

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-01005

vs.

Referee Decision No. 0021219049-02U

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 issue before the Commission is whether the claimant voluntarily left work without good cause within the meaning of Section 443.101(1), Florida Statutes.

The referee's findings of fact state as follows:

The claimant worked as a project engineer with this employer from December 26, 2012, until December 27, 2013. He resigned due to the work environment. The claimant was aware that other employees smoked in the office upon hire. He continued to work at the employer's office thereafter and was exposed to secondhand smoke. The claimant did not advise the employer that he was affected by the smoking in the office. He did not request any accommodations or a leave of absence from the employer to prevent his exposure to the smoke. The claimant visited a doctor on December 14, 2013, and was advised to get away from the environment. He did not advise the employer about his doctor's recommendation. The claimant then submitted his two weeks' notice of resignation and advised the chief executive officer that he

was returning to school. He also advised the chief executive officer and the project engineer that he was looking for a better job. The chief executive officer offered the claimant the opportunity to continue working with the employer while searching for a better job. The claimant then left employment on December 27, 2013. His job was not in jeopardy and work was available when the claimant resigned.

Based on these findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit. 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.

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 claimant contends he quit because employees smoke in the employer's office, and he purportedly has an aversion to secondhand cigarette smoke. The referee held the claimant disqualified from the receipt of benefits, reasoning the claimant did not make a reasonable effort to preserve his job before he quit because he did not advise the employer that he was quitting due to the presence of cigarette smoke in the office. The employer's chief executive officer testified that if the employer had been made aware of the claimant's aversion, the employer could have ameliorated the claimant's concerns of being exposed to secondhand smoke by providing him with a private office in a suite separate from the employer's main office that has its own air conditioning system. The referee, however, did not adequately develop the record regarding the testimony of the chief executive officer that the employer could have provided the claimant with a smoke-free work environment, and whether the accommodation would have been sufficient, given the claimant's contention on appeal to the Commission that he would still have to go to the employer's main suite as part of his job. Because the decision does not adequately address this point, the Commission concludes the case must be remanded. On remand, the referee is directed to develop the record regarding the specific accommodations the employer would have made for the claimant if he had advised the employer of his aversion to secondhand cigarette smoke and whether the employer's accommodations would have ameliorated the claimant's concerns. We note that it is undisputed that the employer's workplace was maintained in violation of Florida's Clean Indoor Air Act, which is designed to protect employees from the

secondhand smoke conditions of which the claimant complains. *See* Section 386.201 et seq., Florida Statutes. Accordingly, *to the extent that the claimant did resign as a result of the indoor smoking*, the employer bears the burden of establishing that it would comply with the Act at least as regards the claimant, to avoid giving the claimant good cause attributable to the employer to voluntarily quit employment.

As to the issue of whether or not the claimant quit at least in part due to the smoking, we note that the referee did not make a specific finding of causation. The employer's evidence indicated that the claimant gave reasons other than the smoking in the workplace as his reasons for quitting. In addition to precluding the employer from attempting to resolve the smoking concern, such evidence also raises the issue of whether in fact the smoking was causal in the claimant's resignation, notwithstanding the claimant's contentions at the hearing. On remand, the referee is directed to make specific findings as to the cause(s) of the claimant's quitting.

As a finder of fact, the referee has a duty to examine or cross-examine any witness as is necessary to properly develop the record. Fla. Admin. Code R. 73B-20.024(3)(b). It is incumbent upon the referee to develop the record and accurately reflect the material testimony in the decision so that a reviewing body can evaluate the case. Without the above referenced information, the Commission is unable to determine whether the referee correctly held the claimant disqualified from the receipt of benefits.

In order to address the foregoing issues, the referee's decision is vacated, and the case is remanded to the referee for further proceedings consistent with this order. On remand, the referee is directed to hold a supplemental hearing to develop the record as outlined above and render a new decision that contains accurate and specific findings of fact regarding the circumstances surrounding the claimant's job separation and a proper analysis of those facts, along with an appropriate credibility determination 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.

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
7/18/2014,
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: Juanita Williams
Deputy Clerk



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



*23968658 *

Docket No.0021 2190 49-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

Employer

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 worked as a project engineer with this employer from December 26,

2012, until December 27, 2013. He resigned due to the work environment.

The claimant was aware that other employees smoked in the office upon hire. He continued to work at the employer's office thereafter and was exposed to secondhand smoke. The claimant did not advise the employer that he was affected by the smoking in the office. He did not request any accommodations or a leave of absence from the employer to prevent his exposure to the smoke. The claimant visited a doctor on December 14, 2013, and was advised to get away from the environment. He did not advise the employer about his doctor's recommendation. The claimant then submitted his two weeks' notice of resignation and advised the chief executive officer that he was returning to school. He also advised the chief executive officer and the project engineer that he was looking for a better job. The chief executive officer offered the claimant the opportunity to continue working with the employer while searching for a better job. The claimant then left employment on December 27, 2013. His job was not in jeopardy and work was available when the claimant resigned.

Conclusions of Law: The law provides that an individual will be disqualified for benefits who voluntarily leaves 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). Moreover, an employee with good cause to leave employment may be disqualified if reasonable effort to preserve the employment was not expended. See Glenn v. Florida Unemployment Appeals Commission, 516 So.2d 88 (Fla. 3d DCA 1987). See also Lawnco Services, Inc. v. Unemployment Appeals Commission, 946 So.2d 586 (Fla. 4th DCA 2006); Tittsworth v. Unemployment Appeals Commission, 920 So.2d 139 (Fla. 4th DCA 2006).

The record reflects that the claimant 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). In the instant case, the claimant quit due to his exposure to secondhand smoking at work. The claimant admitted that he knew of the smoking work environment upon hire and continued to work in that environment for a year. The claimant did not advise the employer of his issues with the smoking environment or allow the employer an opportunity to address his concern. Further, the claimant did not request any accommodations and was allowed the opportunity to continue his employment while searching for work elsewhere. Given the above, the claimant did not make a reasonable effort to preserve the employment relationship prior to leaving. Therefore, the appeals referee finds that the claimant voluntarily left work without good cause attributable to the employing unit within the meaning of Florida reemployment assistance law.

DECISION: The determination released January 30, 2014, is AFFIRMED. The claimant is disqualified from receipt of reemployment assistance benefits.

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 26, 2014

JENNIFER SIMPSON
Appeals Referee



By:

DAISY L. WILKINS, 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.