STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 14-05679

vs.

Referee Decision No. 0023634516-02U

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 not disqualified from receipt of benefits and charged the employer's account.

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 previously worked full time as a Prepped Food Specialist at a retail grocery store from August 16, 2008 through June 13, 2014. In August 2013, his mother who lived out of state was diagnosed with cancer. In May 2014, the claimant's mother was given six months to live. The claimant informed the Store Manager that he would be quitting and his last day would be June 7, 2014. The claimant did not find asking for a leave of absence to be helpful as the claimant intended to care for his out of state mother until she died. The claimant then changed his last day at work to June 13, 2014. On June 13, 2014, the claimant worked his last day and his employer informed the claimant to call back when he was back in the state.

Based on these findings, the referee held the claimant voluntarily left work with good cause and held the employer's tax account to be charged on this claim. 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.

The referee's findings of fact are supported by competent, substantial evidence and are adopted by the Commission. We also note the undisputed evidence reflects that, at the time of the claimant's resignation, he advised his employer he was retiring to care for his mother during her final stage of cancer. Indeed, he withdrew funds from his retirement account with the employer. The claimant's mother died approximately seven weeks after his last day of work with the employer.

Section 443.101(1)(a), Florida Statutes, denies payment of benefits to persons who voluntarily leave a job, unless the leaving was for good cause attributable to the employer which would compel a reasonable employee to cease working; due to the claimant's personal illness or disability that required separation; or to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.

The referee held the claimant's quitting was not disqualifying under the family emergency exception. Under that doctrine, the exception from disqualification for voluntarily quitting due to *personal* illness, set forth above, has been extended by courts to encompass the illness or death of a family member;[1] however, those cases involved circumstances where the employer declined leave or other reasonable accommodation requested by the employee prior to quitting. *See Ramirez v. Reemployment Assistance Appeals Commission*, 135 So. 3d 408 (Fla. 1st DCA 2014) (employee's voluntarily leaving work to attend to a family emergency after the employer declined to give her time off without knowing a precise date when she would return was encompassed by the statutory exception for good cause attributable to illness or disability); *Andres v. Florida Unemployment Appeals Commission*, 888 So. 2d 119 (Fla. 4th DCA 2004) (employee's quitting after the employer refused reasonable accommodations she requested to attend to her seriously ill child was not disqualifying under family emergency exception).

---

[1] The family emergency exception also has been applied by courts in cases involving discharges. Courts have held that a temporary, unapproved absence from work to attend to a family emergency, with proper notice to the employer, does not constitute disqualifying misconduct. *See*, *e.g.*, *Szniatkiewicz v. Unemployment Appeals Commission*, 864 So. 2d 498 (Fla. 4th DCA 2004) (where the evidence showed the claimant had no intention of quitting his job, responding to a legitimate family emergency did not constitute misconduct connected with work). In this case, the claimant resigned, thus the cases involving discharges for absenteeism due to a family emergency are not applicable here.

The genesis of the family emergency exception is not in the statute, but rather it was developed exclusively in case law. *Accord Tittsworth v. Unemployment Appeals Commission*, 920 So. 2d 139 (Fla. 4th 2006). The Commission strictly construes the family emergency exception in accordance with existing case law because it is not authorized to develop nor extend an exception not contemplated in the plain language of the statute.

In *Ramirez*, the court described the family emergency exception as follows:

> When there is evidence of a genuine family emergency, a claimant cannot be denied benefits because he or she either voluntarily quit or committed misconduct, because leaving work for such emergency constitutes good cause under [Section 443.101(1)(a), Florida Statutes], rather than disregard of the employer's interests.

135 So. 3d at 409-410.

Notwithstanding the court's description of the broad scope of the family emergency exception, a close review of the case law reveals the family emergency doctrine has never been applied by the courts in a scenario where an employee voluntarily quit due to the illness of a family member without having first requested *and been denied* leave or other accommodation by the employer, as are the circumstances in this case. Thus, any statement in *Ramirez* that the doctrine is applicable to such a situation is considered non-binding dicta. Indeed, in *Tittsworth* the Fourth District Court of Appeal declined to apply the family emergency exception where the employee left work to go to Colombia to care for a sick family member where there was no evidence she asked the employer if she could do so and still retain her job. 920 So. 2d at 140-41.

Moreover, extending the exception to the circumstances described here disregards important policy considerations. First, the overarching goal of the reemployment assistance program law is to altogether avoid unemployment in the first place, to the extent feasible. *See* §443.031, Fla. Stat. (the purpose of Chapter 443 is to promote employment security). That goal is promoted by several statutory provisions, including those that discourage job separations through disqualifications from benefits for claimants who unnecessarily cause separations, *see generally* §443.101, Fla. Stat., as well as provisions that render ineligible claimants who remain unemployed longer than necessary. *See generally* §443.091, Fla. Stat. Also in furtherance of the goal of employment security, a principle long-established in the

case law holds that an employee will be disqualified for quitting if he does not exercise due diligence in attempting to maintain employment. *Borakove v. Florida Unemployment Appeals Commission*, 14 So. 3d 249, 251 (Fla. 1st DCA 2009) (citing *Glenn v. Florida Unemployment Appeals Commission*, 516 So. 2d 88, 89 (Fla. 3d DCA 1987)).

In this case, the claimant did not request a leave of absence or other accommodation from the employer. Instead, the claimant told the employer he was retiring and withdrew funds from his retirement account, giving the employer no indication that he wished to maintain employment while he attended to his mother. The claimant testified he did not ask for a leave of absence because he did not know how much time he would need. However, the record does not reflect that a leave of absence request under such circumstances would have been futile. Indeed, cases before the Commission demonstrate that employers routinely grant leaves of absence of indefinite length, the period of which instead depends upon the occurrence of a reasonably ascertainable future event. Since the record does not establish the claimant made any attempt to maintain his employment instead of becoming unemployed, his condition of unemployment does not appear to have been out of necessity. Consequently, the claimant must be disqualified from benefits.

We recognize that "[s]ympathy and a degree of legal leniency are justifiably on the side of the employee who has a family emergency." *Ramirez*, 135 So. 3d at 411 (Makar, J., dissenting). However, the Commission cannot ignore or second-guess the wisdom of the plain language of the statute nor the overriding public policy concerns of the Legislature with respect to the reemployment assistance program law.

We further note that the referee erred by holding the employer's account chargeable for benefit payments made to the claimant in connection with this claim. Even if the family emergency exception were applicable in this case, in the absence of evidence that the claimant made a request of the employer for leave or other accommodation that was denied, the claimant's quitting cannot be deemed attributable to the employer. In addition, since agency records reflect this employer timely responded to the notice of claim filed (UCB-412), the employer's account cannot be charged for benefit payments made to the claimant. *See* §443.131(3)(a), Fla. Stat.

The decision of the appeals referee is reversed. The claimant is disqualified from receipt of benefits for the week ending June 14, 2014, and until he becomes reemployed and earns $4,675. As a result of this decision of the Commission, benefits received by the claimant for which the claimant is not entitled may be considered an overpayment subject to recovery, with the specific amount of the overpayment to be calculated by the Department and set forth in a separate overpayment determination.

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 3/24/2015, 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

*33760536 *

Docket No.0023 6345 16-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES Claimant

DECISION OF APPEALS REFEREE

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

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), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

Issues Involved: CHARGES TO EMPLOYER'S EMPLOYMENT RECORD: Whether benefit payments made to the claimant will be charged to the employment record of the employer, pursuant to Sections 443.101(9); 443.131(3)(a), Florida Statutes; Rules 73B-10.026; 11.018, Florida Administrative Code. (If charges are not at issue on the current claim, the hearing may determine charges on a subsequent claim.)

Findings of Facts: The claimant previously worked full time as a Prepped Food Specialist at a retail grocery store from August 16, 2008 through June 13, 2014. In August 2013, his mother who lived out of state was diagnosed with cancer. In May 2014, the claimant's mother was given six months to live. The claimant informed the Store Manager that he would be quitting and his last day would be June 7, 2014. The claimant did not find asking for a leave of absence to be helpful as the claimant intended to care for his out of state mother until she died. The claimant then changed his last day at work to June 13, 2014. On June 13, 2014, the claimant worked his last day and his employer informed the claimant to call back when he was back in the state.

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 shows the claimant 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).

In Andres v. State Unemployment Appeals Comm'n, 888 So. 2d 119 (Fla. Dist. Ct. App. 4th Dist. 2004), the Court found a claimant was qualified to receive benefits after quitting her job because her employer denied her request for a leave of absence or change in hours to care for her ill daughter. The Court affirmed the referee's decision that the claimant had good cause attributable to the employer for quitting. In Marchese v. Unemployment Appeals Comm'n, 946 So. 2d 123 (Fla. Dist. Ct. App. 4th Dist. 2007), a worker quit her job because she was denied a leave of absence after her nanny left. The claimant argued that she chose not to return to work because a family emergency existed. The court found that a family emergency did not, in fact, exist. Consequently, because the claimant left work without good cause attributable to her employer, she was not entitled to unemployment benefits.

In Order #08-04356the Unemployment Appeals Commission cited Tittsworth v. Unemployment Appeals Commission, 920 So.2d 139 (Fla. 4th DCA 2006) and enumerated factors to be considered when a claimant leaves a job to address a family member's need for medical care. These include whether the claimant had the option of taking a leave of absence with reasonable, defined parameters, whether the claimant gave the employer an opportunity to provide such a leave, and whether the claimant made a reasonable request for time off or other temporary accommodation to address a family emergency. If such a request was made, the referee must then determine whether the employer's denial of such leave or accommodation was unreasonable and would reasonably impel the average able-bodied qualified worker to leave gainful employment.

The testimony provided by the claimant demonstrates by a preponderance of the evidence that the claimant quit for good cause as the cause would reasonably impel the average able-bodied qualified worker to give up his or her employment. The claimant's mother was given six months to live given her most recent cancer diagnosis. A legitimate family emergency existed and the claimant honorably traveled out of state to care for his dying mother until her death. While the claimant did not ask for a leave of absence, this was reasonable given his intent to care for his mother until the day she died. The claimant had no knowledge of when his mother would die and could not plan accordingly with his employer. The claimant quit for good cause. Therefore, the claimant is qualified for receipt of reemployment benefits beginning June 8, 2014. The employer's tax account will be charged on this claim.

Decision: The determination dated September 2, 2014 is AFFIRMED. The claimant is qualified for receipt of reemployment benefits beginning June 8, 2014. The employer's tax account will be charged on this claim.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the department and set forth in a separate overpayment determination, unless specified in this decision. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on October 15, 2014.

Roberto Castillo
Appeals Referee

By: Jessica Cain

Jessica Cain, 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 distribution/mailed 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 distribución/fecha de envìo 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 distribisyon/postaj. 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.
