

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 16-01630

vs.

Referee Decision No. 0028111382-04U

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.

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 referee's findings of fact state as follows:

The claimant worked part time from March 27, 2015 through February 12, 2016, as a part specialist. The claimant resigned due to [a] new job opportunity on 2/12/16 via the phone to [the store manager]. The claimant voluntarily resigned.

Based on these findings, the referee held the claimant voluntarily left work for nondisqualifying reasons under the law. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is flawed and procedural error occurred during the hearing process. Consequently, the case must be remanded.

The employer was the only party to appear for this hearing. While the employer's witness testified that the claimant verbally told him that he was quitting because "he had a better job lined up for better pay and he did not want to work [for the employer's witness] anymore," that statement is hearsay and must meet statutory standards before it can be used to support the referee's finding of fact.

Section 443.151(4)(b)5.c., Florida Statutes, provides that 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. Additionally, hearsay evidence may support a finding of fact under the “residual exception” for reemployment assistance appeals proceedings if the party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing and the appeals referee 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. §443.151(4)(b)5.c.(I)-(II), Fla. Stat.

The employer’s witness’ testimony that the claimant stated he was quitting because “he had a better job lined up for better pay and he did not want to work [for the employer’s witness] anymore,” is classic hearsay because it is an out-of-court statement being used by the appeals referee to support a finding about the truth of the matter asserted. None of the statutory exceptions to the hearsay rule contained in the Florida Evidence Code applies to the statement. Unlike the ordinary situation where a statement of an opposing party is being “offered against the party,” *see* Section 90.803(18), Florida Statutes, the employer’s witness’ testimony of what the claimant said to him is not an “admission” of the claimant within the meaning of Section 90.803(18)(a), Florida Statutes. Moreover, while the employer’s witness testified as to what he was told by the claimant, there is no indication that the employer has expressly adopted the statement as true as is required by Section 90.803(18)(b), Florida Statutes. *See State v. Carlson*, 808 P.2d 1002, 1006 (Or. 1991). Nor does this statement meet the requirements of the residual exception. Under these circumstances, the finding that the claimant resigned “due to [a] new job opportunity” is based solely on incompetent inadmissible hearsay evidence, and, therefore, is rejected.

The purpose of the reemployment assistance statute is to provide economic assistance to persons unemployed through no fault of their own. §443.031, Fla. Stat. Consistent with that public policy, the statute generally disqualifies workers who leave their employment voluntarily. §443.101(1)(a), Fla. Stat. The statute excuses only those who leave employment with good cause attributable to their employer; those who leave work because of illness or disability requiring separation; those who leave temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous six calendar months; and those who relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. §443.101(1)(a)1., Fla. Stat.

It appears that the referee is applying the rationale that has been interpreted by the Commission from the holdings of the courts in *Doig v. Unemployment Appeals Commission*, 862 So. 2d 76 (Fla. 1st DCA 2003) and *Seneca v. Florida Unemployment Appeals Commission*, 39 So. 3d 385 (Fla. 1st DCA 2010), holding the claimant not disqualified because he quit his position with the employer to accept other employment. Because the referee's material finding is not supported, the legal conclusion must also be rejected. It is the claimant's burden to establish whether he quit with good cause or for nondisqualifying reasons under statutory and case law, and he has failed to meet it.

Despite the record containing no competent evidence to support the finding that the claimant quit his job with the employer to accept work with another employer and the referee's reliance on *Doig* and *Seneca* being in error, the case must be remanded due to procedural error. The referee stated on the record that she had two unannounced telephone numbers for the claimant and said she would attempt to call the numbers. After failing to contact the claimant, the referee said, "the numbers cannot dial out." Without explaining what the phrase, "the numbers cannot dial out" meant, and failing to indicate whether the telephone numbers were nonworking telephone numbers or whether the Department's computerized telephone system was having technical difficulties and not allowing the referee to dial the telephone numbers, the referee simply stated that she had not been contacted by the claimant and would proceed with the hearing with only the employer in attendance. The referee's failure to explain for the record whether the issue with the telephone numbers was due to the nature of the telephone numbers or the Department's computerized telephone system precludes the Commission from determining whether the claimant was afforded due process. Accordingly, the claimant is entitled to an additional hearing on the merits of the case.

On remand, the referee is directed to send a copy of the recording of the first hearing to the claimant with the next hearing notice, convene a supplemental hearing, develop the record as outlined above, allow the parties to offer additional testimony, present witnesses, and question one another. The referee must then render a new decision that features specific and accurate findings of fact supported by competent evidence as well as an appropriate conflict resolution with respect to all disputed material facts.

The parties are warned that the testimony of the witnesses not subject to cross-examination at prior hearings due to the absence of the opposing party will most likely be rejected as incompetent and, as such, given no consideration if the witnesses are not available during subsequent hearings. *See Altmeaux v. Ocean Construction, Inc.*, 782 So.2d 922 (Fla. 2d DCA 2001). The referee shall specifically notice the parties of this fact when appropriate and offer the parties and their witnesses the opportunity to participate in subsequent hearings telephonically. Appeals referees shall record all attempts to telephone the parties.

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
6/27/2016,
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: Kimberley Pena
Deputy Clerk



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



*51685140 *

Docket No.0028 1113 82-04

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

CLAIMANT/Appellee

EMPLOYER/Appellant

APPEARANCES

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.

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 worked part time from March 27, 2015 through February 12, 2016, as a part specialist. The claimant resigned due to new job opportunity on 2/12/16 via the phone to the Store Manager, . The claimant voluntarily resigned.

Conclusion of Law:

The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that temporarily terminated the claimant's work within the previous 6 calendar months, or to relocate due to a military-connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification.

The record reflects the claimant resigned. The claimant resigned due to new job opportunity on 2/12/16. As such, the claimant is not disqualified from the receipt of benefits.

Decision:

The determination dated March 21, 2016, qualifying the claimant from February 7, 2016, is affirmed.

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 April 29, 2016.

C. RICHARDSON
Appeals Referee

By:



KIMBERLY MARTIN, 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 the last five digits of the 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.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

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 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 los últimos cinco dígitos del 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.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

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 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 senk dènye chif nimewo sekirite sosyal demandè a 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.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

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.