

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 19-00480

vs.

Referee Decision No. 0034246113-04U

Employer/-None

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. 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 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 reemployment assistance law established by the Florida Legislature. 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.

I.

Background Facts and Issue Presented

As reflected in the referee's findings, the agency previously held the claimant had been overpaid benefits to which he was not entitled, as he was retroactively disqualified from benefits due to being discharged from employment by the City of Longwood for misconduct. Through a series of appeals, the misconduct holding reached finality. *See* Referee Decision No. 0019424985-07 (June 30, 2014); R.A.A.C. Order No. 14-03457 (November 4, 2014); Case No. 1D14-5369 (February 10, 2016).

At the hearing, the claimant seemingly attempted to challenge his disqualification from benefits on the ground it was negated by a subsequent arbitration award through which the claimant was reinstated to his position with the employment unit. The referee did not disturb the disqualification. That matter has not been raised on appeal to the Commission and will not be addressed. Instead, the sole issue before us is whether the overpayment is subject to recoupment pursuant to Section 443.151(6)(d), Florida Statutes.

II.

Analysis

When a claimant has been overpaid, the Florida Department of Economic Opportunity ("Department") has an obligation under federal law to attempt to recover the overpayment. One overpayment recovery method is "recoupment" wherein the Department retains benefit payments, which would otherwise be paid to a claimant, to offset an overpayment liability. Recoupment is presumptively permissible in any pending case to recover an unsatisfied overpayment. §443.151(6)(a) & (b), Fla. Stat.

However, a statutory defense permits temporary waiver of recoupment under certain circumstances. Section 443.151(6)(d), Florida Statutes, states:

Recoupment from future benefits is not permitted if the benefits are received by any person without fault on the person's part and recoupment would defeat the purpose of this chapter or would be inequitable and against good conscience.

Stated differently, the statute requires proof of the following:

- (1) that the claimant bears no fault for the overpayment; *and*
- (2) *either*
 - a. that recoupment of the overpayment would defeat the purpose of the reemployment assistance law, *or*
 - b. that it would be inequitable and against good conscience.

Because this defense is an exception to the Department's ability to recoup overpayments, the claimant bears the burden of proving both prongs of the defense. *See Unemployment Appeals Commission v. Comer*, 504 So. 2d 760, 761 (Fla. 1987). If the claimant fails to prove either prong, the defense is not established and the Department may recoup the overpayment.

With respect to the first prong, the record affirmatively shows that the claimant was at fault for the overpayment. As stated above, the claimant was discharged for misconduct, which led to his disqualification from benefits and consequent overpayment. We have held that a claimant who was discharged for misconduct is at fault for any overpayment resulting from a disqualification imposed because of the discharge. *See, e.g., R.A.A.C. Order No. 17-02728* (December 4, 2017) (reversing waiver of recoupment because the claimant was at fault for the overpayment since it resulted from a discharge for misconduct).

The claimant's request for review by the Commission asserts the referee made three errors: 1) the referee improperly placed the burden on him to show that he was without fault with respect to the overpayment, 2) the referee failed to make findings of fact regarding the second prong of the statutory defense to recoupment, and 3) the referee failed to consider the equitable defense of laches where the claimant allegedly relied on notice that payments would be made. Though claimant's counsel anticipated filing a brief, the Commission did not receive one.

At the outset, we must conclude that the claimant's bald assertions of error, which are unaccompanied by any developed argument or citation to authority, are properly deemed waived. *White v. White*, 627 So. 2d 1237, 1239 (Fla. 1st DCA 1993) ("When points, positions, facts and supporting authorities are omitted from the brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy") (*quoting Polyglycoat Corp. v. Hirsch Distributors, Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983)). Nevertheless, we do not find merit in the assertions and will address each one separately below.

A. Burden of Proof

On appeal to the Commission, the claimant asserts that the referee improperly placed the burden on him to show that he was without fault with respect to the overpayment. Even if this issue had been preserved on appeal to us, we would not find reversible error had occurred.

First, the burden of proof is irrelevant in this case. Though the referee concluded that the claimant did not establish he was *without* fault for the overpayment, the referee also made specific findings of fact regarding the history of this claim for benefits, which affirmatively show the claimant's fault for the overpayment, as discussed above. Those findings of fact have not been challenged on appeal to us and, in any case, are supported by competent, substantial evidence, as concluded above. Since the record shows the claimant's fault on facts that are not challenged, the outcome here is not based on the claimant's failure to carry a burden.

Second, as noted above, it is the longstanding interpretation of the Commission and the Department that the statute places the burden on the claimant to establish grounds for waiver of recoupment, and our interpretation is supported by the *Comer* case referenced above.

B. Statutory Equitable Defenses

The claimant further asserts the referee failed to make findings pertinent to and engage in an analysis of the second prong of the statutory defense to recoupment: that is, whether recoupment would defeat the purpose of the statute or would be inequitable and against good conscience. While the record was not developed as to the second prong, that is irrelevant under the circumstances.

As explained above, the two prongs of statutory defense to recoupment are conjunctive; to be entitled to waiver of recoupment, a claimant must establish *both* prongs. If either prong is not met, the statutory defense is not available to the claimant. Here, the claimant did not meet the first prong of the defense because the record clearly shows he was at fault for the overpayment, as concluded above. Thus, any error in failing to develop the record or make findings of fact as to the second prong would have been harmless. Accordingly, we find the referee did not reversibly err in declining to address the second prong.

C. Laches

The claimant also asserts the referee failed to consider the equitable defense of laches grounded upon the allegation that the claimant detrimentally relied on a notice that payments would be made. The request for review does not identify the notice(s) upon which the claimant is alleged to have relied. However, a review of the determinations issued by the Department reveals the claimant was expressly on notice that his entitlement to benefits was not certain under the circumstances.

Other than the recoupment determination itself, only three other determinations were issued by the Department—one before the recoupment determination and two after. Before the recoupment determination was issued (on July 23, 2018), the Department issued a Notice of Monetary Determination (July 20, 2018). The Notice of Monetary Determination showed that the claimant had met the monetary requirements for establishing a claim set forth in Section 443.111(2), Florida Statutes, i.e., his base period wages were sufficient to establish a claim. However, the Notice of Monetary Determination also specifies, “There is an eligibility issue related to your claim that could potentially prevent you from receiving benefits shown on this document.”

After the recoupment determination was issued, the Department issued two Notices of Approval: one addressing the claimant’s separation from employment with one employer (Issue Identification No. 0034 2405 81-03, distributed August 3, 2018), and the other addressing his continued part-time employment with another employer (Issue Identification No. 0034 2640 72-01, distributed August 7, 2018). Those determinations reflect that the claimant is entitled to benefits only “if otherwise eligible” and “as long as all other eligibility requirements are met.”

The claimant could not rely on any of the issued determinations to show he reasonably and detrimentally relied on an agency notice that payment would be made. Consequently, the claimant’s laches argument is rejected as unavailing.

III. Collateral Matters

The claimant’s Notice of Appeal was filed by a representative for the claimant. Section 443.041, Florida Statutes, provides that a representative for any individual claiming benefits in any proceeding before the Commission shall not receive a fee for such services from the claimant unless the amount of the fee is approved by the Commission. The claimant’s representative shall provide the amount, if any, the claimant has agreed to pay for services, the hourly rate charged or other method used to compute the proposed fee, and the nature and extent of the services

rendered, not later than fifteen (15) days from the date of this order. *See Fla. Admin. Code R. 73B-21.006(4)*. The Commission reviews requests for approval of attorneys' fees under the standards established in R.A.A.C. Order No. 16-02976 (April 26, 2017).¹

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

¹ Available at http://www.floridajobs.org/finalorders/raac_finalorders/16-02976.pdf.



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



*77709661 *

Docket No.0034 2461 13-04

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES:

Claimant
BPC Staff
Claimant Representative

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: BENEFIT RECOUPMENT: Whether an overpayment of unemployment compensation benefits paid to the claimant by Florida or another state is subject to recoupment by the Florida Department, pursuant to Section 443.151(6), 443.221(3), Florida Statutes; Public Law 99-272.

Findings of Fact: The claimant filed a claim for reemployment benefits effective July 15, 2018, establishing a weekly benefit amount of \$275. Prior to filing the claim, the claimant incurred an overpayment with the Department of Economic Opportunity (DEO). The claimant's former employer appealed a determination finding the claimant qualified to receive benefits. A hearing was held and a decision was issued on June 30, 2014 finding the claimant disqualified from receiving benefits. The claimant participated in the hearing (See Docket No. 00194249 85-07). As a result of the unfavorable decision, an overpayment determination was issued. The claimant appealed the decision to the Reemployment Assistance Appeals Commission(RAAC). On November 4, 2014, the Commission issued an order affirming the decision. The claimant then appealed the Commission order to the State of Florida First District Court of Appeal. On February 10, 2016, the District Court filed an opinion affirming the order.

Conclusions of Law: The law provides that, at the discretion of the Department, an overpayment may be recouped by deduction from future payable benefits. However, benefits will not be recouped if the overpayment was received without fault of the claimant and such recoupment would defeat the purpose of the statute or would be inequitable and against good conscience.

The record reflects the claimant filed an application for reemployment benefits effective July 15, 2018, with a weekly benefit amount of \$275. The record further reflects a decision was issued disqualifying the claimant. The claimant appealed to both the Commission and the District Court and the decision was affirmed. The claimant has failed to show that the overpayment was due to no fault of his own. Accordingly, it is held the Department may recoup the overpayment from future benefits payable to the claimant.

Consideration was given to the fact that the claimant's job was reinstated on March 15, 2016, after the reemployment hearing, after the order from RAAC and after the opinion from the District Court. However, even though the arbitrator found that there was no just cause for the termination based on the employer's policies and procedures, under reemployment compensation law, it was found that the employer satisfied its burden of proof to show misconduct.

Decision: The determination dated July 23, 2018, is **AFFIRMED**. The Department may recoup the overpayment from future benefits payable to the claimant.

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 26, 2019.

S. STEEN
Appeals Referee

By: 

CLAUDETTE SILVERA, 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.