

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

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 15-05170

vs.

Referee Decision No. 0026943816-04U

Employer/Appellant

---

**ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

---

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

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

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

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

At issue before the Commission is whether the referee properly evaluated and weighed the employer's drug test evidence in concluding that the claimant was discharged for reasons other than disqualifying misconduct pursuant to Section 443.036(29), Florida Statutes (2015).

The record reflects the employer has implemented a drug and alcohol-free workplace policy. For use at the appeals hearing, the employer provided the Drug and Alcohol Testing Policy reflected in the collective bargaining agreement between the employer and the claimant's union. The undisputed testimony reflects this written policy governs the issue of alcohol and drug testing as it pertains to the claimant for the period of October 1, 2014, through September 30, 2016. The written policy was discussed at the hearing, authenticated by the parties, and included in evidence. Per this agreement and an earlier version that was in place at the time the claimant was hired, the claimant was subject to drug and alcohol tests on a random basis, if injured at work, and if there was ever an indication of impairment while on duty.

The record further reflects the claimant had been required to complete multiple drug tests while working for the employer. The claimant was subject to a random drug test in December 2013 and tested positive for cocaine. Evidence of the December 2013 drug test and the precise contents of the policy in place at that time were not provided to the referee, but the claimant testified he admitted to the employer's witness, the Director of Human Resources, around the time that test was administered, that he had used cocaine at a party with other employees. The record reflects the claimant and the employer subsequently entered into a "Last Chance Agreement and General Release" as a result of the test results. A copy of the

agreement was discussed at the hearing and admitted into evidence as Exhibit E3-E7. In summary, this agreement states the claimant's random drug test in December 2013 was positive for a controlled substance in violation of the employer's policy and instead of termination, the claimant would be subject to a suspension consisting of two weeks' unpaid leave, completion of an individualized employee assistance or substance abuse program, and submission to random drug tests for twelve months after returning to work. The agreement specified that failure to fulfill the requirements of the agreement and/or a second positive drug test would result in immediate discharge. The claimant successfully fulfilled the requirements of the "Last Chance Agreement" and returned to work. The record does not reflect any issues with the claimant's employment until a random drug test conducted on March 30, 2015, resulted in a reported "positive" result. The claimant was discharged on April 7, 2015, as a result of the test results.

The record reflects that on March 30, 2015, the claimant was selected at random to submit to a drug test and he complied by providing a urine sample as directed. The following day, March 31, 2015, the claimant had an accident on the job that resulted in a torn rotator cuff and torn knee meniscus. The employer sent the claimant for treatment at the medical clinic the employer utilizes for on-the-job injuries. During the course of treatment on March 31, and as required per the employer's policy, the claimant was required to submit to drug and alcohol tests at the clinic on March 31, 2015. The referee's findings that "[t]he claimant went the next day and had another drug test done," "[t]he test that the claimant had done . . .," and "[t]he employer accepted the results of the test they had paid for . . ." inaccurately imply that the claimant acted on his own accord to initiate and pay for the drug test conducted on March 31, 2015. To the contrary, the parties provided undisputed testimony as to the events that resulted in the *employer* requiring the claimant to undergo two separate drug tests, on two consecutive days, for two separate reasons. The findings are corrected to reflect that both the test administered on March 30 and the one on March 31, 2015, were required by the employer per the employer's policy and terms of employment. The record does not reflect which party paid for the March 31 test, but testimony reflects the March 31 test was administered pursuant to the employer's workers' compensation policy requirements, and we assume, consistent with such programs, that the testing was provided by the employer.

Testimony also reflected that results of drug and alcohol tests required by the employer are reported to the director of human resources, the employer's witness at the hearing, via email or fax. The witness testified the results only inform her as to whether the test is "negative" or "positive" for drug use and negative tests are usually reported to her quicker than positive tests. Regarding the two tests administered to the claimant on March 30 and March 31, the director testified she received the results of claimant's March 31 test, "the second test" as it was referenced by the parties at the hearing, before receiving the results of the March 30

test, “the first test.” The director testified the report advised that the claimant’s drug test conducted on March 31, 2015, was “negative” for drug and alcohol use. The director further testified that she subsequently received the results of the March 30, 2015 test, and it was “positive for cocaine.” The director stated she spoke<sup>1</sup> with the medical review officer (MRO) who provided the positive test result, discussed with the MRO the conflicting test results from the March 31 negative test, and subsequently concluded that the tests made logical sense because, at some point in time, the illegal substance has to pass out of the claimant’s system. The witness testified she was not part of the chain of custody regarding the sample collected from the claimant on March 30, she is not aware of how the human body metabolizes cocaine, and was not provided the level of cocaine reflected in the March 30 test, but relied upon the MRO’s representation that the claimant tested positive for cocaine on March 30, and the substance was out of his system by the time of the test on March 31. The director testified she discharged the claimant on April 7, 2015, for violating the employer’s policy and the “Last Chance Agreement” by having a positive drug test on March 30, 2015.

Regarding the evaluation of the evidence, the record reflects the employer presented the MRO report, included in the record as Exhibit E1, as evidence of a *confirmed positive drug* test on March 30, 2015. A review of the document shows the sample was collected on March 30, 2015, “ON SITE,” but it does not specify whether that means at the jobsite, the Health Care Center of Miami which appears on the top of the report in association with the MRO, or the testing lab which the form states as “LABCORP.” The document does not identify the type of sample, such as urine, and while it says: “Drug Found: COCAINE,” the document does not provide the metabolite level. The employer did not present the chain of custody document for the March 30 test. The employer’s witness testified she was not sure of the location of the test, but stated samples for random tests may be collected at the jobsite in an effort to minimize disruption to the flow of work. The witness confirmed she did not collect the sample herself, did not know who did, and did not participate in safeguarding the sample or delivering it to the lab for testing. Regarding the March 31 test, the employer did not present any documentary evidence. The claimant, however, provided a copy of the carbon copy chain of custody document he was given at the time the March 31 sample was taken at the clinic where he was being treated for the injuries he suffered on the job and a copy of the “Alcohol Testing Form.” These documents were admitted into evidence as CLMNT 3 and CLMNT 4. Portions of the copies can be difficult to read as a result of shading on the original, but both the claimant and the employer’s witness testified the test results for the March 31, 2015, were negative for drug and alcohol use.

---

<sup>1</sup> This testimony is included in our discussion for purposes of explaining the underlying reasons for the separation in this case, but the witness’s testimony as to what she was told by the MRO is otherwise inadmissible hearsay which is not competent by itself to support a material finding of fact.

In holding the claimant was discharged for reasons other than disqualifying misconduct, the referee included a conflict resolution in favor of the claimant and found the claimant's testimony and evidence that he did not use an illegal drug to be more reliable and credible than the employer's testimony and evidence that the March 30, 2015, drug test was positive for cocaine in violation of the employer's policy. On appeal to the Commission, the employer's counsel asserts "[t]he record is undisputed that the Claimant was discharged for a positive drug test for cocaine submitted to on March 30, 2015," and pursuant to Section 443.101(11), Florida Statutes, the test results admitted into evidence establish a rebuttable presumption that the claimant used illegal drugs. The employer asserts the referee erred by ignoring the rebuttable presumption of a positive drug test and the referee erred by putting more weight in the claimant's evidence than the employer's. We disagree.

Section 443.101(11), Florida Statutes (2015), directs:

(11) If an individual is discharged from employment for drug use as evidenced by a positive, confirmed drug test as provided in paragraph (1)(d), or is rejected for offered employment because of a positive, confirmed drug test as provided in paragraph (2)(c), test results and chain of custody documentation provided to the employer by a licensed and approved drug-testing laboratory is self-authenticating and admissible in reemployment assistance hearings, and such evidence creates a rebuttable presumption that the individual used, or was using, controlled substances, subject to the following conditions:

(a) To qualify for the presumption described in this subsection, an employer must have implemented a drug-free workplace program under ss. 440.101 and 440.102, and must submit proof that the employer has qualified for the insurance discounts provided under s. 627.0915, as certified by the insurance carrier or self-insurance unit. In lieu of these requirements, an employer who does not fit the definition of "employer" in s. 440.102 may qualify for the presumption if the employer is in compliance with equivalent or more stringent drug-testing standards established by federal law or regulation.

(b) Only laboratories licensed and approved as provided in s. 440.102(9), or as provided by equivalent or more stringent licensing requirements established by federal law or regulation may perform the drug tests.

(c) Disclosure of drug test results and other information pertaining to drug testing of individuals who claim or receive compensation under this chapter shall be governed by s. 443.1715.

The employer's evidence fell short of that required to gain the rebuttable presumption for several reasons. The employer did not provide the chain of custody document and the witness testified she had no personal knowledge of the chain of custody of the urine sample. In addition, the employer did not submit evidence that the March 30 drug test was conducted at a licensed laboratory as required. The chain of custody document usually provides this information. Finally, although the employer contended that its policy was adopted pursuant to Chapter 440, Florida Statutes, the employer did not submit documentary or testimonial proof that the employer currently qualifies for insurance discounts as determined by a licensed insurer or self-insurance unit. Without this mandatory evidence in the record, the employer has not met the requirements of Section 443.101(11), Florida Statutes, and, therefore, has not gained the rebuttable presumption of a positive drug test. *See* R.A.A.C. Order No. 15-03721 (December 30, 2015).<sup>2</sup>

We have held that an employer may prove a violation of a drug-free workplace policy without establishing the presumption, but to do so *solely* through documentary evidence of drug testing, the employer *must* present sufficient evidence of the chain of custody. *See* R.A.A.C. Order 14-02971 (January 27, 2015).<sup>3</sup> The statutory provision makes test results and chain of custody documentation self-authenticating and admissible, but the conjunctive nature of the provision has been interpreted by the Commission as requiring both items for the statutory provision to apply. This is crucial, because the documents cannot be admitted under the business record exception as employer records where, as here, they were generated by a third party rather than the employer. Likewise, we have held that both must be admitted to meet the requirements of the "residual" exception contained in Section 443.151(4)(b)5.c.(I)-(II), Florida Statutes. *See* R.A.A.C. Order 15-04393 (March 24, 2016). If the employer produces the full chain of custody documentation and the test results, showing either the actual laboratory results or the results and the testing thresholds for the screening and confirmation testing, but without proof of current entitlement to insurance discounts, the employer's evidence may be evaluated by the referee like all other documentary evidence submitted for use at the hearing pursuant to Section 443.151(4)(b)5.c., Florida Statutes (2015).

This case demonstrates why chain of custody evidence is crucial to establishing sufficient proof of a violation of drug policy. The only document provided by the employer to show a positive drug test is Exhibit E1. This form is a medical review officer's report. It is a *summary* of the drug test and this summary does not reflect the metabolite levels contained in the claimant's urine sample, or the threshold metabolite level for cocaine that the MRO used to conclude a sample is "positive." The actual drug test that includes the substances tested, evidence of both the screening and confirmation testing, the results of the metabolites found, or alternatively the threshold value of metabolites deemed to be a positive result, is the

---

<sup>2</sup> Available at [http://www.floridajobs.org/finalorders/raac\\_finalorders/15-03721.pdf](http://www.floridajobs.org/finalorders/raac_finalorders/15-03721.pdf).

<sup>3</sup> Available at [http://www.floridajobs.org/finalorders/raac\\_finalorders/14-02971.pdf](http://www.floridajobs.org/finalorders/raac_finalorders/14-02971.pdf).

best evidence to present to the referee. The provided document affords the trier of fact no way to evaluate whether the summary accurately reflects the actual test results and whether the amount of cocaine detected was consistent with the testing thresholds generally required by law or industry standard, or in this case, equivalent to the standards established in employer's policies.<sup>4</sup> Section 30.2 of the employer's drug policy, reflected in Exhibit E9, specifically establishes threshold levels of metabolites and, therefore, defines the amount of a substance that must be present in the claimant's body in order for the employer to conclude the claimant is in violation of the policy. The employer's policy directs that an employee can have bodily concentrations of cocaine less than 300 ng/mL and not be considered to be "positive" for cocaine use. Only once the metabolite level reaches the threshold of 300 ng/mL, would the claimant be deemed per the policy to have tested "positive" for cocaine and, therefore, be in violation of the policy. As a result of not providing the actual drug test results, the lack of any quantitative evidence or testing thresholds on the face of the MRO's summary as to the amount of cocaine detected in the claimant's system, and a chain of custody document providing clear indication that the offered results were those of the claimant, the employer's evidence fails to provide competent, reliable evidence that the claimant violated the employer's policy or that the test result is a positive confirmed drug test.

Absent a sufficiently probative test result for March 30, 2015, the employer had no other evidence of a policy violation. Contrary to the employer's assertion, the claimant did not admit that he used cocaine or that the March 30, 2015 test results were valid. The claimant's admission that the MRO's summary states the test was positive for cocaine is not an admission that the claimant used cocaine, but an admission that he was aware of what the report indicated and aware that is why the employer stated the claimant was discharged. The record reflects the claimant repeatedly denied using cocaine since 2013 and challenged the validity of the test results. The record also reflects that the employer asserted that if the claimant was so concerned about the validity of the March 30 test results, the claimant should have exercised his option to have the other portion of the split urine sample tested. To this the record reflects the claimant responded that he did not trust that the sample had been properly handled so that it could produce an accurate result, he did not think it was feasible to personally pay for the re-test of a mishandled and compromised sample, and he did not think it was necessary as the test done the following day was reported as negative for drug use. He further testified that the

---

<sup>4</sup> The document contains a barely legible certification which appears to state as follows: "The results for the identified specimen are in accordance with the applicable screening and [illegible] cutoff levels established by the HHS Mandatory Guidelines for Federal WORKPLACE TESTING PROGRAMS and/or the State of Florida *HRS* Guidelines (emphasis added)." We give little credence to a boilerplate certification when it appears to refer to the State of Florida agency that created the state's drug-testing standards in 1991, but which has not been in existence since 1997. Drug-testing standards in Florida have been regulated by the Agency for Health Care Administration for nearly two decades.

employer had both test results prior to the decision to discharge, he thought the Director would realize the March 30 test was not accurate, but believed that the employer was going to discharge him even if the test result was negative because it did not want to deal with him after the injuries he sustained on March 31.

While we agree with the employer that, due to the elimination rates<sup>5</sup> of cocaine in the human body, the fact that the claimant passed a test taken March 31, 2015, does not necessarily contradict the possibility of his failing an accurately performed test taken the day before, neither is it an irrelevant consideration given that cocaine can be found at detectable levels for several days under certain circumstances. Moreover, the referee's reliance on the more complete test results for March 31, 2015, was not erroneous for the reasons discussed above. The claimant further testified that he offered to submit and pay for, on the front end, a blood or hair<sup>6</sup> sample test, because he believes they are capable of capturing greater detail of evidence of drug use and would clarify that he has not used drugs since the 2013 incident, but wanted the employer to agree to reimburse him for the expense if and when the test result was returned as negative. The claimant testified the offer was refused. The employer's witness reiterated that she relied upon the MRO's summary to conclude the claimant violated the employer's policy and "Last Chance Agreement." The employer offered no observational evidence that the claimant was acting impaired or otherwise suggestive of current drug use.

The referee's findings of fact and conclusions of law are supported by the record. It is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. The referee found the claimant's testimony that he did not use cocaine and the test was flawed to be more credible than the employer's summary results provided from the MRO. Because we conclude that the employer's evidence was not sufficiently probative, we affirm the referee's findings and conclusions.

---

<sup>5</sup> Forensic research shows that detection times for cocaine depend upon the subject's usage history, method of ingestion, specific metabolite(s) tested and detection thresholds, as well as individual variance, resulting in detection thresholds ranging from a few hours to several days. *See, e.g.*, Marilyn Huestis et al, "Cocaine and Metabolites Urinary Excretion after Controlled Smoked Administration," *J Anal Toxicol.* 2007 Oct; 31(8): 462-468, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3128807/>; Edward J. Cone et al., "Urine Testing for Cocaine Abuse: Metabolic and Excretion Patterns following Different Routes of Administration and Methods for Detection of False Negative Results," *J Anal Toxicol.* 2003 Oct.; 27 (7): 386-401, available at <http://jat.oxfordjournals.org/content/27/7/386.long>; and Rebecca A. Jufer, "Elimination of Cocaine and Metabolites in Plasma, Saliva and Urine following Repeated Oral Administration to Human Volunteers," *J Anal Toxicol.* 2000 Oct.; 24 (7): 467-477, available at <http://jat.oxfordjournals.org/content/24/7/467.full.pdf>.

<sup>6</sup> Hair samples are believed to have substantially longer detection windows for most drugs, including cocaine. *See, e.g.*, <https://www.omegalabs.net/hair-testing-service/hair-testing-faqs/other-services.cmsx>.



The referee's decision is affirmed. The claimant is not disqualified from receipt of benefits as a result of this claim. If otherwise eligible, the claimant is entitled to benefits. The employer is required to reimburse the reemployment assistance fund for the proportionate share of benefits paid to the claimant. Charging is not an issue identified by the notice of hearing or referee's decision because the employer, by electing reimbursing status, is ipso facto financially responsible for benefits paid to the claimant.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

This is to certify that on

3/30/2016 ,

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



\*47467276 \*

---

---

**Docket No.0026 9438 16-04**

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

---

***CLAIMANT/Appellant***

***EMPLOYER/Appellee***

---

APPEARANCES      Employer  
                                 Claimant

---

### **DECISION OF APPEALS REFEREE**

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

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

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

**Issues Involved:**

SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

**Findings of Fact:** The claimant was hired on December 31, 2012, and was separated on April 7, 2015. The employer, \_\_\_\_\_ employed the claimant as a full-time Maintenance Mechanic I. The employer is a Drug-Free Workplace. The claimant was covered by a collective bargaining agreement that also prohibited the use of alcohol or drugs while employed there. The claimant also had a CDL license which also required him to be drug-free while employed. The claimant was provided with an employee handbook when he was hired which described the employer's drug-free workplace requirements, as well as the penalties for violating them. The claimant was tested for drugs during December 2013. He tested positive for cocaine. The claimant was given a second-chance. He signed a Last Chance Agreement with the \_\_\_\_\_ that put him on notice that a second positive drug test would result in his discharge. He signed this on January 13, 2014. The claimant was tested again on March 30, 2015. The claimant went the next day and had another drug test done. The employer received a Medical Review Officer Determination Verification during April, stating that the claimant had tested positive for cocaine. The test that the claimant had had done came back negative for cocaine. The employer accepted the results of the test they had paid for and discharged the claimant.

**Conclusions of Law:** As of May 17, 2013, the Reemployment Assistance Law of Florida defines misconduct connected with work as, but is not limited to, the following, which may not be construed in pari materia with each other:

- a. Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50; theft of employer property or property of a customer or invitee of the employer.

- b. Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer.
- c. Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- d. A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
- e. 1. A violation of an employer's rule, unless the claimant can demonstrate that:
  - a. He or she did not know, and could not reasonably know, of the rule's requirements;
  - b. The rule is not lawful or not reasonably related to the job environment and performance; or
  - c. The rule is not fairly or consistently enforced.
- 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The record reflects that the employer was the moving party in the separation. Therefore, the claimant is considered to have been discharged. The burden

of proving misconduct is on the employer. Lewis v. Unemployment Appeals Commission, 498 So.2d 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of competent substantial evidence. De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 483 So.2d 413 (Fla. 1986). It was shown that the claimant was discharged as the direct result of an allegedly positive, confirmed drug test. The employer's evidence for this was a copy of the Medical Review Officer Determination Verification. The claimant denied that he had used cocaine since he had signed his Last Chance Agreement. He further provided the referee with his own test results, which included the Chain-of-Custody Form. Under these circumstances, the referee chooses to place the greater weight on the testimony and evidence of the claimant. Given that, the claimant's testimony and evidence better supports his claim, than the employer's testimony and evidence supports theirs. The claimant's conduct was not misconduct as defined above.

Accordingly, since the claimant was not discharged for misconduct connected with work, he should not be disqualified from receiving reemployment assistance benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The Reemployment Assistance Appeals Commission set forth factors to be considered in resolving credibility questions. These include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent comment 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 claimant to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the claimant.

**Decision:** The determination dated September 8, 2015, is REVERSED. If otherwise eligible, the claimant is qualified 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 November 18, 2015.

**S. DIMON**  
Appeals Referee

By: *Robyn L. Deak*

ROBYN L. DEAK, Deputy Clerk

**IMPORTANT - APPEAL RIGHTS:** This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the 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 reembolsar 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 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 diskalfiye epi/oswa deklare moun k ap fè demann lan pa kalifiye 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 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 mesajè 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.

---

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.