

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-02009

vs.

Referee Decision No. 0010251225-03U

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.

Upon consideration, the Commission finds that the appeal of the referee's decision was timely filed. The Commission has jurisdiction to decide the case.

The issue before the Commission is whether the claimant received remuneration in the form of wages in lieu of notice as provided in Section 443.101(3)(a), Florida Statutes, or severance pay as provided in Section 443.101(3)(b), Florida Statutes.

The referee's findings of fact state as follows:

The claimant worked as a real estate consultant for the employer from June 19, 1980, through September 30, 2013. The claimant earned \$1,195.60 per week. The claimant was laid off due to the elimination of her department. The claimant was offered and accepted [34] weeks of severance pay, totaling \$39,367.42. The

length of the severance pay was based upon the claimant's years of service. The claimant received the lump sum severance payment on September 30, 2013. The claimant applied for benefits effective September 29, 2013, with a weekly benefit amount of \$275.

Based on these findings, the referee held the claimant disqualified for receipt of benefits from September 29, 2013, through May 17, 2014. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is supported by competent and substantial evidence, and, further, is in accord with the law; accordingly, it is affirmed.

Section 443.101(3)(b), Florida Statutes, provides an individual will be disqualified from receipt of reemployment assistance benefits for any week with respect to which he or she is receiving or has received remuneration in the form of severance pay. The number of weeks that an individual's severance pay disqualifies the individual is equal to the amount of the severance pay divided by that individual's average weekly wage received from the employer that paid the severance pay, rounded down to the nearest whole number, beginning with the week the individual is separated from employment.

On appeal to the Commission, the claimant asserts her former employer has advised her she is entitled to benefits because she received the severance payment on her last day of work and because the severance payment was taxed at the same rate as a bonus. This is not, however, an accurate interpretation of Florida's reemployment assistance statute. The fact that the claimant received a lump sum severance payment prior to the separation does not negate the application of Section 443.101(3)(b), Florida Statutes, which specifically sets forth the method of calculating the number of weeks a claimant is disqualified due to receipt of severance pay. We note severance pay is often paid in a lump sum prior to the final day of employment. Moreover, the claimant in this case testified the payment of \$39,367.42 was a severance payment from the employer because the separation was caused by the employer eliminating the claimant's entire department and the amount of the payment was based on the claimant's years of service. The fact that the employer possibly misled the claimant concerning her eligibility for benefits for certain weeks also does not negate the provisions of Section 443.101(3)(b), Florida Statutes. The record indicates this was not an early retirement buyout situation whereby the claimant was enticed by the employer's representations or promises of entitlement to accept a buyout package. To the contrary, the record reflects the employer unilaterally decided to close down a portion of its business and lay off the claimant.

The Commission writes in this case to identify and correct two typographical errors. First, the referee's findings state the claimant earned \$1,195.60 per week while performing services for the employer. The record reflects the claimant actually earned \$1,159.60 per week, and the finding is corrected accordingly. The second error concerns the number of weeks the claimant is disqualified. The referee wrote in the decision that the claimant is disqualified for 34 weeks, but the correct number is 33 weeks. We speculate this error occurred because, applying the mathematical formula set forth in the statute concerning the duration of the disqualification penalty relating to severance payments, equates to 33.94 weeks.¹ While general practice would result in the number being rounded up to 34, the statute specifically requires that the number be rounded down to the nearest whole number. Consequently, 33 weeks is the correct period of disqualification. The error requires no further action because the period of disqualification imposed, September 29, 2013, through May 17, 2014, is actually 33 weeks.

The decision of the appeals referee is affirmed. The claimant is disqualified from receipt of benefits from September 29, 2013, through May 17, 2014.

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
6/3/2014,
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: Brandy Follmar
Deputy Clerk

¹ \$39,367.42 severance payment divided by \$1,159.60 weekly wage = 33.94



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



*22212467 *

Docket No.0010 2512 25-03

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: SEVERANCE PAY: Whether the claimant received severance pay or goodwill pay, pursuant to Section 443.101(3), Florida Statutes.

Findings of Fact: The claimant worked as a real estate consultant for the employer from June 19, 1980, through September 30, 2013. The claimant earned \$1,195.60 per week. The claimant was laid off due to the elimination of her department. The claimant was offered and accepted thirty-four weeks

of severance pay, totaling \$39,367.42. The length of the severance pay was based upon the claimant's years of service. The claimant received the lump sum severance payment on September 30, 2013. The claimant applied for benefits effective September 29, 2013 with a weekly benefit amount of \$275.

Conclusions of Law: The law provides that a claimant will be disqualified for benefits for any week in which remuneration in the form of severance pay is or was received. The number of weeks that a claimant's severance pay disqualifies the claimant is equal to the amount of the severance pay divided by the claimant's average weekly wage received from the employer that paid the severance pay.

The record reflects that the claimant was offered and accepted thirty-four weeks of severance pay, totaling \$39,367.42, upon her dismissal. It was shown that length of the severance pay was based upon the claimant's years of service. The claimant's severance is greater than the claimant's weekly benefit amount. Accordingly, the claimant is disqualified from the receipt of benefits from September 30, 2013, through May 17, 2014.

Decision: The determination dated January 8, 2014, is **AFFIRMED**. The claimant is disqualified for the receipt of benefits from September 30, 2013, through May 17, 2014.

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 January 23, 2014

ALEXIS RIVERS
Appeals Referee

By: 

ARMIA DURDEN, 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 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.