

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-09385

vs.

Referee Decision No. 0000273208-05U

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 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 submitted her claim for reemployment assistance benefits effective August 1, 2012, establishing a weekly benefit amount of \$275.00. She received a total of \$1,375.00 in regular reemployment assistance benefits for the weeks ending July 6, 2013, through August 3, 2013.

The claimant is employed as a substitute teacher for the employer, a contractor providing substitute teaching services to public schools since 2006 or 2007. Prior to the summer of 2013, the claimant knew that she would be returning to her same position at the beginning of the 2013-2014 academic year. The claimant resumed her duties when the new academic year began in August 2013. The employer reported base period wages for the claimant.

Based on these findings, the referee held the claimant ineligible for receipt of benefits from the week ending June 30, 2013, through August 17, 2013. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is not supported by competent, substantial evidence and, therefore, is not in accord with the law; accordingly, it is reversed.

Section 443.091(3), Florida Statutes, provides, in general, that benefits based on services to or on behalf of an *educational institution* are not payable between academic terms or during established vacation or holiday breaks if the individual worked for the institution prior to the break and has a reasonable assurance of performing such services in the next term or after the vacation or holiday break. However, the statute also provides that the benefits in question must be based on services in employment described in Sections 443.1216(2) and (3), Florida Statutes. A review of the claimant's Wage Transcript and Determination issued by the Department of Economic Opportunity on August 14, 2013, reflects that the claimant did not work for any educational institutions during the base period of her claim. Accordingly, the claimant is not ineligible for benefits pursuant to Section 443.091(3), Florida Statutes.

It is noted that, effective July 1, 2013, paragraphs (a), (b), and (c) of Section 443.091(3), Florida Statutes, apply to services provided by an individual for an educational institution while in the employ of a *private employer* holding a contractual relationship with such educational institution, but only if the base period wages attributable to such services are identified as such in the quarterly reports filed pursuant to Section 443.131(1), Florida Statutes. See §443.091(3)(f), Fla. Stat. In this case, the claimant earned her base period wages for her current claim year prior to July 1, 2013. For that reason, the claimant is not subject to being held ineligible in this case. It is noted, however, that if the employer elects to identify the claimant's wages as wages subject to Section 443.091(3)(f), the ineligibility provisions of Section 443.091(3) will apply to future claims.

The decision of the appeals referee is reversed. If otherwise eligible, the claimant is entitled to benefits.

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

4/24/2014,

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: Kimberley Pena

Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
REEMPLOYMENT ASSISTANCE PROGRAM
PO BOX 5250
TALLAHASSEE, FL 32314-5250



*17771954 *

Docket No.0000 2732 08-04

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Employer

Claimant

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.

REEMPLOYMENT ASSISTANCE: Whether the claimant was totally or partially unemployed, pursuant to Sections 443.036(44); 443.111(4), Florida Statutes.

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

Findings of Fact: The claimant submitted her claim for reemployment assistance benefits effective August 1, 2012, establishing a weekly benefit amount of \$275.00. She received a total of \$1,375.00 in regular reemployment assistance benefits for the weeks ending July 6, 2013 through August 3, 2013.

The claimant is employed as a substitute teacher for the employer, a contractor providing substitute teaching services to public schools since 2006 or 2007. Prior to the summer of 2013, the claimant knew that she would be returning to her same position at the beginning of the 2013-2014 academic year. The claimant resumed her duties when the new academic year began in August, 2013. The employer reported base period wages for the claimant.

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. Workers who are employed by private, for profit, employers that provide a service to a school system are not affected by the reasonable assurance provisions and are not subject to between terms denial.

Effective July 1, 2013, workers who are employed by private, for profit, employers that hold a contractual relationship with an educational system may be affected by the reasonable assurance provisions and may be subject to between terms denial, only if the base period wages attributed to such services are identified as such in the quarterly reports filed.

The record and evidence in this case show that the claimant had reasonable assurance of performing services for the employer during the 2013-2014 school year. The employer reported base period wages for the claimant. Accordingly, it is held that the claimant is ineligible for reemployment assistance benefits.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments.

The record and evidence show the claimant received a total of \$1,375.00 in regular reemployment assistance benefits for the weeks ending July 6, 2013 through August 3, 2013. As held above, the claimant was ineligible during those weeks. Accordingly, the claimant has been overpaid in the amount of \$1,375.00 in regular reemployment assistance benefits.

Decision: The determination dated September 3, 2013, holding the claimant ineligible from June 30, 2013 through August 17, 2013, and creating an overpayment of \$1,375.00, 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 distributed to the last known address of each interested party on November 15, 2013

RAPHAEL UMANSKY
Appeals Referee

Miranda B. Phillips

By:

MIRANDA PHILLIPS, 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 above 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 connect.myflorida.com or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's 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 connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; 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, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesaje lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak nimewo sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.