

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 19-00240

vs.

Referee Decision No. 0035006329-04U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

On appeal to the Commission, evidence was submitted that was not previously presented to the referee. The parties were advised prior to the hearing that the hearing was their only opportunity to present all of their evidence in support of their case. Florida Administrative Code Rule 73B-21.011 provides that the Commission can consider newly discovered evidence only upon a showing that it is material to the outcome of the case *and* could not have been discovered prior to the hearing by an exercise of due diligence. The Commission did not consider the additional evidence because it does not meet the requirements of the rule.

Department of Economic Opportunity (DEO) records reflect the claimant filed an initial claim for benefits effective November 25, 2019. The claim was classified as a claim for regular reemployment assistance benefits. Subsequent to the filing of the claim, DEO issued a Notice of Disqualification determination, Issue Identification No. 0035006329-03, holding the claimant disqualified from receipt of regular reemployment assistance benefits as a result of her separation from employment. The claimant appealed that determination and a hearing was held before an appeals referee. Subsequent to that hearing, the referee issued a decision on February 5, 2019, affirming the determination holding the claimant disqualified from receipt of regular reemployment assistance benefits. The claimant appealed that decision to the Commission, arguing she should be entitled to benefits under the Disaster Unemployment Assistance (DUA) program.

As to the appeal regarding the denial of regular reemployment assistance benefits, the Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes. However, the Commission does not have jurisdiction over issues related to DUA, which are governed by the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*, and 20 C.F.R. Part 625, rather than the provisions of Section 443.151, Florida Statutes. Upon the filing of a DUA claim, the state agency, here DEO, is responsible for determining whether a claimant is eligible for DUA. 20 C.F.R. § 625.9. Any appeal of a DUA determination or redetermination is appealable to the first-stage administrative appellate authority for the state, here the DEO Office of Appeals. 20 C.F.R. § 625.10(a)(1). A decision from this level is then subject to review only by the appropriate U.S. Department of Labor Employment and Training Administration Regional Administrator, upon request of the party, state agency, or upon the Regional Administrator's own motion. 20 C.F.R. § 625.10(c)(1). Since the Commission does not have jurisdiction over any DUA matters, we cannot review whether DEO properly classified the claim as a regular reemployment assistance claim rather than a DUA claim. Accordingly, our review herein is limited to the issue of whether the referee correctly decided the claimant's appeal of the determination disqualifying her from reemployment assistance benefits.

Should the claimant disagree with DEO's classification of her claim as a regular reemployment assistance claim rather than a DUA claim, she might choose to attempt to pursue that matter with the U.S. Department of Labor Regional Administrator at the following address:

Regional Administrator, U.S. Department of Labor/ETA
Atlanta Federal Center, 61 Forsyth St., Rm. 6M12
Atlanta, GA 30303
Fax: (404) 302-5382¹

Regarding regular reemployment assistance decisions, the Commission's review is generally limited to the issues before the referee and the evidence and other pertinent information contained in the official record. The referee has the responsibility to develop the hearing record, weigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. The Commission reviews the evidentiary and administrative record and the referee's decision to determine whether the referee followed the proper procedures, adequately developed the evidentiary record, made appropriate and properly supported findings, and properly applied the

¹ Because the Commission does not participate in any portion of the DUA review process, we cannot state whether, or to what extent, the Department of Labor Regional Administrator will accept review of the claimant's contention.

reemployment assistance law established by the Florida Legislature. The Commission cannot reweigh the evidence and the inferences to be drawn from it. Further, absent extraordinary circumstances, the Commission cannot give credit to testimony contrary to that accepted as true by the referee.

Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes that the referee sufficiently followed the proper procedures and the case does not require reopening or remanding for further proceedings. The referee's material findings are supported by competent, substantial evidence in the record. The referee also correctly applied the law in deciding the case.

Although the record reflects the claimant left work for personally compelling reasons, the quitting was not for good cause attributable to the employing unit or for any other legally-recognized exception to the disqualification provisions of the reemployment assistance law; consequently, the claimant is disqualified from receipt of regular reemployment assistance benefits. *See* §443.101(1)(a), Fla. Stat.

The referee's decision is affirmed.

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

5/29/2019 ,

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



*77194056 *

SSN:

Docket No.0035 0063 29-04

CLAIMANT/Appellant

Account Number:

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

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.

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 by the employer, a payroll company, on July 2, 2018, earning \$14 per hour working for the client, . While returning home from an evacuation, the claimant had car problems on or around October 17, 2018. After returning home, the claimant had to secure temporary housing due to the hurricane damage. The claimant performed a temporary fix on her car and informed the employer of the issue. On or around October 21, 2018, the claimant received two hundred dollars

from the client company to help fix her car. The claimant spent the money on hoses. On October 30, 2018, the claimant secured permanent housing in Ft. Walton, approximately two hours away. The claimant's car broke down due to a leaking head casket so the claimant emailed her resignation effective immediately, November 30, 2018.

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 was the moving party to the separation. The facts show that the claimant quit due to a lack of transportation. The evidence in this case shows that the claimant still had work available with the employer at the time she resigned. Although it is accepted that the claimant had to secure a new residence, the record shows that the claimant quit due to her car breaking down. While the claimant may have had valid personal reasons to leave employment, the claimant's reasons for leaving do not meet the criteria of "good cause" as defined by law. It is therefore concluded that the claimant quit without good cause. The claimant therefore is subject to disqualification.

Decision: The determination dated December 27, 2018, holding the claimant disqualified 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 February 5, 2019.

C. MILLER
Appeals Referee

Robyn L Deak

By:

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 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 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 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 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 mesajè 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 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.