

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 15-01325

vs.

Referee Decision No. 0024853862-02U

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 referee's findings of fact state as follows:

The claimant signed up to work for the employer on June 23, 2014. The employer is a staffing agency. The claimant stated on her application with the employer that she wanted to perform part-time clerical work. The claimant also put on her employment application that she could work in Lakeland, Florida. The claimant did not put a specific minimum dollar amount on her application that she wanted to receive from her employment. The claimant received a call from the employer on December 9, 2014, to work a position for a job in Mulberry, Florida. The claimant refused the job because it was too far. The Mulberry position that she was offered on December 9, 2014, was not listed as one of the locations the claimant stated that she was willing to travel to on her application. On December 10, 2014[,] the employer's staffing associate asked the claimant about applying to a part-time mail clerk position in Lakeland, Florida. The claimant told the

employer's staffing associate that she did not want to take the job because of distance. The claimant does not recall having a conversation with the employer about the December 10, 2014 job position. The claimant performed a previous job position in Lakeland, Florida, while she was working for the employer. In order to have received the job position for the mail clerk position in Lakeland, Florida, that the employer told the claimant about on December 10, 2014, the claimant would have had to interview with the hiring company to see if they would offer her employment.

Based on these findings, the referee held no bona fide offer of suitable work was made. 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, the decision must be set aside and the cause remanded for the rendition of a decision regarding whether the claimant failed, without good cause, to apply for available suitable work.

The referee reasoned in part as follows:

Department records indicate that the notice of disqualification was based on information that the claimant had refused a job offer that was made on December 10, 2014. The evidence shows the employer is a staffing agency. The employer testified that sometimes they hire an employee to work for another company without having to go on an interview process and sometimes an employee has to go on an interview process to obtain employment with the hiring company whom the claimant is performing temporary work for. The employer's staffing specialist testified the claimant had to interview with the hiring company for the mail clerk position. The claimant did not interview for the job position because she told the employer the job was too far. The claimant does not recall refusing the job offer on December 10, 2014, because of location. The claimant only recalls refusing a job offer made on December 9, 2014, by the employer because of location. The law states that for a refusal of suitable work to occur, a genuine offer of work must be made and received. Because the claimant had to interview with the hiring company in

order to obtain the position for the December 10, 2014 job referral that was given to her by the employer, a genuine offer of work was not made. Thus, since the claimant never received a genuine offer to work, the claimant has not refused employment. The employer has not shown the claimant refused a genuine offer of work of suitable work. Accordingly, the claimant is entitled to receive benefits.

While the Commission agrees with the referee that there was no bona fide offer of work, the issue noticed to the parties to be addressed at the hearing was broader than whether there was a bona fide offer of work. The determination under appeal in this case that was issued on January 13, 2015, indicated that the claimant was disqualified from benefits because the claimant refused an offer of suitable work without good cause because the distance to the offered work was not excessive. However, Section 443.101(2), Florida Statutes, also provides that a claimant will be disqualified from receipt of benefits if the Department of Economic Opportunity finds that the individual has failed without good cause to *apply* for available suitable work. The record establishes that the claimant was made aware that work was available, that this employer asked the claimant if she wished the employer to send her resume to the prospective employer, and that the claimant declined. Once the employer made such an offer, the burden shifted to the claimant to establish the prospective employment was not suitable. The factors to be considered are much the same as those involved in deciding whether an offer of suitable work was refused with good cause. The referee should first address the specific criteria contained in Section 443.101(2), Florida Statutes.

* * * * *

The department shall by rule adopt criteria for determining the “suitability of work,” as used in this section. In developing these rules, the department shall consider the duration of a claimant’s unemployment in determining the suitability of work and the suitability of proposed rates of compensation for available work.¹ Further, after an individual has received 25 weeks of benefits in a single year, suitable work is a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing.

¹ The relevant Department rule is contained in Florida Administrative Code Rule 73B-11.019.

(a) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk to the individual's health, safety, and morals; the individual's physical fitness, prior training, experience, prior earnings, length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence.

(b) Notwithstanding any other provisions of this chapter, work is not deemed suitable and benefits may not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. The position offered is vacant due directly to a strike, lockout, or other labor dispute.
2. The wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
3. As a condition of being employed, the individual is required to join a company union or to resign from or refrain from joining any bona fide labor organization.

In considering the factors under subparagraph (a) above, the referee should adduce competent evidence regarding the claimant's employment history: her job title(s), job duties, rate of pay for each assignment, whether she worked on a full-time or part-time basis, her hours and days of work, duration of assignments, the location of her prior job sites, and distances of these job sites from her home. The referee must then determine for the prospective employment the job title, job duties, rate of pay, location of assignment, distance from the claimant's home, duration of assignment, full-time or part-time status, and the days and hours of the position. After adducing sufficient evidence to complete the record, the referee must make specific and accurate findings and decide whether the claimant's refusal to allow her resume to be forwarded for consideration will operate to disqualify her from receipt of benefits.

In order to address the points raised above, the referee's decision is vacated and the case is remanded. On remand, the referee is directed to render a decision that contains specific findings of fact regarding the prospective work the claimant declined to apply for, compare it to the claimant's employment work history and, if the involved work is deemed suitable, her reasons for refusing to consider applying for it, along with an appropriate credibility determination in accordance with Florida Administrative Code Rule 73B-20.025(3)(d)2. Any hearing convened subsequent to this order shall be deemed supplemental, and all evidence currently in the record shall remain in the record.

The decision of the appeals referee is vacated and the case is remanded for further proceedings.

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

7/27/2015,

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



*39867129 *

Docket No.0024 8538 62-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

Employer

DECISION OF APPEALS REFEREE

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

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

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

FAILURE TO APPLY FOR OR ACCEPT WORK: Whether the claimant failed without good cause to apply for suitable work as directed by the Department or one-stop career center or accept suitable work when offered, pursuant to Section 443.101(2), Florida Statutes; Rule 73B-11.019, 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 Fact: The claimant signed up to work for the employer on June 23, 2014. The employer is a staffing agency. The claimant stated on her application with the employer that she wanted to perform part time clerical work. The claimant also put on her employment application that she could work in Lakeland, Florida. The claimant did not put a specific minimum dollar amount on her application that she wanted to receive from her employment. The claimant received a call from the employer on December 9, 2014 to work a position for a job in Mulberry, Florida. The claimant refused the job because it was too far. The Mulberry position that she was offered on December 9, 2014 was not listed as one of the locations the claimant stated that she was willing to travel to on her application. On December 10, 2014 the employer's staffing associate asked the claimant about applying to a part time mail clerk position in Lakeland, Florida. The claimant told the employer's staffing associate that she did not want to take the job because of distance. The claimant does not recall having a conversation with the employer about the December 10, 2014 job position. The claimant performed a previous job position in Lakeland, Florida while she was working for the employer. In order to have received the job position for the mail clerk position in Lakeland, Florida that the employer told the claimant about on December 10, 2014, the claimant would have had to interview with the hiring company to see if they would offer her employment.

Conclusions of Law: The law provides that a claimant who fails without good cause to apply for available, suitable work when so directed by the Department or one stop career center or to accept suitable work when offered will be disqualified for benefits. "Good cause" for failing to apply for or accept suitable work is cause of a reasonably compelling and necessary nature.

The law provides that a claimant who fails without good cause to apply for available, suitable work when so directed by the Department or one stop career center or to accept suitable work when offered will be disqualified for benefits. For a refusal of suitable work to occur, a genuine offer of work must be made and received.

The law provides that benefits will not be charged to the employment record of a contributing employer who furnishes required notice to the Department when the claimant refused, without good cause, an offer of suitable work from the employer.

Department records indicate that the notice of disqualification was based on information that the claimant had refused a job offer that was made on December 10, 2014. The evidence shows the employer is a staffing agency. The employer testified that sometimes they hire an employee to work for another company without having to go on an interview process and sometimes an employee has to go on an interview process to obtain employment with the hiring company whom the claimant is performing temporary work for. The employer's staffing specialist testified the claimant had to interview with the hiring company for the mail clerk position. The claimant did not interview for the job position because she told the employer the job was too far. The claimant does not recall refusing the job offer on December 10, 2014 because of location. The claimant only recalls refusing a job offer made on December 9, 2014 by the employer because of location. The law states that for a refusal of suitable work to occur, a genuine offer of work must be made and received. Because the claimant had to interview with the hiring company in order to obtain the position for the December 10, 2014 job referral that was given to her by the employer, a genuine offer of work was not made. Thus since the claimant never received a genuine offer to work, the claimant has not refused employment. The employer has not shown the claimant refused a genuine offer of work of suitable work. Accordingly, the claimant is entitled to receive benefits.

Because the employer has not shown that the claimant refused an offer of suitable work, benefits will be charged to the employer's account.

Decision: The determination dated January 13, 2015 is REVERSED. The claimant is not disqualified from receiving benefits. The employer's account will be charged for benefits.

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 March 6, 2015.

E. THOMAS HILL
Appeals Referee

By: *Robyn L. Doak*

ROBYN L. DEAK, Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the 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 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 o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [*docket number*] y el número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat 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.

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.