STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-06037

vs.

Referee Decision No. 0023526340-03U

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. The Commission's review is generally limited to the evidence and issues before the referee and 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.

I.
Procedural Background

This case originates from the claim for benefits filed by the claimant effective July 6, 2014, following her separation from this employer. On August 8, 2014, Department of Economic Opportunity ("D.E.O.") Adjudication issued a "Notice of Approval" nonmonetary determination, Issue Identification No. 0023232530-01, concluding that the claimant's separation from [another employer] was under non-disqualifying circumstances. On August 20, 2014, D.E.O. Adjudication entered a "Notice of Disqualification" nonmonetary determination, Issue ID #0023526340-01, regarding the claimant's separation from [this employer], concluding that the claimant had voluntarily quit her employment without good cause attributable to the employer.

Our review of the claimant's records indicate that D.E.O. properly issued two nonmonetary determinations in this case. According to the claimant's Wage Transcript and Determination ("WTD"), the claimant ceased employment with [the other employer] on or about December 31, 2013, and became employed by this employer on or about January 1, 2014. This appears to have been solely an administrative transfer between employer accounts. While the claimant may not have noticed any difference in her employment, the administrative transfer of the claimant's employment from [the other employer's] account to [this employer's] account constituted a separation and hire under the reemployment assistance law. However, adjudication incorrectly analyzed the separation from [the other employer] under the facts from [this employer's] separation. The claimant's administrative termination from [the other employer] constituted a separation for reasons other than misconduct and was correctly adjudicated as non-disqualifying, although for the wrong reason. Because the history of this case indicates that the parties correctly litigated the subsequent separation from this employer, we do not address the initial determination any further.

After the disqualifying nonmonetary determination, the claimant appealed the denial of benefits to the Office of Appeals for a hearing. According to the record of the September 19, 2014 hearing, the referee made no attempt to contact the employer because it had not provided a contact number. The September 19, 2014 hearing, in which the referee took testimony from the claimant regarding the reasons for her voluntary separation, resulted in a decision issued that date in the claimant's favor, concluding that she quit with good cause attributable to the employer. The employer timely moved to reopen the case as authorized by Florida Administrative Code Rule 73B–20.017. Accordingly, the referee rescinded the prior decision, reopened the case for a hearing on whether the employer had good cause for failing to appear at the initial hearing, and, if necessary, a hearing on the merits of the separation determination.

At the second hearing on October 28, 2014, the referee inquired as to why the employer failed to appear at the prior hearing. The co-owner testified that he received the notice of hearing, and saw the language regarding the need to provide contact information, but believed it was not necessary to call because the notice reflected his correct contact number. He also testified that the language was confusing because it also advised that, if no number or an incorrect number was shown, to call and advise the Deputy Clerk. After adducing this testimony and hearing argument on the issue of good cause, the referee proceeded to the merits of the case. After receiving additional evidence from the parties, the referee issued a decision on October 29, 2014, holding that the employer had good cause for

non-appearance, and affirming the disqualifying determination holding the claimant disqualified for voluntarily resigning without good cause attributable to the employer. The claimant timely appealed this decision to the Commission, and the parties have provided briefs regarding the issues raised by the claimant.

II.
The Decision Below

The referee's October 29, 2014 decision concluded that the employer had shown good cause for its failure to appear at the first hearing. As to the merits, the referee's findings of fact recite as follows:

> The claimant worked for [the employer], from November 25, 2007 to June 27, 2014. At the time of separation, the claimant was a store manager. In March 2014, the claimant began to feel that the vice president, who was the claimant's immediate supervisor, was mistreating the sales associates in the claimant's store. The vice president allegedly made comments such as that the girls were not doing their jobs, or made remarks regarding the sales associates' clothes and demeanor. The claimant did not address these issues directly with the vice president. On May 30, 2014, the claimant sent one of [the owners,] an email stating that the claimant had some concerns and would like to discuss them with [the owner] at some point. [The owner] responded, via email, instructing the claimant to talk to the vice president or other personnel. The claimant then sent [the owner] an additional email on June 1, 2014 stating that she would still like to discuss some matters with [the owner]. [The owner] did not respond to the email.
>
> On June 27, 2014, the claimant was called to a meeting. The claimant, the vice president, and the two owners of the company were present at the meeting. The purpose of the meeting was to present the claimant with a written warning for violating the employer's policy regarding tracking sales associate sales goals. During the meeting, [the owner] equated the claimant's policy violations, in which the claimant re-directed sales to other associates so that all associates could get sales, to a communistic principle. [The owner] also [likened] the resulting rewards these associates received to theft because the rewards were being received by the associates due to the policy violations regarding distributing sales. The claimant was told that she could either

> comply with the policy and remain a store manager, become a key-holder at her same rate of pay, or return to a non-managerial position. The claimant was then asked to sign the written warning. The claimant had never received any other disciplinary warnings from the employer. The claimant signed the warning. Towards the end of the meeting, the claimant stated that she was not feeling well. The meeting was then ended at that time.
>
> When the claimant left the meeting she went back to her store to drop off supplies and left her keys at the store. On June 28, 2014, the claimant's husband sent [the owner] an email, copying the [other owner,] in which the claimant's husband stated that the claimant was leaving her position with [the employer] because her health was in jeopardy due to "continuous harassment," specifically citing the meeting on June 27, 2014. No further contact was made by either party. The employer was unaware of any ongoing health issues the claimant may have had at the time she quit. The claimant did not ask the employer for any type of medical leave prior to quitting.

Based upon the above findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit, concluding in pertinent part:

> The record reflects that the claimant voluntarily quit. The burden of proof is on the claimant who voluntarily [quits] work to show by a preponderance of the evidence that quitting was with good cause. Uniweld Products, Inc. v. Industrial Relations Commission, 277 So. 2d 827 (Fla. 4th DCA 1973). In the instant case, the claimant provided testimony indicating that she quit for health reasons. However, after considering the totality of the claimant's testimony, the hearing officer does not find that the claimant quit because of her health. The claimant testified that she would never have quit her job if it were not for the treatment she endured during the June 27, 2014 meeting. Accordingly, the hearing officer finds that the claimant quit due to conflicts with management. Furthermore, even if the claimant did quit for health reasons, the record reflects that she made no attempts to preserve her employment by requesting a leave of absence or something of the like. Therefore, the claimant's decision to quit is still considered disqualifying.

Ultimately, the claimant quit because of what occurred during the June 27, 2014 meeting between herself, the owners, and the vice president. The hearing officer was presented with conflicting testimony regarding what transpired during that meeting. After considering the testimony and evidence presented, the hearing officer finds the employer's version of events more plausible. The law provides that 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." *See Uniweld Products*, 277 So. 2d at 829. In *Uniweld*, the court noted that the employer frequently yelled at the claimant, but found the claimant's quitting was not shown to be with good cause where no evidence was presented to show the claimant's health or welfare was in any danger or jeopardy. In the instant case, the hearing officer does not find that the events of the June 27, 2014 meeting would impel a reasonable person to give up employment. The standard of reasonableness in determining good cause for quitting is that of the average person, not the super-sensitive. *Id*. The evidence of record more aptly describes the claimant as super-sensitive. While the hearing officer understands that the claimant may have been upset because she was receiving her first reprimand and because her actions, which resulted in the warning, were described as communistic and akin to theft, these comments, standing alone, do not justify the claimant's decision to quit without trying to preserve her employment.

While the claimant testified that she had a difficult relationship with the vice president, she provided no testimony to suggest that she had ever experienced similar issues with either of the owners. Accordingly, if the claimant was upset about what had transpired in the meeting, she had a duty to at least address it with the owners to see if it could be worked out before quitting. While there is an argument to be made that the claimant's past difficulties with the vice president, that had gone unresolved, may have factored into the claimant's decision to quit without speaking to the owners, this argument is respectfully rejected. The hearing officer was given conflicting testimony regarding the relationship between the claimant and the vice president. After considering all relevant testimony and evidence, the hearing officer finds that if

> there were issues between the two, they were one-sided. The claimant did not speak directly to the vice president about any misgivings the claimant had about their relationship or the vice president's treatment of the claimant and her workers. Additionally, the record reflects that the claimant sent [the owner] two emails regarding wanting to speak with her at some point. The evidence presented shows that [the owner] responded to one of the emails. However, the emails do not specifically identify the vice president as the issue that needs to be discussed. Based on the testimony and evidence presented, the hearing officer does not find that the claimant made a sufficient effort to inform the owners about the problems she was having with the vice president specifically. Accordingly, the employer was unable to correct an issue that it did not know existed. The claimant has failed to meet her burden to prove that she quit with good cause attributable to the employer, or for other non-disqualifying reasons. Accordingly, the claimant is disqualified from receiving benefits.

Based on these findings and conclusions, the referee affirmed the underlying determination of August 20, 2014, resulting in the claimant's disqualification from receipt of benefits.

III.
The Issues on Appeal

On appeal to the Commission, the claimant raises three assertions of error: first, that the referee erred in concluding the employer had good cause for its non-appearance at the September 19, 2014 hearing; second, that the referee erred in concluding the claimant did not have good cause attributable to the employer for voluntarily resigning; and third, that the claimant had good cause to resign due to her health requiring separation from employment, and that the referee did not properly recognize or address the issue. Each of these issues will be analyzed separately.

IV.
Analysis

A. *Whether the Referee Erred in Concluding that the Employer Established Good Cause for Not Appearing at the First Hearing.*

In her request for review ("RFR"), the claimant contends that the referee erroneously concluded that the employer had good cause for its failure to appear at the first hearing. Specifically, the claimant contends, apparently based on the claimant's representations which are not in the hearing recordings except through counsel's assertions [Transcript of October 28, 2014 hearing ("10/28/14 Trans.") at 18], that the referee attempted to telephone the employer but was unable to get an answer. [RFR at 6-7.] The claimant also contends that the hearing recording does not include the referee's attempt to reach the employer, prejudicing the claimant's ability to attack the finding of good cause. [RFR at 6.]

Contrary to the claimant's argument, not only does the recording of the first hearing not indicate an attempt to contact the employer, it implies that the referee made no such attempt. The referee stated on the record at the beginning of the September 19, 2014 hearing that the employer had not provided a contact number, which generally indicates, absent further explanation by the referee, that she will not attempt to call the party. Thus, the extant record indicates that no effort was made to contact the employer at the September 19, 2014 hearing. Regardless, in the absence of any hearing record demonstrating that the referee complied with the Commission's requirement to make two attempts on the record at least 10 minutes apart to contact the party, reopening must be granted where a party credibly contends it was available for the hearing at the identified telephone number. *See*, *e.g.,* U.A.C. Order No. 11-11183 (August 24, 2011); U.A.C. Order No. 11-05783 (June 23, 2011).

With respect to the issue of good cause for non-appearance, both the Commission and the courts strongly favor resolution of cases on the merits. *See*, *e.g., Milner v. Unemployment Appeals Commission*, 82 So. 3d 1026, 1028 (Fla. 1st DCA 2011) (citing prior cases). Where a party has made meaningful efforts to be available for a hearing, and promptly seeks reopening when it learns it has missed the hearing, it has met the requirements of the rule. Good cause under the rule does not require a party to exercise perfect judgment, provided some diligence is shown. We recognize that many parties are unfamiliar with the hearing procedure, and that normal human error may occur. In this case, the employer's testimony indicated

that it did not provide contact numbers immediately prior to the hearing because the hearing notice reflected the correct telephone number, and the language of the notice was confusing as to whether the employer had to provide contact information if the correct number was listed. [10/28/14 Trans. at 15-17.] The relevant notice was as follows:

> ***Note to Employer:*** **AT LEAST 24 HOURS BEFORE THE HEARING, PROVIDE THE DEPUTY CLERK WITH THE NAME AND TELEPHONE NUMBER OF THE PERSON WHO WILL REPRESENT THE EMPLOYER AT THE HEARING.**
>
> ***IMPORTANT***: The appeals referee will telephone you for the hearing at the number shown above. If no number is shown or a different number should be dialed, contact the deputy clerk at once and provide the correct contact name and number.

The issue of good cause is a mixed issue of fact and law. The referee must evaluate the credibility of the non-appearing party's testimony, and properly apply findings to the legal standards of what constitutes good cause. In this case, the referee correctly concluded that the employer's reason for non-appearance was the referee's failure to contact it. This failure to contact was due to the employer's failure to call in a specific contact name for the hearing because of its confusion as to whether it had to provide additional information when its contact number was correctly listed. The employer is correct that the language of the notice above can be read as somewhat ambiguous in the situation where a party's contact number is correct, but it has not provided a specific contact person. Indeed, where a party's non-appearance is the result of unclear notice, the good cause issue may implicate due process. Moreover, we emphasize that where a file indicates that a party has not provided a specific contact person in response to the notice of hearing, but the file contains a telephone number, the referee should at least attempt to contact the party at that number. The requirement in the notice of hearing that a party provide contact information in advance of the hearing serves the purpose of facilitating the referee's efforts to reach the correct individuals for the hearing, and should be complied with, but it does not excuse a referee from making some effort to contact the party at whatever phone number is available.

Additionally, the claimant notes that the referee did not explicitly rule on the issue of good cause for non-appearance prior to proceeding to the merits portion of the hearing. The claimant is correct that Commission rules require the referee to reach the threshold issue of good cause for nonappearance before proceeding to the merits. While the best practice is to rule on the issue on the record prior to taking evidence on the merits, it is not harmful error when the referee fails to do so, in the

absence of some showing of prejudice. Additionally, we recognize that many referees take the issue under advisement when the non-appearing party has made an initial showing of possible good cause, in order to give themselves the opportunity to consider the issue further or review the file. We find no reversible error in the referee's handling of the good cause issue.

B. *Whether the Referee Erred in Holding that the Claimant Failed to Establish She Resigned with Good Cause Attributable to the Employer.*

Section 443.101(1)(a), Florida Statutes, provides that an individual shall be disqualified from receipt of benefits for voluntarily leaving work without good cause attributable to the employing unit. Under the statute, "the term 'good cause' includes only that cause attributable to the employing unit which would compel a reasonable employee to cease working." §443.101(1)(a)1., Fla. Stat. *See also Uniweld Products, Inc. v. Industrial Relations Commission*, 277 So. 2d 827, 829 (Fla. 4th DCA 1973) (holding good cause is such cause as "would reasonably impel the average able-bodied qualified worker to give up his or her employment").

As stated in the preceding section, the referee concluded, based on the specific findings and credibility determination, that the claimant failed to establish that her voluntary resignation was with good cause attributable to the employer. Because the issue of good cause is an ultimate issue, the Commission views it as a mixed issue of fact and law. *See S. Fla. Cargo Carriers Ass'n v. Dep't of Bus. & Prof'l Regulation*, 738 So. 2d 391, 392-94 (Fla. 3d DCA 1999) (adopting order of the agency, and *citing McDonald v. Dept. of Banking and Finance*, 346 So. 2d 569, 578-79 (Fla. 1st DCA 1977)). *See also Tourte v. Oriole of Naples, Inc.,* 696 So. 2d 1283, 1284 (Fla. 2d DCA 1997) (noting that courts have held the issue of good cause to be an issue of fact, an issue of law, and a mixed issue of law and fact). Thus, while the referee's basic or "subsidiary" findings are reviewed under the competent, substantial evidence standard, the referee's ultimate conclusion must be supported by subsidiary findings, and comport with numerous established legal principles. Depending on the case, the outcome may functionally turn on resolution of the contested subsidiary facts, or on the application of the legal standards to the subsidiary findings. In this case, as in many, the ultimate decision turns on contested issues of fact.

As to the issue of good cause attributable to the employer, there were a number of material disputes of fact as to what was said and done and when, and how it was said and done, at the meeting between the claimant and management on June 27, 2014. The referee entered findings and conclusions consistent with the employer's evidence, and specifically found the employer's testimony more credible. While the claimant challenges the ultimate decision as to good cause, the claimant

has not identified any subsidiary finding that she contends is not supported by competent, substantial evidence. Moreover, given the subsidiary findings, we conclude the referee's ultimate decision is not only correct, but inescapable under the existing legal standards. Under the believed evidence, the employer did no more than give a written warning to a manager who had failed to follow and enforce a known employer policy because she disagreed with it. The claimant explained that the policy would not work at her location, but the employer has the right to require an employee to follow its directives even if the subordinate disagrees with the wisdom of the policy. The claimant may not have liked the management style of the employer's vice president, but the credited evidence does not demonstrate the type of conduct that would give an employee good cause to quit. Accordingly, we find no error as to the referee's conclusion that the claimant failed to establish good cause to quit attributable to the employer.

C. *Whether the Claimant Established that She Resigned with Good Cause Due to Injury or Disability.*

Finally, the claimant contends that she had good cause to quit due to "illness or disability of the individual requiring separation from his or her work," citing Section 443.101(1)(a)1., Florida Statutes. [RFR at 12.] Much of the argument the claimant provides for this proposition, however, relies upon the claimant's testimony that was rejected by the referee in favor of the employer's evidence. Thus, in analyzing the issue of good cause to quit due to health, we must interpret the factual record in the light of the referee's findings and employer's credited testimony regarding the events of June 27, 2014.

The claimant's testimony regarding her health was primarily provided at the September 19, 2014 hearing. The claimant testified that she was feeling ill on the morning of June 27, 2014, so her husband drove her to the meeting. During the meeting, she became nauseous, feeling like she might vomit. After the meeting, the claimant was so upset she was shaking and felt like she was about to have a nervous breakdown. She went to her store to drop off some supplies, went home and tried to calm herself down. She was up during the night with chest pains and had a migraine headache. The next day she went to the hospital because of chest pains, the headaches and feeling nauseous, as well as feeling stressed. While at the hospital, her doctor told her that "she needed to get away from the stress they were inducing to [her]" and that "she could no longer be subject to that kind of stress." The claimant also provided as evidence documents from her hospital visit. They

reflect that she was given a cardiac evaluation protocol, a CT scan, and prescriptions for a narcotic pain medication and an anti-nausea medication.[1] The discharge instructions reflected that she was instructed to follow-up with her primary care provider. The discharge instructions do not indicate she was released with any limitations on her ability to work.

Because the referee did not make specific findings regarding the claimant's health issues, we evaluate the claimant's evidence only to determine whether the claimant's evidence was sufficient, *if believed*, to establish good cause to quit due to health.

In determining whether an employee has good cause to resign due to illness or disability, the record must reflect that the health issues "required separation from work" as required by the statute. *See*, *e.g.*, *Stanick v. T & B Metal Works, Inc.*, 867 So. 2d 523 (Fla. 1st DCA 2004), *citing Vajda v. Unemployment Appeals Commission*, 610 So. 2d 645, 646 (Fla. 3d DCA 1992). In determining whether separation is required, we examine whether the claimant "is physically unable to perform the job duties." *See Large v. Unemployment Appeals Commission*, 927 So. 2d 1066, 1067 (Fla. 4th DCA 2006), *citing Krulla v. Barnett Bank*, 629 So. 2d 1005, 1007 (Fla. 4th DCA 1993). However, for this latter test to be satisfied, the record must reflect more than an inability of short duration. *See Borakove v. Unemployment Appeals Commission*, 14 So. 3d 249 (Fla. 1st DCA 2009) (affirming disqualification when the employee quit after only one day on the job). The record should demonstrate that the illness or disability *required* separation, which means that other alternatives such as an accommodation of some kind will not be or have not been effective, or have not been granted despite request. *See*, *e.g.*, *Reedy v. Unemployment Appeals Commission*, 19 So. 3d 1035, 1037 (Fla. 1st DCA 2009) (holding that the employer's failure to respond to the claimant's requests for "assistance, training, and support" resulting in increasing job-related stress and anxiety supported referee's decision finding good cause attributable to the employer). *Cf. Bogardus v. Justice Admin. Comm'n*, 943 So. 2d 256 (Fla. 3d DCA 2006) (claimant's failure to provide doctor's note and to ask for accommodations precluded finding of good cause attributable to the employer). Cases involving job-related stress must be carefully evaluated because stress, unlike organic injuries or longer-term mental health conditions, can be situational and short-term.

The record in this case contains no clear evidence of an organic, chronic physical condition or a mental health condition. The claimant testified that her conditions were caused by job-related stress. The Commission has evaluated cases involving stress or other acute psychological factors previously. In general, the

[1] Significantly, the physician did not prescribe any anti-anxiety or antidepressant medications.

Commission has focused on (1) the severity and duration of such conditions[2]; (2) whether the claimant received medical instructions and provided proof of the same to the employer which were not accommodated[3]; (3) whether the claimant made efforts to preserve her employment by at least attempting to obtain accommodation, including leave or change in the work environment, that might resolve any acute stress-related symptoms[4]; and (4) whether the stress was related to starting new employment which the claimant learns is unsuitable because of its effects on preexisting limitations.[5]

Considering this case in light of our past precedent, none of the factors which have generally led to a conclusion that separation is required due to health are present. This case instead involves a situation where the claimant, after the apparently acute onset of stress-related medical conditions, resigned simultaneously with notifying the employer of her health condition. She sought no accommodation, even though the employer had given her the choice of changing her job duties the day before, including a change which would not result in loss of pay.

The claimant's only significant evidence that her condition required her to resign was her testimony that her doctor told her to remove herself from the job-related stress. The record reflects, however, three significant limitations on this evidence. First, the claimant's testimony on this point did not indicate that she was told to resign; rather, the doctor indicated that she needed to remove herself from

---

[2] R.A.A.C. Order No. 13-03598 (June 27, 2013) (reversing disqualification, because the claimant had previously suffered a stroke, had taken several weeks of medical leave due to high blood pressure, and had been advised by physician not to return to the prior employer for health reasons); R.A.A.C. Order No. 13-03216 (May 17, 2013) (reversing disqualification, because the claimant had ongoing stress from employment leading to anxiety, high blood pressure, insomnia and loss of appetite, for which she was receiving medical treatment); U.A.C. Order No. 12-05838 (June 28, 2012) (reversing disqualification, because the claimant had ongoing panic attack and heart palpitations, and had been advised by physician to leave employment); and U.A.C. Order No. 11-12347 (September 22, 2011) (reversing disqualification, because the claimant was suffering ongoing emotional and mental effects from being sexually battered by a co-worker).

[3] R.A.A.C. Order No. 13-03976 (June 21, 2013) (reversing disqualification, because the claimant had received a physician's instruction to obtain bed rest, provided a note to the employer, and the employer failed to comply); R.A.A.C. Order No. 12-07130 (August 20, 2012) (reversing disqualification, because the claimant had received a physician's release, after FMLA leave due to stress and depression, which restricted her to 40 hours per week, less than her job required).

[4] R.A.A.C. Order No. 15-00482 (March 18, 2015) (reversing referee's decision and disqualifying the claimant, because the claimant failed to avail herself of offered leave for rest); R.A.A.C. Order No. 14-01949 (September 18, 2014) (reversing referee's decision and disqualifying the claimant, because the claimant failed to avail himself of opportunity to extend leave for rest to address stress and depression).

[5] U.A.C. Order No. 11-08593 (July 11, 2011) (reversing disqualification, because the claimant's stress related to new job was aggravating a prior disability); U.A.C. Order No. 10-02687 (May 28, 2010) (same).

the stress, which could have been addressed in other ways such as a change in job duties as offered by the employer. Evidence of a medical condition that does not indicate that leaving the job is required is insufficient in this context. *See*, *e.g., Hockaday v. D.C. Dept. of Employment Servs.*, 443 A.2d 8, 12 (D.C. Ct. App. 1982).

Second, the claimant's testimony was hearsay that does not fall within one of the hearsay exceptions. As such, it can only be used as "corroborative hearsay," that is, to corroborate, supplement or explain other admissible evidence. *See* §443.151(4)(b)5.c., Fla. Stat. In this case, however, the hearsay testimony is the only material testimony regarding whether the claimant's condition was sufficiently severe to require separation from employment, and the hearsay did not supplement or explain any of the medical records provided by the claimant; indeed, her discharge instructions make no mention of any work limitations.[6] In the absence of competent documentary medical evidence that the claimant's acute stress-related symptoms required immediate separation, there is insufficient competent, substantial evidence in *this* record to meet the claimant's burden of proof.

Our analysis comports with the approach of the majority of other states addressing voluntary separations due to stress-related conditions in the context of unemployment insurance cases. *See Eggleston v. Dept. of Employment Sec.*, 557 N.E.2d 534, 536-37 (Ill. App. Ct. 1990) (holding that good cause requires presenting medical documentation showing need to separate, providing employer notice, and accepting any accommodation); *Shafiee v. Grossman Chevrolet Co., Inc.*, 2003 Minn. App. LEXIS 1290 (Minn. Ct. App. October 28, 2003) (affirming denial of benefits where the record lacked any competent medical evidence of the necessity of separation); *Delgado v. Bd. Of Rev.*, 2015 N.J. Super. Unpub. LEXIS 980 (N.J. Super. Ct. App. Div. 2015) (holding that claimant's testimony, in the absence of medical documentation, was insufficient to establish good cause due to health); *Rhinehart v. Pennsylvania Unemployment Compensation Bd. of Rev.*, 389 A.2d 243, 246 (Pa. Commw. Ct. 1978) (holding hearsay testimony of claimant regarding advice from medical professionals unsupported by medical documentation could properly be disregarded by the hearing officer); *Mary Lee Foundation v. Texas Employment Commission*, 817 S.W.2d 725, 728-29 (Tex. Ct. App. 1991) (holding hearsay medical documentation regarding the employee's medical condition was improperly admitted to support finding of disability). *Accord Daves v. Sears Roebuck & Co.*, 502 S.W.2d 106, 109 (Ark. 1973) (holding that failure to authorize employer to obtain medical verification from physician of recommendation to change jobs precluded proof of preservation of employment).

---

[6] For these reasons, this case appears distinguishable from U.A.C. Order No. 12-05838, *supra*. However, to the extent it is not, we recede from the prior precedent as inconsistent with the statutory hearsay limitations.

Third, given the referee's rejection of the accuracy of the claimant's description of the events of June 27, 2014, the reliability of any medical advice which may have been based on the claimant's description could be called into question. For example, it is doubtful, given the claimant's testimony, that she ever discussed the possibility of another less-stressful position with the physician.

With respect to the referee's focusing on the issue of good cause attributable to the employer in lieu of also addressing good cause for health reasons, we note that the record evidence gave the referee reasons to do so. The claimant repeatedly testified that her resignation was the result of the way that she was treated on June 27, 2014, and that if the employer had not mistreated her that day, she would still be working for them. Because any adverse health effects were from the claimant's emotional (rather than rational) reaction to the employer's warning, the referee could reasonably have determined that the health concerns were secondary in this case, and they could have been resolved if the claimant had attempted to preserve her employment relationship.

V.
Conclusion

Because we find no error in the referee's conclusion as to any contested issues, and because we conclude, as a matter of law, that the claimant's evidence was insufficient to establish that she suffered from an illness or disability that required her to resign, we affirm the referee's decision.

The referee's decision is affirmed. The claimant is disqualified from receipt of benefits.

The Reemployment Assistance Appeals Commission has received the request of the claimant's representative for the approval of a fee for work performed in conjunction with the appeal to the Commission, as required by Florida Statutes Section 443.041(2)(a). In examining the reasonableness of the fee, the Commission is cognizant that: (1) in the event a claimant prevails at the Commission level, the law contains no provision for the award of a representative's fees to the claimant's representative, by either the opposing party or the State (i.e., a claimant must pay his or her own representative's fee); and (2) the amount of reemployment assistance secured by a claimant may be very small. The legislature specifically gave referees (with respect to the initial appeal) and the Commission (with respect to the higher-level review) the power to review and approve a representative's fees due to a concern that claimants could end up spending more on fees than they could reasonably expect to receive in reemployment assistance.

Upon consideration of the complexity of the issues involved, the services actually rendered to the claimant, and the factors noted above, the Commission approves a fee of $588.

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 7/16/2015, 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: Kady Ross
Deputy Clerk

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

*34326941 *

Docket No.0023 5263 40-03 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES Claimant

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: NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rules 73B-20.016; 20.017.

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.

NONAPPEARANCE: A hearing was scheduled in this matter for September 19, 2014 at 8:00 a.m. The employer did not appear at the scheduled hearing because it did not receive the call for the hearing. The employer faxed a letter to the Department on September 19, 2014, stating that it did not receive the call for the hearing and requesting that the hearing be rescheduled.

A case will be re-opened for a hearing on the merits when a party requests a reopening within 20 days of rendition of the decision and establishes good cause for not attending a previous hearing. If good cause is not established, the previous decision will be reinstated.

The record reflects that the employer did not appear at the September 12, 2014 hearing because it did not receive the call for the hearing. The employer's reason for failing to appear is considered compelling. The employer exercised due diligence in requesting re-opening within twenty days of the decision. Therefore, the employer has established good cause for its nonappearance and it entitled to a hearing on the merits of the case.

FINDINGS OF FACT: The claimant worked for the employer, , doing business as , from November 25, 2007 to June 27, 2014. At the time of separation, the claimant was a store manager. In March 2014, the claimant began to feel that the vice president, who was the claimant's immediate supervisor, was mistreating the sales associates in the claimant's store. The vice president allegedly made comments such as that the girls were not doing their jobs, or made remarks regarding the sales associates' clothes and demeanor. The claimant did not address these issues directly with the vice president. On May 30, 2014, the claimant sent one of the owners, , an email stating that the claimant had some concerns and would like to discuss them with at some point. responded, via email, instructing the claimant to talk to the vice president or other personnel. The claimant then sent an additional email on June 1, 2014 stating that she would still like to discuss some matters with . did not respond to the email.

On June 27, 2014, the claimant was called to a meeting. The claimant, the vice president, and the two owners of the company were present at the meeting. The purpose of the meeting was to present the claimant with a written warning for violating the employer's policy regarding tracking sales associate sales goals. During the meeting, equated the claimant's policy violations, in which the claimant re-directed sales to other associates so that all associates could get sales, to a communistic principle. also liken the resulting rewards these associates received to theft because the rewards were being received by the associates due to the policy violations regarding distributing sales. The claimant was told that she could either comply with the policy and remain a store manager, become a key-holder at her same rate of pay, or return to a non-managerial position. The claimant was then asked to sign the written warning. The claimant had never received any other disciplinary warnings from the employer. The claimant signed the warning. Towards the end of the meeting, the claimant stated that she was not feeling well. The meeting was then ended at that time.

When the claimant left the meeting she went back to her store to drop off supplies and left her keys at the store. On June 28, 2014, the claimant's husband sent an email, copying the other owner, , in which the claimant's husband stated that the claimant was leaving her position with because her health was in jeopardy due to "continuous harassment," specifically citing the meeting on June 27, 2014. No further contact was made by either party. The employer was unaware of any ongoing health issues the claimant may have had at the time she quit. The claimant did not ask the employer for any type of medical leave prior to quitting.

CONCLUSIONS OF LAW:The law provides that an individual will be disqualified for benefits who voluntarily leaves work without good cause attributable to the employing unit. Good cause is such cause as "would reasonably impel the average able-bodied qualified worker to give up his or her employment." Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). Moreover, an employee with good cause to leave employment may be disqualified if reasonable effort to preserve the employment was not expended. See Glenn v. Florida Unemployment Appeals Commission, 516 So.2d 88 (Fla. 3d DCA 1987). See also Lawnco Services, Inc. v. Unemployment Appeals Commission, 946 So.2d 586 (Fla. 4th DCA 2006); Tittsworth v. Unemployment Appeals Commission, 920 So.2d 139 (Fla. 4th DCA 2006).

The record reflects that the claimant 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 the instant case, the claimant provided testimony indicating that she quit for health reasons. However, after considering the totality of the claimant's testimony, the hearing officer does not find that the claimant quit because of her health. The claimant testified that she would never have quit her job if it were not for the treatment she endured during the June 27, 2014 meeting. Accordingly, the hearing officer finds that the claimant quit due to conflicts with management. Furthermore, even if the claimant did quit for health reasons, the record reflects that she made no attempts to preserve her employment by requesting a leave of absence or something of the like. Therefore, the claimant's decision to quit is still considered disqualifying.

Ultimately, the claimant quit because of what occurred during the June 27, 2014 meeting between herself, the owners, and the vice president. The hearing officer was presented with conflicting testimony regarding what transpired during that meeting. After considering the testimony and evidence presented, the hearing officer finds the employer's version of events more plausible. The law provides that 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." See Uniweld Products, 277 So.2d at 829. In Uniweld, the court noted that the employer frequently yelled at the claimant, but found the claimant's quitting was not shown to be with good cause where no evidence was presented to show the claimant's health or welfare was in any danger or jeopardy. In the instant case, the hearing officer does not find that the events of the June 27, 2014 meeting would impel a reasonable person to give up employment. The standard of reasonableness in determining good cause for quitting is that of the average person, not the super-sensitive. Id. The evidence of record more aptly describes the claimant as super-sensitive. While the hearing officer understands that the claimant may have been upset because she was receiving her first reprimand and because her actions, which resulted in the warning, were described as communistic and akin to theft, these comments, standing alone, do not justify the claimant's decision to quit without trying to preserve her employment.

While the claimant testified that she had a difficult relationship with the vice president, she provided no testimony to suggest that she had ever experienced similar issues with either of the owners. Accordingly, if the claimant was upset about what had transpired in the meeting, she had a duty to at least address it with the owners to see if it could be worked out before quitting. While there is an argument to be made that the claimant's past difficulties with the vice president, that had gone unresolved, may have factored into the claimant's decision to quit without speaking to the owners, this argument is respectfully rejected. The hearing officer was given conflicting testimony regarding the relationship between the claimant and the vice president. After considering all relevant testimony and evidence, the hearing officer finds that if there were issues between the two, they were one-sided. The claimant did not speak directly to the vice president about any misgivings the claimant had about their relationship or the vice president's treatment of the claimant and her workers. Additionally, the record reflects that the claimant sent two emails regarding wanting to speak with her at some point. The evidence presented shows that responded to one of the emails. However, the emails do not specifically identify the vice president as the issue that needs to be discussed. Based on the testimony and evidence presented, the hearing officer does not find that the claimant made a sufficient effort to inform the owners about the problems she was having with the vice president specifically. Accordingly, the employer was unable to correct an issue that it did not know existed. The claimant has failed to meet her burden to prove that she quit with good cause attributable to the employer, or for other non-disqualifying reasons. Accordingly, the claimant is disqualified from receiving benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. In Order Number 2003-10946 (December 9, 2003), the Commission set forth factors to be considered in resolving credibility questions. These factors 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's witnesses to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

DECISION: The determination dated August 20, 2014, disqualifying the claimant, is **AFFIRMED**. The claimant is disqualified for the week ended June 28, 2014 and until she earns wages of $4,675.00. The claimant's representative requested a fee for representation at the hearing. However, the representative was not able to provide the specific amount of the fee at the time of the hearing. Accordingly, the hearing officer is unable to approve a fee. The claimant's representative may submit a motion for fee approval at a later date.

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 29, 2014.

KELLY WORTNER
Appeals Referee

By: Kristi Snyder

Kristi Snyder, 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.
