

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-00982

vs.

Referee Decision No. 0008787829-02U

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 holding the claimant disqualified from 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 referee's findings of fact state as follows:

The claimant began working for the listed employer, a retail tool store, on August 27, 2010, as a part-time retail cashier. The claimant was made aware that after three written warnings for cash discrepancies, he would be subject to termination. The claimant received a total of four written warnings for cash discrepancies March 21, 2013, through June 27, 2013. The claimant received a written warning from the assistant manager on March 21, 2013, due to being over \$29.95. The store manager issued the claimant a written warning on May 20, 2013, for being over \$10.20. On June 27, 2013, the store manager issued the claimant his final warning. The claimant was short \$8.14 on June 12, 2013, and \$5.02 on June 26, 2013. The claimant was warned that failure to correct the cash discrepancies will lead [to]

and result in his termination. On August 15, 2013, the claimant's cash till was \$13.02 over. The claimant was made aware of the employer's policy regarding cash shortages or overages. The claimant was discharged on August 16, 2013, for cash discrepancies.

Based on these findings, the referee held the claimant was discharged for misconduct connected with work. 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, further, is not in accord with the law; accordingly, it is reversed.

While the record reflects the claimant received write-ups for cash shortages and overages, the record does not establish that the claimant was culpable for any of the discrepancies. The claimant testified that the employer's new registers did not work properly and would often shut down. He testified that employees were unable to determine whether transactions went through. He also testified that, after two months, employees were told not to use quick payment keys because the registers were not working properly. He indicated that all the registers had problems.

The employer's witness admitted that the registers would freeze and that employees were unable to determine, at the store level, whether the transactions went through. He indicated that employees frequently had to call the employer's corporate office and ask if transactions went through and that employees were "at their mercy." According to the employer's witness, if corporate could find no change in inventory or sales, employees were told to ring up the sale again. The employer's witness also admitted that, when the claimant was warned, he complained about the problems with the employer's registers. The witness further admitted that four other "good cashiers" were also let go for the same reason and indicated that they too raised the same concerns.

While the employer's witness indicated that the employer's information technology (IT) people were unable to find any reason for the discrepancies, his testimony does not establish that the claimant was culpable for the discrepancies that led to the four warnings he received. The claimant denied being careless or negligent and indicated that he performed his work in the same manner as he had during the 29 months before he received the warnings.

While the employer's policy requires termination after four cash discrepancies within a six-month period, the employer did not show the claimant was culpable for any of the cash discrepancies that led to the warnings he received. The record, therefore, establishes the employer's policy was not fairly enforced. Since the claimant established one of the defenses enumerated in subparagraph (e) of Section 443.036, Florida Statutes, the claimant is not subject to disqualification under that subparagraph.

Absent evidence the claimant was culpable for any of the cash discrepancies, the record also fails to establish that the claimant acted in conscious disregard of the employer's interests or in deliberate violation or disregard of the reasonable standards of behavior which the employer expected of him, or that he was careless or negligent to a degree or recurrence that manifests culpability or wrongful intent, or that his actions showed an intentional and substantial disregard of the employer's interests or of his duties and obligations to the employer. The record, therefore, does not reflect the claimant committed misconduct connected with work within the meaning of subparagraphs (a) or (b) of the statute. Under the facts of this case, we must conclude the claimant was discharged for reasons other than misconduct connected with work within the meaning of the reemployment assistance law.

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
6/30/2014,
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



*22881434 *

Docket No.0008 7878 29-02

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

CLAIMANT/Appellee

EMPLOYER/Appellant

APPEARANCES

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.

Issues Involved: SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(30), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

Findings of Fact: The claimant began working for the listed employer, a retail tool store, on August 27, 2010, as a part-time retail cashier. The claimant was made aware that after three written warnings

for cash discrepancies, he would be subject to termination. The claimant received a total of four written warnings for cash discrepancies March 21, 2013, through June 27, 2013. The claimant received a written warning from the assistant manager on March 21, 2013, due to being over \$29.95. The store manager issued the claimant a written warning on May 20, 2013, for being over \$10.20. On June 27, 2013, the store manager issued the claimant his final warning. The claimant was short \$8.14 on June 12, 2013, and \$5.02 on June 26, 2013. The claimant was warned that failure to correct the cash discrepancies will lead and result in his termination. On August 15, 2013, the claimant's cash teal was \$13.02 over. The claimant was made aware of the employer's policy regarding cash shortages or overages. The claimant was discharged on August 16, 2013, for cash discrepancies.

Conclusions of Law: As of May 17, 2013, 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. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50; 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 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) 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.

The hearing record demonstrates that the employer was the initiating party in the separation. Therefore, the claimant is considered to have been discharged. The burden of proving misconduct is on the employer. Lewis v. Unemployment Appeals Commission, 498 So.2d 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of competent substantial evidence. De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 468 So.2d 413 (Fla. 1986). It was shown that the claimant was discharged for cash discrepancies. The testimony of the employer representative illustrates that the claimant was informed that three warnings would result in termination of the employment. It was shown that the claimant was issued four warnings for the same issue regarding cash discrepancies. The record shows that the claimant failed to


correct his issues after being warned. In this instance, the claimant's actions demonstrate a carelessness or negligence to a degree or recurrence that manifests culpability. As such, the claimant's actions arise to the level of misconduct as defined in the statute. Accordingly, the claimant is held disqualified from the receipt of benefits.

Decision: The determination dated September 4, 2013, is REVERSED. The claimant is disqualified for the receipt of Reemployment Assistance Benefits from August 11, 2013, the following five weeks and until the claimant earns \$2,703. The employment record of the employer shall be non-charged for benefits paid in connection with this claim.

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 February 5, 2014

DARCY ETIENNE
Appeals Referee

By: 

JODEE GOMILLION, 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 reembolsar 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.