

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 14-01142

vs.

Referee Decision No. 0021333556-02U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the employer's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision which held the claimant was not on a bona fide leave of absence and, therefore, not 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's unemployment is due to a leave of absence voluntarily initiated by the claimant, pursuant to Sections 443.036(29) and 443.101(1)(c), Florida Statutes.

The referee's findings of fact state as follows:

The claimant worked for a fast food restaurant as a cashier from February 28, 2013, through August 10, 2013. The claimant requested a leave of absence with the manager due to her home windows being broken into. The claimant's leave of absence was approved by a manager. The manager informed the claimant that she would have her same or similar position once she returned from her leave. The claimant did not know how long she would be on leave. The claimant was informed that her windows may not be repaired for a month. The claimant was informed that, once she submitted the police report, she could arrive back to work. The claimant submitted the police report on October 5, 2013, to the

manager. The manager informed the claimant that he did not need the police report and that he would provide a date for her to report back to work and that he would call her. The claimant did not receive a call, so she went to the building and she was informed that the owner did not want her to report back.

Based on these findings, the referee held that since the claimant's leave of absence was not for a specific period of time, her leave was not a bona fide leave of absence and she was, therefore, not disqualified from receipt of reemployment assistance benefits. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is not in accord with the law; accordingly, it is reversed.

Section 443.036(29), Florida Statutes, provides:

(29) "Leave of absence" means a temporary break in service to an employer, for a specified period of time, during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

Section 443.101(1)(c), Florida Statutes, further provides an individual shall be disqualified from the receipt of benefits for any week with respect to which the Department finds a claimant's unemployment is due to a leave of absence if the leave was voluntarily initiated by the individual. An agreement granting a leave of absence presumes that an employee will have a job upon his or her return. A bona fide leave of absence for purposes of the reemployment assistance law does not require that the employer and employee agree on a specific date for the end of the leave. *See Goodman v. Engle Homes, Inc.*, 621 So. 2d 523 (Fla. 4th DCA 1993). *See also* U.A.C. Order No. 08-02326 (May 6, 2008). Some leaves expire upon the occurrence of a specified event, whose date may not be determinative at the commencement of the leave. In U.A.C. Order No. 09-00886 (February 27, 2009), the Commission has also explained:

While the claimant did not testify she had any set date to return, the leave of absence was to terminate upon the occurrence of a reasonably ascertainable event. As a practical matter, leaves of absence are routinely timed to end when a worker obtains a medical release. These leaves are considered bona fide leaves of absence within the meaning of the unemployment compensation law. Accordingly, the claimant is on a voluntarily initiated bona fide leave of absence and is not entitled to unemployment compensation benefits for the duration of that leave.

In this case, the claimant testified that, after she explained her situation to her manager and told her that it might possibly be a month before the broken windows in her home were replaced, the manager told her once she came back with a police report, she could return to work. Here, the time frame for the leave was premised on a reasonably ascertainable event, the repair of the aforementioned windows. Accordingly, the claimant was on a bona fide leave of absence and is disqualified for the receipt of benefits from August 13, 2013, when her leave began, until October 5, 2013, when she returned to the employer with a copy of the relevant police report.

After October 6, 2013, the claimant was no longer on a bona fide leave of absence and had become separated from her employment. The issue of the claimant's separation was not addressed by the determination under appeal which was before the referee. Unless already addressed, the issue of the claimant's separation is directed to the Department for review.

The decision of the appeals referee is reversed. The claimant is disqualified from the receipt of benefits from August 13, 2013, through October 5, 2013.

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

7/28/2014,

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



*24305214 *

Docket No.0021 3335 56-02

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.

Issues Involved: LEAVE: Whether the claimant's unemployment is due to a leave of absence voluntarily initiated by the claimant, pursuant to Sections 443.036(29); 443.101(1)(c), Florida Statutes.

Findings of Fact:The claimant worked for a fast food restaurant as a cashier from February 28, 2013, through August 10, 2013. The claimant requested a leave of absence with the manager due to her home windows being broken into. The claimant's leave of absence was approved by a manager. The

manager informed the claimant that she would have her same or similar position once she returned from her leave. The claimant did not know how long she would be on leave. The claimant was informed that her windows may not be repaired for a month. The claimant was informed that once she submitted the police report, she could arrive back to work. The claimant submitted to police report on October 5, 2013 to the manager. The manager informed the claimant that he did not need the police report and that he would provide a date for her to report back to work and that he would call her. The claimant did not receive a call, so she went to the building and she was informed that the owner did not want her to report back.

Conclusion of Law: The law provides that a claimant will be disqualified for benefits for any week of unemployment due to a leave of absence voluntarily initiated by the claimant. As defined in the statute, "leave of absence" means a temporary break in service to an employer, for a specified period of time during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

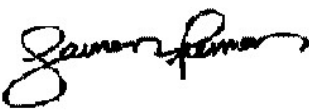
The record reflects that the claimant requested a leave of absence due to her home windows being broken. The evidence shows that the claimant was approved a leave of absence. The evidence also shows that the claimant's leave was not for a specified period of time. It was shown that the claimant was guaranteed her same or similar position upon her return from leave. It was also shown that since the claimant's leave was not for a specified period of time, her leave was not a bona fide leave of absence. Therefore, the claimant is not disqualified from receiving reemployment assistance.

Decision: The determination dated February 12, 2014, holding the claimant disqualified from receiving benefits from September 29, 2013, through March 1, 2014, is REVERSED.

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 March 6, 2014

WHITNEY GOLDEN SMITH
Appeals Referee

By: 

LAUREN FREEMAN, 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 diskalfye 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 departman.

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 lèt 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.