

**STATE OF FLORIDA**  
**REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 15-01055

vs.

Referee Decision No. 0024921041-02U

Employer/Appellee

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**ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

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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 wherein the claimant was held ineligible for benefits and the employer's account was noncharged.

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 was totally or partially unemployed within the meaning of Section 443.036(44), Florida Statutes (2014).

The referee made the following findings of fact:

The claimant has worked for the employer of record, a theme park, as a seasonal Actor 'A' since November 5, 2012. The claimant's primary occupation is an actor. The claimant's last full-time position was in April 2012 as a stage manager. Since April 2012, the claimant has worked with at least one other employer as an as needed actor. The claimant only works irregularly as called by the employer. The claimant is "constantly filing for unemployment" because he is rarely employed on a full-time basis. The claimant filed a claim for benefits effective January 26, 2014, establishing a weekly benefit amount (WBA) of \$181. The claimant filed another claim for benefits effective February 1, 2015.

Working for the employer of record, the claimant earned \$814.84 during the week ending December 27, 2014; \$628.60 during the week ending January 3, 2015; \$156.70 during the week ending January 10, 2015; \$428.76 during the week ending January 17, 2015; \$428.76 during the week ending January 24, 2015; and \$344.74 during the week ending January 31, 2015.

Based on these findings, the referee held the claimant ineligible for receipt of benefits for the weeks ending January 3 through January 31, 2015. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision relied on a court decision which we hold is no longer good law. Accordingly, it is reversed.

The referee concluded on the facts above that the claimant was not "unemployed," citing *Palm Beach County School Board v. Unemployment Appeals Commission*, 504 So. 2d 505 (Fla. 4th DCA 1987). However, the reasoning of *Palm Beach County School Board* relies heavily on provisions of Chapter 443 that have long since been modified, and on rules adopted pursuant to them that have long since been revoked. With those statutory and regulatory changes, the *Palm Beach County School Board* decision now stands without support. We conclude that it is not only now, but has been for many years, superseded by statutory and regulatory amendment.

The traditional position of the Commission, which was enunciated by the Third District in the well-reasoned decision of *North Miami General Hospital Inc. v. Plaza*, 432 So. 2d 723 (Fla. 3d DCA 1983), is that the issue of whether an individual is attached to the labor market in cases similar to this one is whether the individual is "able and available" under Section 443.091(1)(d), Florida Statutes. Accordingly, we instruct the Department, if it has not done so, to review the issue of the claimant's availability for work.

We note, finally, that the hospitality industry in Florida depends heavily on seasonally available, part-time, or as-needed employees. Providing employers the flexibility to hire short-term employees as needed is important to the success of Florida's hospitality industry. Likewise, permitting such employees to utilize the safety net provided by reemployment assistance benefits, *provided* they show a continuing attachment to the job market and make *bona fide* ongoing efforts to seek work in their chosen field, is also consistent with the current statutory language. We find no basis in the statutory language to categorically exclude such employees from reemployment assistance benefits.

The decision of the appeals referee is reversed. If otherwise eligible, the claimant is entitled to benefits.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman  
Thomas D. Epsky, Member  
Joseph D. Finnegan, Member

This is to certify that on  
6/9/2015,  
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: Ebony Porter  
Deputy Clerk



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



\*39297655 \*

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**Docket No.0024 9210 41-02**

Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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***CLAIMANT/Appellant***

***EMPLOYER/Appellee***

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APPEARANCES

Employer

Claimant

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### **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.**

REEMPLOYMENT ASSISTANCE: Whether the claimant was totally or partially unemployed, pursuant to Sections 443.036(44); 443.111(4), Florida Statutes.

**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.)

**Finding of Fact:** The claimant has worked for the employer of record, a theme park, as a seasonal Actor 'A' since November 5, 2012. The claimant's primary occupation is an actor. The claimant's last fulltime position was in April 2012 as a stage manager. Since April 2012, the claimant has worked with at least one other employer as an as needed actor. The claimant only works irregularly as called by the employer. The claimant is "constantly filing for unemployment" because he is rarely employed on a fulltime basis. The claimant filed a claim for benefits effective January 26, 2014, establishing a weekly benefit amount (WBA) of \$181. The claimant filed another claim for benefits effective February 1, 2015.

Working for the employer of record, the claimant earned \$814.84 during the week ending December 27, 2014; \$628.60 during the week ending January 3, 2015; \$156.70 during the week ending January 10, 2015; \$428.76 during the week ending January 17, 2015; \$428.76 during the week ending January 24, 2015; and \$344.74 during the week ending January 31, 2015.

**Conclusions of Law:** Section 443.111(4), Florida Statutes provides in relevant part:

#### WEEKLY BENEFIT FOR UNEMPLOYMENT.

(a) Total. Each eligible individual who is totally unemployed in any week is paid for the week a benefit equal to her or his weekly benefit amount.

(b) Partial. Each eligible individual who is partially unemployed in any week is paid for the week a benefit equal to her or his weekly benefit less that part of the earned income, if any, payable to her or him for the week which is in excess of 8 times the federal hourly minimum wage. These benefits, if not a multiple of \$1, are rounded downward to the nearest full dollar amount.

The Federal minimum wage was \$5.15 per hour through July 23, 2007, rose to \$5.85 per hour, effective July 24, 2007, with increases to \$6.55 per hour effective July 24, 2008, and \$7.25 effective July 24, 2009. Therefore, the allowed weekly earnings for which no deduction is made is \$46.80 through July 23, 2008, then \$52.40 through July 23, 2009, and \$58 after that.

The record reflects that the claimant is an actor, who chooses to work irregularly as called by the

employer. A claimant who chooses to work only irregularly as called by the employer is not unemployed, and is therefore ineligible. See Palm Beach County School Board v. Unemployment Appeals Commission, 504 So.2d 505 (Fla. 4th DCA 1987). In the instant case, the claimant's primary occupation is dependent on irregular, as needed employment opportunities. According to the claimant's own testimony he is "constantly filing for unemployment" because of the nature of his profession. The claimant is not unemployed and is not eligible to receive benefits.

**Decision:**The determination dated January 12, 2015, is AFFIRMED. The claimant is not unemployed and is not eligible to receive benefits from December 28, 2014 through January 31, 2015. The employer's account is relieved of charges beginning December 28, 2014. Eligibility for the subsequent claim is referred back to the Department.

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 February 19, 2015.

**A. MORTON**  
Appeals Referee



By:

DAISY L. WILKINS, 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 20<sup>th</sup> 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](http://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 envío 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](https://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 diskalfye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

**Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, [connect.myflorida.com](https://connect.myflorida.com) oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit departman.**

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesaje lèt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak nimewo sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

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An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.