STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-04590

vs.

Referee Decision No. 0022864608-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of an appeal of the decision of a reemployment assistance appeals referee pursuant to Section 443.151(4)(c), Florida Statutes. The referee's decision stated that a request for review should specify any and all allegations of error with respect to the referee's decision, and that allegations of error not specifically set forth in the request for review may be considered waived.

Upon appeal of an examiner's determination, a referee schedules a hearing. Parties are advised prior to the hearing that the hearing is their only opportunity to present all of their evidence in support of their case. The appeals referee has the responsibility to develop the hearing record, weigh the evidence, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. Section 443.151(4)(b)5., Florida Statutes, provides that any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding Section 120.57(1)(c), Florida Statutes, hearsay evidence may support a finding of fact if the party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing and the appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record. A decision of an appeals referee cannot be overturned by the Commission if the referee's material findings are supported by competent, substantial evidence and the decision comports with the legal standards established by the Florida Legislature. The Commission cannot reweigh the evidence or consider additional evidence that a party could have reasonably been expected to present to the referee during the hearing. Additionally, it is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. Absent extraordinary circumstances, the Commission cannot substitute its judgment and overturn a referee's conflict resolution.

Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes no legal basis exists to reopen or supplement the record by the acceptance of any additional evidence sent to the Commission or to remand the case for further proceedings. The Commission concludes the record adequately supports the referee's material findings and the referee's conclusion is a correct application of the pertinent laws to the material facts of the case.

The issue before the Commission is whether the claimant voluntarily left work without good cause attributable to the employing unit or was discharged by the employer for misconduct connected with work within the meaning of Section 443.101(1), Florida Statutes. Whether a claimant quit or was discharged is generally a factual determination to be made by the referee. *Williams v. Florida Unemployment Appeals Commission* 67 So. 3d 1229 (Fla. 3d DCA 2011) (citing *Gulfview Animal Hospital v. Zemke*, 741 So. 2d 1163 (Fla. 2d DCA 1999)). The finding can only be reversed if it is not supported by competent, substantial evidence. *See id.*; *Aldana-Chiles v. Florida Unemployment Appeals Commission*, 930 So. 2d 808, 810 (Fla. 3d DCA 2006); *Jones v. Creative World School, Inc.*, 603 So. 2d 118 (Fla. 2d DCA 1992).

The referee's findings of fact state as follows:

> The claimant previously worked full-time as a security guard for the employer, a security company, from January 2, 2013 until December 2013. The claimant separated from the employer based on sexual harassment from her supervisor. The claimant returned to work for the employer on or about early January 2014, after the employer discharged the supervisor for sexual harassment. The claimant returned to work her second period of employment with a

> new supervisor. Once in February 2014 and once in early March 2014, the claimant saw [a] vehicle consistent with the vehicle driven by her former supervisor. The claimant never reported either incident to her new supervisor or human resources. On Friday, May 16, 2014, the claimant was issued a written warning after her supervisor verified a report that seven vehicles were on company property with invalid passes and/or no passes. Vehicle verification was required per the employer's compliance with Homeland Security. After she received the warning, the claimant informed her supervisor that she was going to quit. The supervisor advised the claimant to think about her decision to quit over the weekend. On May 19, 2014, the claimant submitted a letter of resignation. On May 29, 2014, the claimant quit.

In reaching her conclusion, the referee recognized that conflicting evidence was presented by the parties and resolved material evidentiary conflicts in favor of the employer.

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 adequately supports the referee's material findings and the referee's conclusion is a correct application of the pertinent laws to the material facts of the case.

On appeal, both the claimant's counsel and the claimant herself have filed arguments and documents with the Commission. In her filing, the claimant references documents that were provided to the referee, which could not be considered by the referee. The parties were advised prior to the hearing that the hearing was their only opportunity to present all of their evidence in support of their case. In order for documents to be considered, they must be presented to the opposing party and the appeals referee at least 24 hours prior to the appeals hearing. Fla. Admin. Code R. 73B-20.024(3)(e). In this case, the employer's representative denied receiving the documents provided by the claimant's counsel for the appeals hearing. Before the hearing adjourned, the referee appropriately questioned the claimant's counsel regarding whether she wanted the hearing to be postponed in order for both parties to receive the documents. Claimant's counsel declined the referee's offer of postponement, the hearing was adjourned, and a decision was subsequently rendered. In light of the claimant's counsel's waiver during the hearing, the Commission cannot now consider the documents that were not received by the opposing party prior to the hearing. As to the claimant's proffer of additional documents, which were not provided for the hearing, Florida Administrative Code Rule 73B-22.005 provides that the Commission can consider

newly discovered evidence only upon a showing that it is material to the outcome of the case *and* could not have been discovered prior to the hearing by an exercise of due diligence. The claimant's medical records were available to her prior to the hearing and, consequently, cannot now be considered. The Commission did not consider the additional evidence because it does not meet the requirements of the rule.

The claimant had two periods of employment with this employer. This order solely addresses whether the claimant separated from her second period of employment with this employer under disqualifying circumstances. Facts that occurred during the claimant's first period of employment are only set forth below to contextualize the events that occurred during the claimant's second period of employment.

As noted within the referee's findings, the claimant was a security guard for the employer. The record reflects the claimant provided security services for the employer's client at a port governed by the Department of Homeland Security and U.S. Customs and Border Protection. During the hearing before the appeals referee and on appeal to the Commission, the claimant alleged that she was initially subjected to harassment by her former supervisor, and that she was subsequently subjected to retaliatory harassment by the client company's safety manager. The claimant testified that, when she resigned in December 2013, she advised a representative in the employer's human resources office, that her former supervisor had sexually harassed her;[1] and, that she returned to her employment after the employer discharged him. She also testified that, during her first period of employment, the client's safety manager stated on one occasion that she "looked like a black hole." The claimant then testified that, during her second period of employment, the safety manager would complain about her performance although he had never previously complained about her performance. The claimant attributed his complaints to his friendship with her former supervisor and his desire to harass her because of her role in her former supervisor's discharge. The claimant further alleged that the client's safety manager complained to her manager about her performance. Finally, the claimant grieved the proximity of her former supervisor's home to the job site and explained that the stress from the situation exacerbated her pre-existing heart condition.

[1] The details contained within paragraph 13 of the claimant's brief, containing allegations of indecent exposure and inappropriate contact, were not made during the appeals hearing. No such allegations were presented by the claimant regarding her second period of employment.

The claimant's supervisor acknowledged that the client's safety manager complained about the claimant's performance. However, she explained that all of his complaints were valid and testified that the claimant's actions were in violation of policy or post orders. She acknowledged that the warning given to the claimant on May 16, 2013, was issued after a complaint was received from the safety manager and another individual, noted that the matter complained of, a lack of proper passes on parked vehicles, was a violation of port security protocol, and testified that two other employees were disciplined for the same infraction after the claimant's separation. Finally, she testified that the employer's district manager and the client's safety manager informed her that the staff was advised that, if her former supervisor reported to the job site, they would have him "picked up" by the sheriff for trespassing.

It is undisputed that the claimant tendered her resignation after she received the May 16 write-up. The claimant testified she told a representative in the corporate office that she was resigning because of a hostile work environment. However, she also testified that, during her second period of employment, she did not report to the employer's corporate office that she saw her former supervisor's truck at the job site; she did not talk to the human resources office about the May 16 write-up; and, she did not request a transfer to another job site.

On appeal, the claimant acknowledges she quit and argues she was constructively discharged because of the hostile work environment. Alternatively, the claimant argues she quit for health reasons because the work environment exacerbated her health condition.

As previously noted, this order solely addresses the claimant's allegations regarding her second period of employment. Consequently, the only support for the claimant's allegations of a hostile work environment are her allegations that her former supervisor was present at the facility, that the client's safety manager was excessively critical of her job performance, that the warning she was issued on May 16 was unwarranted,[2] and that it was motivated by retaliatory animus.[3] All of the other incidents referenced by the claimant took place during her first period of employment and the vast majority of hostile conduct that occurred during her first period of employment was at the hands of an individual the employer discharged.

---

[2] We note that the employer did not discharge the claimant, but merely issued her a warning, and the claimant did not complain to the employer's corporate office or human resources department about the warning, the ramifications of which will be discussed more fully below.

[3] The claimant's allegations of retaliation are couched both in terms of hostile environment and in terms of a specific adverse action, the issuance of a written warning. Because either of these theories could potentially be sufficient to meet the standard established in *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), we analyze the retaliation claims under each theory.

The claimant has not shown that the work conditions during her second period of employment were sufficiently severe or pervasive to constitute a hostile work environment. *See Harris v. Forklift Systems, Inc.,* 510 U.S. 17, 21, 114 S.Ct. 367, 370 (1993) (citing *Meritor Savings Bank, FSB v. Vinson,* 477 U.S. 57, 106 S. Ct. 2399 (1986)). Establishing that harassing conduct was sufficiently severe or pervasive to alter an employee's terms or conditions of employment includes a subjective and an objective component. The employee must "subjectively perceive" the harassment as sufficiently severe and pervasive to alter the terms or conditions of employment, and this subjective perception must be objectively reasonable. *Mendoza v. Borden, Inc.,* 195 F.3d 1238, 1246 (11th Cir. 1999) (internal citation omitted). Factors to consider when evaluating whether a work environment was hostile include the severity of the conduct, whether the conduct was threatening or humiliating, and whether the conduct unreasonably interferes with the plaintiff's performance at work. *Edwards v. Wallace Community College,* 49 F.3d 1517, 1521-22 (11th Cir. 1995). The claimant did not demonstrate that her "working conditions were so intolerable that a reasonable person in her position would be compelled to resign." *Steele v. Offshore Shipbuildings, Inc.,* 867 F.2d 1311, 1317 (11th Cir. 1989); *Wardwell v. School Board of Palm Beach County,* 786 F.2d 1554, 1557 (11th Cir. 1986).

The claimant also did not introduce sufficiently probative evidence to establish that she suffered adverse job action on account of her having opposed, complained of, or sought remedies for, unlawful workplace discrimination. *See* 42 U.S.C. §2000e-3. "Recently the Supreme Court announced that Title VII retaliation claims require proof that the desire to retaliate was the 'but-for' cause of the challenged employment action." *Fuller v. Stimpson*, 917 F. Supp. 2d 1146, 1166 (S.D. Fla. 2013) (citing *University of Texas Southeastern Medical Center v. Nassar*, -- U.S.--, 133 S. Ct. 2517 (2013)).

The claimant alleged that the client company's safety manager nitpicked her performance. The claimant's supervisor explained that she independently concurred with the safety manager's assessment of the claimant's performance. She testified that there were instances when the claimant was not objectively keeping to the standards the employer required (e.g., not greeting people at the gate) and that the employer made some allowances for the claimant's violation of policy (e.g., by allowing the claimant to cover a facial piercing with a Band-Aid). She also testified that two other employees were ultimately also disciplined for not checking vehicles' passes. As the credited evidence reflects, the claimant objectively violated some policies, the record does not evidence that the claimant worked in a hostile work environment or that the desire to retaliate was the "but-for" cause of the adverse job action.

While the Commission does not conclude that harassing conduct need necessarily reach a level sufficient to implicate Title VII or Florida Civil Rights Act ("FCRA") liability in order to establish good cause, neither do we ignore a developed body of law providing guidance as to when the conduct of harassers, or the inaction of employers, is sufficient to "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, 829 (Fla. 4th DCA 1973).

Even assuming the claimant in this case presented a series of events that might make some individuals consider relinquishing their employment, the claimant, did not properly inform her employer of the issues that she felt necessitated her resignation.[4]

It is well-established that "whenever feasible, an individual is expected to expend reasonable efforts to preserve his employment." *Glenn v. Unemployment Appeals Commission*, 516 So. 2d 88, 89 (Fla. 3d DCA 1987). The standard has been applied in numerous cases where an employee failed to utilize an internal grievance or other procedure to resolve the issues affecting his or her employment, or to attempt to resolve workplace concerns by further discussion with his employer. *Morales v. Unemployment Appeals Commission*, 43 So. 3d 157, 158 (Fla. 3d DCA 2010); *Lawnco Servs., Inc. v. Unemployment Appeals Commission*, 946 So. 2d 586 (Fla. 4th DCA 2006); *Klesh v. Unemployment Appeals Commission*, 441 So. 2d 1126 (Fla. 1st DCA 1983). However, a claimant is not required to exhaust a procedure in circumstances where it would be futile to do so. *Schenk v. Unemployment Appeals Commission*, 868 So. 2d 1239, 1241 (Fla. 4th DCA 2004); *Grossman v. Jewish Community Center*, 704 So. 2d 714, 717 (Fla. 4th DCA 1998).

This doctrine has been applied to hostile environment cases, including those involving sexual harassment, by both the courts and the Commission. In *Rivera v. Unemployment Appeals Commission*, 99 So. 3d 505 (Fla. 3d DCA 2011), the court's analysis included the issue of preservation of employment. The Court concluded that, when the employer advised her that it was not taking any further action on her harassment complaint because it could not corroborate her assertions, the claimant had appropriately attempted to preserve her employment before quitting. Likewise, the Commission has applied this test in cases.

---

[4] The Commission has previously addressed the issue of preservation of employment when one alleges harassing conduct in the workplace, most notably in R.A.A.C. Order No. 13-05313 (February 18, 2014), the pertinent language of which is duplicated below. *See also* R.A.A.C. Order No. 13-06892 (December 3, 2013); U.A.C. Order No. 12-01947 (March 23, 2012); U.A.C. No. 10-08280 (September 3, 2010).

In other cases, the court or Commission has considered the issues of whether the claimant brought the allegations of harassment to the employer's attention, and gave the employer an adequate opportunity to address them, to be part of the initial showing of good cause. For example, in *Craven v. Unemployment Appeals Commission*, 55 So. 3d 650, 653 (Fla. 1st DCA 2011), the court accepted the principle that a claimant's failure to provide sufficient opportunity for the employer to address harassment could be grounds for disqualification, while remanding the case for additional fact-finding as to that issue. In *Brown v. Unemployment Appeals Commission*, 633 So. 2d 36 (Fla. 5th DCA 1994) (en banc), the claimant's refusal to cooperate in an investigation of her complaints, along with her refusal to return to work after the employer had arranged a transfer away from the alleged harasser, meant she had not established good cause attributable to the employer. In *Yaeger v. Unemployment Appeals Commission*, 786 So. 2d 48 (Fla. 3d DCA 2001), the court held that the claimant had established good cause when she had formally complained to the employer and it had finished its investigation without indicating it was taking any further action.

The requirement of attempting to address harassment with the employer is also consistent with Title VII and FCRA analysis. Under those laws, in cases where the harassment is conducted by a coworker or other non-supervisory individual, the employee must prove negligence on the part of the employer. *Vance v. Ball State University*, 133 S.Ct. 2434 (2013). In other words, the employer is liable for permitting a hostile environment if "the employer knew or should have known of the offensive conduct, but failed to take prompt remedial action." *Henson v. City of Dundee*, 682 F.2d 897, 905 (11th Cir. 1982).

Regardless of which analysis is used, Florida courts have uniformly held that the issue of whether a claimant brought the harassment to the attention of the employer and gave the employer a reasonable opportunity to engage in remedial action must be considered in determining whether a claimant who resigned from employment is qualified for benefits. Thus, the referee reached the correct conclusion on this issue.

In this case, the claimant did not present her allegations of harassing conduct to the employer's management prior to relinquishing her employment on the second occasion. The appeals referee expressly noted that the claimant never reported seeing her former supervisor's vehicle at the work site. The employer had previously demonstrated it was a company that would take remedial action in the face of harassing conduct, as evidenced by the discharge of the claimant's former supervisor when the employer became aware of his harassing conduct. Consequently, the

claimant's failure to approach the employer's corporate office or human resources department about the presence of her former supervisor's vehicle, the allegedly harassing conduct of the client company's safety manager, or her failure to challenge the issuance of the warning *prior* to tendering her resignation was unreasonable.

Finally, we address the claimant's argument that her medical condition necessitated her resignation. The record contradicts portions of paragraph 14 of the claimant's brief, wherein it is alleged the claimant was hospitalized in 2014. During the hearing, the claimant testified she was last hospitalized in December 2013, for stress and anxiety, and she had not been hospitalized since. Sometime after the claimant returned to work for this employer she became aware her former supervisor lived near her place of employment and, within the first three months at work, she saw his vehicle at the jobsite. The claimant, however, continued to work for the employer for an additional three more months and, per her testimony, had no hospitalizations during her second period of employment. The claimant testified that the complaints made by the client company's safety manager stressed her and, because of her heart condition, the stress created the possibility that she could "pass out." The claimant did not testify that she was medically advised to quit. While she had previously requested a leave of absence, the claimant testified she did not ask for a leave of absence after 2013. And, as noted above, the claimant did not present her complaints to the employer's corporate or human resources office during her second period of employment. The claimant testified she did not request a transfer during her second period of employment because she knew the employer had no more Panama City locations.[5] While the claimant's manager was aware the claimant had a heart condition, and was "looking into" surgery in the future, she was not aware if the claimant had previously been hospitalized for the condition.

This is not a case wherein an employee obtained new employment and shortly thereafter realized they could not physically perform their duties. *See Humble v. Unemployment Appeals Commission*, 963 So. 2d 956 (Fla. 2nd DCA 2007). S*ee also Vajda v. Unemployment Appeals Commission*, 610 So. 2d 645 (Fla. 3d DCA 1992). Nor has the claimant demonstrated that her health condition required her to relinquish employment. The claimant's failure to request a transfer during her second period of employment precludes a conclusion that the employer could not accommodate the needs of the claimant's medical condition. *See Large v. Unemployment Appeals Commission*, 927 So. 2d 1066 (Fla. 4th DCA 2006). Consequently, the claimant has not demonstrated that the referee's decision disqualifying her from benefits must be reversed.

---

[5] The Commission notes that, during the claimant's first period of employment, she asked her supervisor, who she asserted sexually harassed her, for a transfer. When asked how she knew there were no positions to transfer to during her second period of employment the claimant only asserted that she "would know because [she] works for the company."

The Commission notes that the claimant's Notice of Appeal was filed by a representative for the claimant. Section 443.041, Florida Statutes, provides that a representative for any individual claiming benefits in any proceeding before the Commission shall not receive a fee for such services unless the amount of the fee is approved by the Commission. The claimant's representative shall provide the amount, if any, the claimant has agreed to pay for services, the hourly rate charged or other method used to compute the proposed fee, and the nature and extent of the services rendered, not later than fifteen (15) days from the date of this Order.

The referee's decision is affirmed.

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

2/26/2015 ,

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

*31255371 *

Docket No.0022 8646 08-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellee ***EMPLOYER/Appellant***

APPEARANCES Claimant

Employer

Claimant Representative

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 previously worked full time as a security guard for the employer, a security company, from January 2,

2013 until December 2013. The claimant separated from the employer based on sexual harassment from her supervisor. The claimant returned to work for the employer on or about early January 2014, after the employer discharged the supervisor for sexual harassment. The claimant returned to work her second period of employment with a new supervisor. Once in February 2014 and once in early March 2014, the claimant saw vehicle consistent with the vehicle driven by her former supervisor. The claimant never reported either incident to her new supervisor or human resources. On Friday, May 16, 2014, the claimant was issued a written warning after her supervisor verified a report that seven vehicles were on company property with invalid passes and/or no passes. Vehicle verification was required per the employer's compliance with Homeland Security. After she received the warning, the claimant informed her supervisor that she was going to quit. The supervisor advised the claimant to think about her decision to quit over the weekend. On May 19, 2014, the claimant submitted a letter of resignation. On May 29, 2014, the claimant quit.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that temporarily terminated the claimant's work within the previous 6 calendar months, or to relocate due to a military connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification.

The record reflects that the claimant was the moving party in the separation. Therefore, the claimant is considered to have voluntarily 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). Consideration was given to the claimant's contention that she quit due to sexual harassment from a previous supervisor. The record reflects that the employer discharged the former supervisor prior to the claimant's new period of employment. Therefore, the claimant's contention is irrelevant to the second period of employment.

The evidence indicates that the claimant quit after receiving a written reprimand. When an employee, in the face of allegations of misconduct, chooses to leave the employment rather than exercise a right to have the allegations determined, such action supports a finding that the employee voluntarily left the job without good cause. Board of County Commissioners, Citrus County v. Florida Department of Commerce, 370 So.2d 1209 (Fla. 2d DCA 1979).The generally accepted standard for determining good cause for leaving employment was pronounced in Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). Uniweld involved an office worker who quit her employment because the corporate president had a habit of yelling and screaming at his employees. The court held that the claimant failed to demonstrate good cause for leaving her employment. It reasoned: To voluntarily leave employment for good cause, the cause must be one which would reasonably impel the average able bodied qualified worker to give up his or her employment. . . . The applicable standards are the standards of reasonableness as applied to the average man or woman, and not to the supersensitive. 277 So.2d at 829. (citations omitted). The court further observed: It would be indeed a dull and unimaginative employee who, upon quitting, could not dredge up and highlight some friction point in the past employment relationship. Just as a matter of common sense and everyday experience, we believe every person who has experienced the employment situation has had some special pet gripe, grudge or grievance, which could be pumped up and elevated into a cause if desired. . . . The average employee has, or should have, a modicum of tolerance and an ability to bear these matters which do not markedly impress or bother the average fellow worker. 277 So.2d at 829 30. While the claimant may have had good personal reasons for quitting, it has not been shown that the decision to quit was impelled by any action on the part of the employer. Accordingly, the claimant should be disqualified from the receipt of unemployment benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The Reemployment Assistance Appeals Commission set forth factors to be considered in resolving credibility questions. These include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the employer to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

60BB-5.009 Fees.

(1) Any attorney or authorized representative who represents a claimant in any proceeding governed by these rules shall disclose orally on the record, or by post hearing motion, the amount, if any, the claimant has agreed to pay for his or her services. The attorney or representative shall also disclose the hourly rate charged or other method used to compute the proposed fee and the nature and extent of the services rendered.

(2) The appeals referee shall approve, reduce or deny the proposed fee by written order which may be included in the decision upon the merits of the appeal.

Specific Authority 120.80(10)(a) (c), 443.012(3), (11), 443.151(4)(d) FS. Law Implemented 443.041(2), 443.151(4)(d) FS. History New 5 22 80, Formerly 38E 5.09, 38E 5.009.

The claimant had legal representation at the hearing. The attorney's fee to represent the claimant is $750; the appeals referee approves the fee to be paid by the claimant.

Decision: The determination dated July 3, 2014 is REVERSED. The claimant is disqualified from the receipt of reemployment assistance benefits from the week ending May 31, 2014, and until the claimant earns $3,893.

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 August 15, 2014.

KAREN GILBERT
Appeals Referee

By: Robyn L Deak

ROBYN L. DEAK, 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 definitif sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20yèm 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.
