however, does not violate the employee's duty of loyalty and does not constitute tortious interference. *Harlee*, 619 So. 2d at 300 ("Opening a bank account and obtaining office space and telephone service are acts of mere preparation and do not constitute intentional interference with a business relationship."); *Fish v. Adams*, 401 So. 2d 843, 845 (Fla. 5th DCA 1981). Notification to customers through advertisement is not a breach of an employee's duty of loyalty, and an employee may take with him a customer list that he himself has developed. *Fish*, 401 So. 2d at 845; *Insurance Field Services*, 384 So. 2d at 303. In *Fish*, the Court stated:

> "The general rule with regard to an employees' duty of loyalty to his employer is that an employee does not violate his duty of loyalty when he merely organizes a corporation during his employment to carry on a rival business after the expiration of his employment. However, that employee may not engage in disloyal acts in anticipation of his future competition, such as using confidential information acquired during the course of his employment or soliciting customers and other employees prior to the end of his employment. *Insurance Field Services, Inc. v. White & White Inspection & Audit Service, Inc.*, 384 So. 2d 303 (Fla. 5th DCA 1980). An employee does not have to be managerial in order to have this duty."

Fish, 401 So. 2d at 845.

Additionally, Florida has enacted the Uniform Trade Secrets Act. *See* Chapter 688, Florida Statutes. Even absent a restrictive covenant, misappropriation of an employer's trade secrets (which may include items such as customer lists, pricing lists, vendor lists, etc.) is a statutory violation remedial at law.

In this case, the referee concluded the claimant's purported actions amounted to misconduct as defined by subparagraph (a). The referee specifically found/concluded that the claimant's company offered the "same services" as the employer's company, the claimant had an "operational website just like" the employer's website, and the claimant established and operated a competing business while still employed for the employer. The record, however, was not developed sufficiently regarding how the employer's president/owner came to these conclusions. At the hearing, the claimant testified that, as of the date of the hearing, his company had not yet opened for business. He further testified that his business concept differs from this employer's business concept, and the services offered will

also differ. The president/owner testified that, in part, his observations of an Instagram site and a website led him to "think" the claimant "was establishing" a company and that the claimant was "probably going to use the next 30 days working with me to get it going." He also testified that, because the Instagram site had 317 followers, he "assume[d] that it was up and running."

On remand, the referee is directed to develop the record further in order to determine whether the claimant tortiously interfered with the employer's business, violated his duty of loyalty to the employer, and/or engaged in disloyal acts toward the employer. The referee should determine whether the claimant undertook unauthorized acts such as (1) engaging in actual competition by running a competitive business during his employment; (2) misappropriating trade secrets of the employer either while employed or thereafter; (3) diverting or delaying business opportunities of the employer while employed so that he could take advantage of them after separation; (4) soliciting customers, clients or other employees for his current or future business while employed with the employer; and (5) working on preparation of the new business during working hours with the employer. The referee is also directed to develop the record further regarding how the employer's president/owner became aware that the claimant's company offered or was going to offer the same services as the employer's company; which specific identical services the claimant's company purportedly offered; and how the employer's president/owner became aware that the claimant was actually operating the company while he was still employed with this employer. We note that, in duty of loyalty cases, the current employer will rarely have extensive direct evidence of the claimant's breach of duties. However, development of any probative circumstantial evidence and inferences that may be properly drawn from such evidence, combined with careful examination of the claimant, will permit the referee to determine whether the claimant breached his duties under the law as discussed above, or merely engaged in permissible preparation for competition. The referee must take care in determining what events happened at what time: actions which are a breach of duty *prior* to separation may be completely permissible *after* separation in the absence of a non-competition agreement.

In the event the employer does not establish the claimant was discharged on June 27 for misconduct connected with work, the record must be developed further in order to determine whether the claimant's resignation which, according to the employer's president/owner was to become effective on July 26, 2013, would have been with good cause attributable to the employer. Section 443.101(1), Florida Statutes, provides that an individual shall be disqualified from receipt of benefits for

voluntarily leaving work without good cause attributable to the employing unit. Good cause is such cause as "would reasonably impel the average able-bodied qualified worker to give up his or her employment." *Uniweld Products, Inc. v. Industrial Relations Commission*, 277 So. 2d 827 (Fla. 4th DCA 1973).

The Commission notes the claimant's testimony indicates he informed the employer on June 26 that he would continue his employment for up to six months. At the hearing, the claimant identified multiple dissatisfactions with his employment. The claimant's testimony is unclear regarding which, if any, of those issues led him to quit his employment and/or whether his assertion is that he believes some or all of those issues caused the employer to terminate him. On remand, the referee is directed to seek clarification regarding the specific reason(s) the claimant gave notice of his resignation. Additionally, the record was not developed sufficiently in order to determine whether the claimant contends that the employer unilaterally and materially breached the terms of employment. On remand, the referee is directed to develop the record further regarding the claimant's assertions that he was asked to perform duties outside of his job description, did not receive his own store, and believed he did not receive compensation or expense reimbursements owed to him. Such record development should include, but not be limited to, adducing testimony regarding the terms of the claimant's employment, such as his job duties and compensation agreement; the specific conversation(s) that occurred between the claimant and the employer regarding receiving his own store; and the specific manner in which the claimant was purportedly not compensated correctly and/or was asked to perform duties outside of his job description. The referee is also directed to develop the record further regarding the claimant's specific efforts, if any, to resolve his concerns as well as the reason the claimant was admittedly willing to continue working under such conditions for up to six months.

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 concerning the events that led to the claimant's separation from employment 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 2/7/2014, 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. **2013-73699U** Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant **EMPLOYER/Appellee**

APPEARANCES: CLAIMANT & EMPLOYER LOCAL OFFICE #: 3627-0

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.

CHARGES TO EMPLOYMENT RECORD: Whether benefit payments made to the claimant shall be charged to the employment record of the employer, pursuant to Sections 443.101(9); 443.131(3)(a), Florida Statutes; Rules 73B-10.026, 11.018, Florida Administrative Code. (If employer charges are not at issue on the current claim, the hearing may determine charges on a subsequent claim.)

Findings of Fact: The claimant worked full-time as a regional sales leader for an electronics repair company from May 1, 2011 until June 27, 2013. On June 17, 2013, the claimant and his supervisor had a disagreement. On June 26, 2013, the claimant informed his supervisor that he had thirty days to replace him. The claimant offered to train his replacement. The supervisor tried unsuccessfully to persuade the claimant to change his mind and stay with the company. On June 26, 2013, the supervisor learned that the claimant and a co-worker had filed for a limited liability company which offered the same services as the employer. The claimant's new company had an operational website "just like" the employer's. The new company website contained contact information and

had received 317 followers. On June 27, 2013, the supervisor discharged the claimant for operating a competing business while still employed for the employer.

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 was the moving party in the separation. Therefore, the claimant is considered to have voluntarily 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). It was shown that the claimant quit when informed his supervisor that he had thirty days to replace him. The evidence indicates that the claimant's decision to quit was due to a personality conflict with his supervisor and because he wanted to establish his own company. A person who has voluntarily left work has the burden of establishing he or she left under circumstances that would cause the average, reasonable person to leave gainful employment. The average employee has, or should have, a modicum of tolerance and an ability to endure a certain level of friction between the supervisor and the employee. Uniweld Products, Inc., supra. While the claimant may have had compelling reasons for quitting, it has not been shown that the decision to quit would cause the average, reasonable person to leave gainful employment or that it was impelled by any action on the part of the employer. Accordingly, the claimant remains disqualified from the receipt

of reemployment assistance benefits as of the week beginning July 21, 2013. The employment record of the employer will not be charged for benefits for this period.

The record reflects that the claimant was discharged prior to the effective date of his resignation. Section 443.101(1)(a)3, Florida Statues, provides: When an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharged the individual for reasons other than misconduct prior to the date the voluntary quit was to take effect, the individual, if otherwise entitled, will receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

As of June 27, 2011, the Reemployment Assistance Law of Florida defines misconduct connected with work as, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this

state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e) A violation of an employer's rule, unless the claimant can demonstrate that:

1. He or she did not know, and could not reasonably know, of the rules requirements;
2. The rule is not lawful or not reasonably related to the job environment and performance; or
3. The rule is not fairly or consistently enforced.

The record reflects the claimant was discharged for operating a competing business while still employed for the employer. A worker's primary loyalty is to the employer. The claimant knew, or should have known, that establishing and operating a competitive business while still employed for the employer could lead to dismissal. The claimant's actions demonstrate a conscious and intentional disregard of the employer's interests and show a deliberate violation and/or disregard of the reasonable standards of behavior the employer has a right to expect. The claimant's actions have been shown to meet the statutory criteria for misconduct as outlined in subsection (a) of the statute above. Accordingly, since the claimant was discharged for misconduct, as that term is used in the reemployment assistance law, the claimant remains disqualified for the receipt of reemployment assistance benefits from the week beginning June 23, 2013 through July 20, 2013 and until the claimant earns $4,675. The employment record of the employer will not be charged for benefits for this period.

The hearing officer was presented with conflicting testimony regarding the length of the claimant's notice to quit, the reason for discharge and whether the claimant's new company had an operational website "just like" the employer's. The hearing officer 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 August 5, 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 September 10, 2013.

KAREN GILBERT
Appeals Referee

By: Dorothy Sheffield
DOROTHY SHEFFIELD, 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.