

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 20-01480

vs.

Referee Decision No. 0056310713-02P

Employer/-None

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This is an appeal of a referee's decision holding the claimant ineligible for Pandemic Unemployment Assistance ("PUA") under the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act"), created by Public Law 116-136 (March 27, 2020), codified at 15 U.S.C. Chapter 116. Florida law governs the appeals process for PUA. Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter 16-20, Change 1, p. I-14, #54 (April 27, 2020). 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.

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.

At issue is the claimant's eligibility for PUA benefits from March 8, 2020, the effective date of her PUA application, through October 27, 2020, the date of the hearing held in this matter. To be eligible for PUA benefits, a claimant must be a "covered individual" as defined by the CARES Act. To be a covered individual, a claimant must not be eligible for regular Florida reemployment assistance benefits or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) benefits under the CARES Act. 15 U.S.C. §9021(a)(3)(A)(i). Further, to be eligible for PUA benefits, a claimant must be unemployed, partially unemployed, or unable or unavailable to work because:

- (aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (bb) a member of the individual's household has been diagnosed with COVID-19;
- (cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (ii) the individual has to quit his or her job as a direct result of COVID-19;
- (jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

15 U.S.C. §9021(a)(3)(A)(ii)(I). Unemployment must be a direct and immediate result of the pandemic, and not the result of a longer chain of events precipitated or exacerbated by the disaster. 15 U.S.C. §9021(h); 20 C.F.R. §625.5(c). For example, neither a general fear of exposure to COVID-19 nor the inability to find work during the pandemic constitute a PUA-qualifying reason for unemployment under the CARES Act. 15 U.S.C. §9021(a)(3)(A)(ii)(I); Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter No. 16-20, Change 2 at I-6, #14 (July 21, 2020); Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter 16-20, Change 2, p. I-6, #14 (July 21, 2020).

On appeal, the claimant argues she was offered work in January 2020 but was not called in to work because of the pandemic. The record reflects the claimant was offered work as a VPK substitute teacher on an on-call basis. In other words, the claimant would be called if needed by the employer. The claimant did not state that she was told she was not called in due to COVID-19 and her testimony is based on speculation. The burden of proof to establish eligibility for benefits rests with the person claiming benefits. *Florida Industrial Commission v. Ciarlante*, 84 So. 2d 1, 4-5 (Fla. 1955). Mere speculation is not competent, substantial evidence as a matter of law. *C.D. v. Dep't of Children & Families*, 974 So. 2d 495, 502 (Fla. 1st DCA 2008). Because the claimant did not establish that she was unable to work directly because of COVID-19, the referee correctly concluded she did not establish she was covered under the CARES Act and was, therefore, not entitled to benefits under that act.

Because the claimant was held retroactively ineligible for PUA, any benefits she received are overpayments as a matter of law.¹ 20 C.F.R. §625.14; §443.151(6), Fla. Stat. The only factual question is whether the claimant actually received the benefits the Department sent, as reflected in the determination the claimant appealed. At the hearing, the claimant confirmed she received the PUA benefits the Department paid her.

Subsequent to the claimant's application for and receipt of PUA benefits, the claimant was approved for PEUC benefits. The PEUC determination was issued June 3, 2020 and held the claimant eligible for PEUC beginning March 29, 2020. Due to this approval, the overpayments we affirm in this case will be offset against any benefit payments the claimant would have received from PEUC entitlement. In effect, the offset is part of the process of having the claimant's benefits paid by the appropriate program. The Department of Economic Opportunity is responsible for reconciling the claimant's entitlement vs. receipts and determining whether any remaining overpayment will exist.

¹ While it is the Department's responsibility to calculate any remaining overpayment amount, we note as a practical matter that the claimant's PUA overpayment amount reflected on the September 23, 2020 determination will be minimized by the fact that she was subsequently held eligible for PEUC benefits for most of the weeks at issue, and her PEUC benefit amount of \$116 will offset her PUA weekly payments of \$125.

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

12/21/2020 ,

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: Benjamin Bonnell

Deputy Clerk



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



*163486026 *

IMPORTANT:	For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
IMPORTANTE:	Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
ENPÒTAN:	Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limitè pou ou ranpli apèl la.

Docket No. 0056 3107 13-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

PANDEMIC UNEMPLOYMENT ASSISTANCE APPEAL DECISION

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: Pandemic Unemployment Assistance (PUA): Whether and in what amount Pandemic Unemployment Assistance is payable to the claimant, pursuant to 20 CFR, Chapter V, Section 625 and Section 2102 of the CARES Act of 2020, Public Law (Pub. L.) 116-136.

OVERPAYMENT: Whether the claimant received benefits to which the claimant was not entitled, and if so, whether those benefits are subject to being recovered or recouped by the Department, pursuant to Sections 443.151(6); 443.071(7), 443.1115; 443.1117, Florida Statutes and 20 CFR 615.8 and 20 CFR 625.14

Findings of Fact: The claimant filed for pandemic unemployment benefits on July 10, 2020. The claimant worked for the employer July 1, 2019 through October 25, 2019. The claimant's separation from this employer was unrelated to the pandemic. The claimant applied for a VPK substitute teacher position with a different employer in January 2020. She had worked for this employer previously. The claimant was not provided with a start date for employment with this employer. The claimant did not receive any documentation with an offer of employment. The employer was not hiring substitute teachers at that time of application. The claimant was told to follow up in the future for an opportunity to return to work for this employer. The claimant worked for another employer starting in August 2020 through August 25, 2020. She ceased working for that employer due to lack of availability. The Department determined the claimant's gross pandemic unemployment assistance weekly benefit amount to be \$125.00. The claimant received weekly pandemic unemployment assistance benefit amount of \$125.00 for the following week ending dates: 3/14/20, 3/21/20 3/28/20, 4/4/20, 4/11/20, 4/18/20, 4/25/20, 5/2/20, 5/9/20, 5/16/20, 5/23/20, 5/30/20, 6/6/20, 6/13/20, 6/20/20, 6/27/20, 7/4/20, 7/11/20, 7/18/20, 7/25/20, 8/1/20, 8/8/20, 8/15/20, 8/22/20, 8/29/20 and 9/5/20.

Conclusions of Law: In order to be eligible for PUA benefits under the CARES Act, a claimant must be unemployed, partially unemployed, or unable or unavailable to work because:

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section. 15 U.S.C. §9021(a)(3)

The record reflects that the claimant's unemployment is not a direct result of the Pandemic. The claimant testified that she applied for work with her previous employer in January 2020. She testified that the previous employer told her she was hired but due to the Pandemic she would have to wait until it was over before she could start working. The claimant's communication with the employer was in January of 2020 prior to the announcement of the Pandemic. Although, the claimant alleges she had a bona fide offer of employment this decision does not find any such evidence to support an offer of employment. In addition, there was no Pandemic when this communication with the previous employer transpired.

The court has held that factual testimony that is not rebutted or contradicted in any manner cannot be disregarded or rejected by the trial court unless it is illegal, inherently improbable or unreasonable, contrary to natural law, opposed to common knowledge or contradictory within itself. See *Meditek Therapy, Inc. v. Vat-Tech, Inc.*, 658 So.2d 644 (Fla. 2nd DCA 1995). It is inherently improbable that the previous employer informed the claimant in January 2020 that due to the Pandemic she would not be able to commence employment with that business. The Pandemic was not declared in the United States until March 13, 2020.

The claimant failed to furnish sufficient evidence to meet the eligibility requirements for pandemic assistance benefits. Therefore, the claimant is not qualified for pandemic assistance benefits.

Unemployment must be a direct and immediate result of the pandemic, and not the result of a longer chain of events precipitated or exacerbated by the pandemic. 15 U.S.C. §9021(h); 20 C.F.R. §625.5(c). Unemployment due to a general fear of exposure to COVID-19 or **due to inability to find work during the pandemic** does not constitute a PUA-qualifying reason for unemployment under the CARES Act. 15 U.S.C. §9021(a)(3).

Federal regulations provide that an individual who received a payment of benefits to which the individual was not entitled must repay the overpaid benefits to the Department. 20 C.F.R. §625.14

The entry into evidence of a transaction history generated by a personal identification number establishing that a certification or claim for one or more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person or by direct deposit via electronic means, constitutes prima facie evidence that the person claimed and received reemployment assistance benefits from the state.

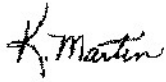
The record reflects that the claimant received gross reemployment assistance in the amount of \$125.00 for each week ending: 3/14/20, 3/21/20 3/28/20, 4/4/20, 4/11/20, 4/18/20, 4/25/20, 5/2/20, 5/9/20, 5/16/20, 5/23/20, 5/30/20, 6/6/20, 6/13/20, 6/20/20, 6/27/20, 7/4/20, 7/11/20, 7/18/20, 7/25/20, 8/1/20, 8/8/20, 8/15/20, 8/22/20, 8/29/20 and 9/5/20.

This decision holds the claimant is not eligible for the receipt of pandemic unemployment assistance benefits and overpaid for the week ending dates of 3/14/20, 3/21/20 3/28/20, 4/4/20, 4/11/20, 4/18/20, 4/25/20, 5/2/20, 5/9/20, 5/16/20, 5/23/20, 5/30/20, 6/6/20, 6/13/20, 6/20/20, 6/27/20, 7/4/20, 7/11/20, 7/18/20, 7/25/20, 8/1/20, 8/8/20, 8/15/20, 8/22/20, 8/29/20 and 9/5/20 in connection with this decision.

Decision: The determination dated September 23, 2020, holding the claimant disqualified and overpaid for pandemic unemployment assistance benefits is **AFFIRMED**.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on October 28, 2020.

D. Potter
Appeals Referee



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-21.003(4), 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, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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-21.003(4), 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, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (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-21.003(4), 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 retoune travay Asistans Komisyon Apèl la, Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesaje lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon.

Pou evite reta, mete nimewo rejis la ak 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 Reyannbochaj 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.