

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

<u>R.A.A.C.</u> <u>Docket No.</u>	<u>Referee</u> <u>Decision No.</u>	<u>R.A.A.C.</u> <u>Docket No.</u>	<u>Referee</u> <u>Decision No.</u>
20-01495	0047732965-02P	20-01511	0047746684-02P
20-01496	0063676075-02P	20-01512	0047751150-02P
20-01497	0063676176-02P	20-01513	0051366371-02P
20-01498	0063676249-02P	20-01514	0054320833-02P
20-01499	0063675405-02P	20-01515	0054327075-02P
20-01500	0063678292-02P	20-01516	0057065038-02P
20-01501	0063678795-02P	20-01517	0057066505-02P
20-01502	0063678882-02P	20-01518	0059524651-02P
20-01503	0063682011-02P	20-01519	0059527185-02P
20-01504	0063682115-02P	20-01520	0061488375-02P
20-01505	0063679565-02P	20-01521	0061487773-02P
20-01506	0063683233-02P	20-01522	0063290207-02P
20-01507	0063683307-02P	20-01523	0063292082-02P
20-01508	0063683403-02P	20-01524	0064796637-02P
20-01509	0063682473-02P	20-01525	0064799742-02P
20-01510	0063683552-02P		

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This is an appeal of 31 decisions of an appeals referee 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 (Apr. 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 these cases do not require reopening or remanding for further proceedings. The referee's material findings are supported by competent, substantial evidence. The referee's ultimate disposition of these cases is also legally correct.

These 31 cases were heard together and involved the issues of PUA eligibility and overpayment. The period at issue is from February 2, 2020, the effective start date of the claimant's PUA claim, through October 17, 2020, the Saturday prior to the hearing before the referee.

In R.A.A.C. Docket No. 20-01495, the issue before the Commission is whether the claimant was unemployed, partially unemployed, or unable or unavailable to work as a direct result of the COVID-19 public health emergency pursuant to one of the qualifying reasons listed in Section 2102(a)(3) of the CARES Act, codified at 15 U.S.C. §9021(a)(3), and is therefore a "covered individual" as provided by the Act and Title 20, Code of Federal Regulations, Section 625.5(c) for the weeks beginning February 2, 2020, through October 17, 2020. This case also involved the issue of whether the claimant was overpaid \$125 in PUA benefits for each week from the week ending February 8, 2020, through the week ending September 5, 2020.

In R.A.A.C. Docket Nos. 20-01496 through 20-01525, the issue before the Commission is whether the claimant failed without good cause to accept or commence suitable work when offered by an employing unit or failed to investigate or accept a referral to an available suitable position in accordance with Section 2102 of the CARES Act, codified at 15 U.S.C. §9021(h), incorporating Title 20, Code of Federal Regulations, Sections 625.4(h) and 625.13(b)(2); and Section 443.101(2), Florida Statutes. Each of these cases involves the claimant's disqualification from and overpayment of PUA benefits for a different one-week period from the week ending February 8, 2020, through the week ending September 5, 2020, excluding the

week ending June 6, 2020. In all of the cases, there is also an issue of whether the claimant received any sum as PUA benefits under Section 2102 of the CARES Act, codified at 15 U.S.C. §9021, to which the claimant is not entitled and which the claimant is liable to repay, pursuant to Title 20, Code of Federal Regulations, Section 625.14, and as provided in Section 443.151(6), Florida Statutes.¹

R.A.A.C. Docket No. 20-01495: Whether the claimant established he was unemployed due to COVID-19.

In R.A.A.C. Docket No. 20-01495, the referee made the following findings of fact:

The claimant initially applied for reemployment assistance benefits in May 2020. The claimant was held monetarily ineligible for reemployment assistance benefits, thus the claimant applied for Pandemic Unemployment Assistance (“PUA”) benefits which the Department held to be effective the week of February 02, 2020. The claimant ceased working as an independent contractor/self-employed with Uber and Lyft during the week of February 02, 2020 as a result of fear of contracting COVID-19. During the weeks beginning February 02, 2020, through October 17, 2020, the claimant was not diagnosed with COVID-19 nor did the claimant provide any care for any individual who had COVID-19. The claimant has no family which lives in the United States. The claimant did not open the applications for Uber or Lyft to seek or accept prospective customers because the claimant was afraid of contracting COVID-19 from a customer within the claimant’s vehicle. The claimant’s doctor provided a note to the claimant indicating that the claimant may not be able to work because of issues with his leg and diabetes. During the period of time beginning February 02, 2020 through October 17, 2020, the issues with the claimant’s leg and diabetes did not prevent the claimant from being able to work. The claimant received gross PUA benefits in the amount of \$125 per week for the weeks beginning February 02, 2020 through September 05, 2020.

¹ The issues of whether the claimant was a covered individual eligible for PUA and whether he failed to recommence suitable work are legally independent in this case. To be entitled to receive any PUA benefits, the claimant must prevail on both issues.

Based on these findings, the referee held the claimant was not entitled to PUA benefits from February 2, 2020, through October 17, 2020, and was overpaid PUA benefits beginning February 2, 2020, through September 5, 2020, in connection with this decision. The referee ultimately found that the claimant did not show his unemployment was a direct result of COVID-19 within the meaning of the CARES Act. We agree.

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). 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)(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 16-20, Change 1, p. I-15, #50 (April 27, 2020) (“UIPL 16-20, Change 1”); Emp. & Training Admin., U.S. Dep’t of Labor, Unemp. Ins. Program Letter 16-20, Change 2, p. I-7, #14 (July 21, 2020).

The claimant testified that he quit because he was afraid of catching COVID-19. An individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-19 related criteria for PUA, is not eligible for PUA benefits because general concerns about exposure to COVID-19 is not one of the reasons listed in section 2102(a)(3)(A)(ii)(I). UIPL 16-20, Change 1, p. I-15, #50. The claimant did not establish that he fell within any of the above-designated PUA-eligible reasons. During the weeks from February 2, 2020, through October 17, 2020, the claimant was not diagnosed with COVID-19 nor did he provide any care for an individual who had COVID-19. He has no family who lives in the United States. He was a driver for Lyft and Uber. He testified that although they wanted him to drive, he did not open applications for Uber or Lyft to seek or accept prospective customers because he was afraid of contracting COVID-19 from a customer within his vehicle. The claimant testified that he is afraid that because he is an overweight diabetic, he is more at risk to get COVID-19. He testified that he talked to his primary doctor, and his doctor gave him a letter; however, he did not supply the letter for the hearing.²

Even considering the claimant’s hearsay evidence of the doctor’s advice, the claimant did not establish that he was a covered individual within the meaning of PUA. The claimant testified the doctor’s note indicated the claimant may be unable to work because of issues with his leg and diabetes. The claimant, however, testified that during the period of time at issue, May 31, 2020, through October 17, 2020, the issues with his leg and diabetes did not prevent him from being able to work. Moreover, based on his testimony, the doctor’s note did not establish a nexus with the pandemic. There was no testimony that he was told by a medical professional to self-quarantine due to his medical condition.

² Absent provision of the doctor’s note, the claimant’s testimony on this point is not “competent” hearsay evidence.

Because the claimant did not establish his unemployment was a direct result of the pandemic or that he was unemployed, partially unemployed, or unable to or unavailable for work due to a designated pandemic-related reason listed above, he has not established he was eligible for PUA benefits for that period. Therefore, the payments of \$125 in PUA benefits for each week from February 2, 2020, through September 5, 2020, which he acknowledged receiving, are overpayments and must be repaid by the claimant.

R.A.A.C. Docket Nos: 20-01496 through 20-01525: Whether the claimant has refused a bona fide offer of suitable work or refused without good cause to resume suitable self-employment.

In R.A.A.C. Docket Nos. 20-01496 through 20-01525, the referee found:

The claimant applied for Pandemic Unemployment Assistance (“PUA”) benefits effective the week of February 02, 2020. Prior to February 02, 2020, the claimant was an independent contractor for the companies Lyft and Uber providing rides to potential customers. In order to obtain customers, the claimant would open up the applications for either Lyft and Uber and wait until a customer appears on the application. Normally, when the claimant logged into the application for either business, the claimant is able to find a customer who needs ride sharing services. During the week of February 02, 2020, the claimant stopped performing services through either Lyft or Uber. From February 02, 2020 through October 17, 2020, the claimant did not log into either application for Uber or Lyft in order to attempt to find prospective customers. The claimant did not request any COVID-19 guidance from either Uber or Lyft during the weeks beginning February 02, 2020 through October 17, 2020. Also during those weeks, the claimant did not perform any services as an independent contractor for Lyft or Uber while having customers use protective equipment, such as masks, or have those customers subject to a screening, such as through temperature readings, before entering the claimant’s vehicle. The claimant received PUA benefits in the amount of \$125.00 for the week ending . . . [Each case listed a different week.]

Based on these findings, the referee held the claimant was disqualified from the receipt of PUA benefits based on his refusal to apply for or accept suitable work. Upon review of the record and the arguments on appeal, the Commission concludes the referee’s decisions are supported by competent, substantial evidence, and, further, are in accord with the law; accordingly, they are affirmed.

The CARES Act provides that the federal regulations applicable to Disaster Unemployment Assistance (DUA), 20 C.F.R. Part 625, shall apply to the PUA program “except as otherwise provided in this section or to the extent there is a conflict” between section 2102 and 20 C.F.R Part 625. See 15 U.S.C. § 9021(h). Both the federal and state regulation hold a claimant disqualified from the receipt of benefits for refusal of a bona fide offer of employment in a suitable position or refusal without good cause to resume or commence suitable self-employment. 20 CFR, Chapter V, Section 625.4 and 625.13(b)(2) and section 443.101(2), Florida Statutes. A position shall not be deemed to be suitable for an individual if the circumstances present any unusual risk to the health, safety, or morals of the individual, if it is impracticable for the individual to accept the position, or if acceptance for the position would, as to the individual, be inconsistent with any labor standard in section 3304(a)(5) of the Federal Unemployment Tax Act, 26 U.S.C. 3304(a)(5), or the comparable provisions of the applicable State law. 20 CFR §625.13(b)(2).

In determining whether any work is suitable for an individual, the department shall consider the degree of risk to the individual’s health, safety, and morals; the individual’s physical fitness, prior training, experience, prior earnings, length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence. §443.101(2)(a), Fla. Stat. Here, the claimant stopped working for Uber and Lyft based on a general fear of contracting COVID-19 from customers entering his vehicle. As stated above, a general fear is not a recognized PUA-eligible reason. Although he indicated that he believes he is more at risk due to his being an overweight diabetic, he provided no medical documentation indicating that he had to self-quarantine or that he could not work as a driver due to his underlying medical condition.

The position of Uber and/or Lyft driver was available to the claimant, and he refused to take it. The claimant testified that to obtain customers, he would open up the applications for either Lyft or Uber and wait until a customer appears on the application. He testified that normally when he logged into the application for either business he was able to find a customer who needed ride sharing services. During the week of February 2, 2020, he stopped performing services for Lyft and Uber. He testified that from February 2, 2020, through October 17, 2020, he did not log into either application to attempt to find prospective customers.

In addition, the claimant made no attempt to contact Uber or Lyft to see what safety measures were available and made no attempt to perform work using safety protocols such as requiring customers to use masks or to be screened by taking their temperature before entering the vehicle. Without these types of efforts and without a doctor’s note indicating that he needed to self-quarantine due to his underlying medical condition and/or an increased risk of infection of or harm from COVID-19,

the claimant did not establish that his work as a driver through Uber or Lyft presented an unusual risk to the claimant's health. The claimant's failure to log into the application to accept work or to even see if work was available, is a refusal to apply for or accept suitable work. The claimant is, therefore, disqualified from the receipt of PUA benefits.

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 claimant acknowledged receipt of \$125 a week in PUA benefits for the weeks at issue, and he has been found not entitled to benefits for those weeks. Therefore, the benefits received are overpayments.

Based on his disqualification for PUA benefits for each week of his refusal, the claimant was overpaid \$125 in PUA benefits in:

R.A.A.C. Docket No. 20-01496 for the week ending February 8, 2020;
R.A.A.C. Docket No. 20-01497 for the week ending February 15, 2020;
R.A.A.C. Docket No. 20-01498 for the week ending February 22, 2020;
R.A.A.C. Docket No. 20-01499 for the week ending February 29, 2020;
R.A.A.C. Docket No. 20-01500 for the week ending March 7, 2020;
R.A.A.C. Docket No. 20-01501 for the week ending March 14, 2020;
R.A.A.C. Docket No. 20-01502 for the week ending March 21, 2020;
R.A.A.C. Docket No. 20-01503 for the week ending March 28, 2020;
R.A.A.C. Docket No. 20-01504 for the week ending April 4, 2020;
R.A.A.C. Docket No. 20-01505 for the week ending April 11, 2020;
R.A.A.C. Docket No. 20-01506 for the week ending April 18, 2020;
R.A.A.C. Docket No. 20-01507 for the week ending April 25, 2020;
R.A.A.C. Docket No. 20-01508 for the week ending May 2, 2020;
R.A.A.C. Docket No. 20-01509 for the week ending May 9, 2020;
R.A.A.C. Docket No. 20-01510 for the week ending May 16, 2020;
R.A.A.C. Docket No. 20-01511 for the week ending May 23, 2020;
R.A.A.C. Docket No. 20-01512 for the week ending May 30, 2020;
R.A.A.C. Docket No. 20-01513 for the week ending June 13, 2020;
R.A.A.C. Docket No. 20-01514 for the week ending June 20, 2020;
R.A.A.C. Docket No. 20-01515 for the week ending June 27, 2020;
R.A.A.C. Docket No. 20-01516 for the week ending July 4, 2020;
R.A.A.C. Docket No. 20-01517 for the week ending July 11, 2020;
R.A.A.C. Docket No. 20-01518 for the week ending July 18, 2020;
R.A.A.C. Docket No. 20-01519 for the week ending July 25, 2020;
R.A.A.C. Docket No. 20-01520 for the week ending August 1, 2020;
R.A.A.C. Docket No. 20-01521 for the week ending August 8, 2020;

R.A.A.C. Docket No. 20-01522 for the week ending August 15, 2020;
R.A.A.C. Docket No. 20-01523 for the week ending August 22, 2020;
R.A.A.C. Docket No. 20-01524 for the week ending August 29, 2020; and
R.A.A.C. Docket No. 20-01525 for the week ending September 5, 2020.

Based on all of the above cases, the claimant is ineligible for PUA benefits from February 2, 2020, through October 17, 2020, and is responsible for repaying an overpayment of \$125 in PUA benefits for the weeks ending February 8, 2020, through September 5, 2020, for a total overpayment amount of \$3,875. Even if the suitable work issue had not been adjudicated, the claimant would still have been ineligible for the entire period based on the first issue, his ineligibility based on the CARES Act because his unemployment, partial unemployment, or being unable or unavailable to work was not a direct and immediate result of the pandemic or for a recognized pandemic related reason in the CARES Act.

The Reemployment Assistance Appeals Commission has received the request of the claimant's representative for the approval of a fee for work performed on an appeal to the Commission as required by Section 443.041(2)(a), Florida Statutes, and Florida Administrative Code Rule 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).³

Upon consideration of the request in light of the factors established in R.A.A.C. Order No. 16-02976, the Commission approves the total requested fee of \$750 for representation in these cases.

³ Available at http://www.floridajobs.org/finalorders/raac_finalorders/16-02976.pdf.

The referee's decisions are 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

12/28/2020 ,

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 Appeals
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Docket No. **0047 7329 65-02**

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: 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:

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: Findings of Fact: The claimant initially applied for reemployment assistance benefits in May 2020. The claimant was held monetarily ineligible for reemployment assistance benefits, thus the claimant applied for Pandemic Unemployment Assistance ("PUA") benefits which the Department held to be effective the week of February 02, 2020. The claimant ceased working as an independent contractor/self-employed worker with Uber and Lyft during the week of February 02, 2020 as a result of fear of contracting COVID-19. During the weeks beginning February 02, 2020 through October 17, 2020, the claimant was not diagnosed with COVID-19 nor did the claimant provide any care for any individual who had COVID-19. The claimant has no family which lives in the United States. The claimant did not open the applications for Uber or Lyft to seek or accept prospective customers because the claimant was afraid of contracting COVID-19 from a customer within the claimant's vehicle. The claimant's doctor provided a note to the claimant indicating that the claimant may

not be able to work because of issues with his leg and diabetes. During the period of time beginning February 02, 2020 through October 17, 2020, the issues with the claimant's leg and diabetes did not prevent the claimant from being able to work. The claimant received gross PUA benefits in the amount of \$125.00 per week for the weeks beginning February 02, 2020 through September 05, 2020.

Conclusions of Law: Pandemic Unemployment Assistance

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).

Additionally, 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).

Here, the record reflects that for the period of time beginning February 02, 2020 through October 17, 2020, the claimant's unemployment from his self-employer/independent contractor status with Uber and Lyft were a result of the claimant's refusal to work in association with those companies due to a fear of exposure to COVID-19. As stated above, unemployment due to a general fear of exposure to COVID-19 does not constitute a PUA-qualifying reason for unemployment under the CARES act. The claimant failed to provide any evidence to meet any of the exceptions mentioned above. The claimant was not diagnosed with COVID-19 nor did the claimant provide any care for an individual who had COVID-19 during the period of time beginning February 02, 2020 through October 17, 2020. The claimant testified that he has no family living in the country, thus the provisions found in (bb), (cc), (dd), and (hh) are not applicable. Finally, while the claimant did have a note from his physician, that note indicated that the claimant may not be able to work because of issues with his leg and diabetic condition which, according to the claimant, did not actually prevent him from being able to work. The claimant gave no evidence that he was told by his health professional to quarantine due to concerns related to COVID-19. Based on the previous statements, the claimant is ineligible for PUA benefits for the weeks beginning February 02, 2020 through October 17, 2020.

Overpayment

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 record reflects that the claimant received gross PUA benefits in the amount of \$125.00 per week for weeks beginning February 02, 2020 through September 05, 2020. Since this decision holds the claimant ineligible for the receipt of PUA benefits for those weeks, the claimant's receipt of PUA benefits for those weeks shall be held as overpayment in connection with this decision.

Decision: The determination dated September 21, 2020, holding the claimant ineligible and overpaid, is **AFFIRMED**. The claimant is ineligible for the receipt of reemployment assistance benefits for the weeks beginning February 02, 2020 through October 17, 2020. The claimant's receipt of PUA benefits for the weeks beginning February 02, 2020 through September 05, 2020 shall be held as overpayment in connection with this decision.

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.

LA TRADUCCIÓN AL ESPAÑOL SE FACILITA SOLAMENTE CON PROPÓSITOS DE ASISTENCIA.
LA VERSIÓN EN INGLÉS ES LA VERSIÓN OFICIAL.

Asistencia de desempleo por pandemia (PUA, en inglés): Si el reclamante tiene o no derecho a recibir Asistencia de desempleo por pandemia, de conformidad con 20 CFR, Capítulo V, Artículo 625 y Artículo 2102 de la Ley CARES del 2020, Ley Pública (Pub. L.) 116-136.

Asistencia de desempleo por pandemia (PUA, en inglés): Si el reclamante recibió o no beneficios de PUA a los que el reclamante no tenía derecho y, de ser así, si dicho pago está o no sujeto a recuperación o reembolso, de conformidad con 20 CFR, Capítulo V, Artículo 625.14.

Determinación de los hechos: Inicialmente, el reclamante solicitó asistencia con beneficios de reemplazo en mayo del 2020. El reclamante resultó ser monetariamente inadmisibles para los beneficios de reemplazo, por lo que solicitó Asistencia con Beneficios de Desempleo por Pandemia ("PUA", en inglés) a lo que el Departamento adjudicó una validez a partir del 02 de febrero del 2020. La semana del 02 de febrero del 2020, el reclamante cesó su empleo como trabajador independiente/autónomo con Uber y Lyft, por el temor a contraer el COVID-19. Entre la semana que comenzó el 02 de febrero del 2020 y el 17 de octubre del 2020, el reclamante ni fue diagnosticado por COVID-19 ni estuvo al cuidado de nadie que tuviera COVID-19. El reclamante no tiene familia que resida en los Estados Unidos. El reclamante no abrió las aplicaciones de Uber y Lyft para buscar y aceptar posibles clientes porque temía contraer el COVID-19 de los clientes dentro de su vehículo. El médico emitió un justificante indicando la posibilidad de no poder trabajar por problemas con la pierna y con la diabetes. Los problemas con la pierna y la diabetes no obstaculizaron la disponibilidad del reclamante para trabajar durante el periodo comprendido entre el 02 de febrero del 2020 y el 17 de octubre del 2020. Cada una de las semanas comprendidas entre la semana que comenzó el 02 de febrero del 2020 y el 05 de septiembre del 2020, el reclamante recibió la cantidad de \$125.00 brutos en concepto de beneficios por PUA.

Conclusiones legales:

Asistencia de desempleo por pandemia

Para poder ser admisible para recibir beneficios de PUA según la Ley CARES, el reclamante tiene que estar desempleado, parcialmente desempleado o hallarse incapaz o no disponible para trabajar porque:

(aa)
A la persona se le diagnosticó COVID-19 o presenta síntomas de COVID-19 y está procurando un diagnóstico médico;

(bb)
A un miembro del hogar de la persona se le diagnosticó COVID-19;

(cc)
La persona se ocupa de atender a un familiar o a un miembro del hogar de la persona a quien se le haya diagnosticado COVID-19;

(dd)
Un menor u otra persona en el hogar en que la persona es la principal responsable de proporcionar cuidados no puede asistir a la escuela o a otro centro que se encuentra cerrado como resultado directo de la emergencia de salud pública por COVID-19 y dicha

escuela o centro de cuidado es necesario para que la persona pueda trabajar;

(ee)
La persona no puede llegar al lugar de trabajo debido a una cuarentena impuesta como resultado directo de la emergencia de salud pública por COVID-19;

(ff)
La persona no puede llegar al lugar de trabajo porque un proveedor de atención médica le ha indicado que debe ponerse en cuarentena voluntaria debido inquietudes relacionadas con la infección por el virus de COVID-19;

(gg)
Estaba previsto que la persona comenzara un empleo y no tiene trabajo o no puede llegar al trabajo como resultado directo de la emergencia de salud pública por COVID-19;

(hh)
La persona se ha convertido en el sostén de la familia o uno de los apoyos principales del hogar porque la persona que era cabeza de familia falleció como resultado directo de la COVID-19;

(ii)

La persona tiene que renunciar a su trabajo como resultado directo de la COVID-19;

(jj)

el lugar de trabajo de la persona está cerrado como resultado directo de la emergencia de salud pública por COVID-19; o

(kk)

La persona cumple todos los otros criterios establecidos por el ministro para asistencia por desempleo de conformidad con esta sección. 15 U.S.C. §9021(a)(3).

El desempleo debe ser el resultado directo e inmediato de la pandemia, y no el resultado de una sucesión más larga de acontecimientos provocados o empeorados por la pandemia. 15 U.S.C. §9021(h); 20 C.F.R. §625.5(c). El desempleo debido a un temor general de exponerse a la COVID-19 o debido a la imposibilidad de encontrar trabajo durante la pandemia no constituye un motivo admisible para recibir PUA por desempleo según la Ley CARES. 15 U.S.C. §9021(a)(3).

Aquí, el acta refleja que, el desempleo del reclamante, categorizado como trabajador independiente/autónomo con las compañías Uber y Lyft durante el periodo comprendido entre el 02 de febrero del 2020 y el 17 de octubre del 2020, fue el resultado de su negativa a trabajar con estas compañías por el temor a exponerse al COVID-19. Como se indicó anteriormente, un desempleo como resultado del temor general a exponerse al COVID-19, no constituye un requisito de admisibilidad al desempleo por PUA bajo la ley CARES. El reclamante incumplió con la aportación de pruebas y evidencias que cumplen con alguna de las cláusulas anteriormente mencionadas. El reclamante ni fue diagnosticado con COVID-19 ni estuvo al cuidado de nadie que tuviera el COVID-19 entre el 02 de febrero del 2020 y el 17 de octubre del 2020. El reclamante declaró no tener familia residiendo en el país; por lo tanto, las cláusulas (bb), (cc), (dd) y (hh) no aplican. Finalmente, a pesar de que el reclamante sí tenía un justificante médico, dicho justificante indicaba la posibilidad de que él no pudiera trabajar por problemas con la pierna y por su condición de diabético, que, según él mismo, no le impedían, de hecho, estar disponible para trabajar. El reclamante no aportó prueba alguna de que el profesional de la salud le dijera que hiciera la cuarentena por temas relacionados con el COVID-19. De acuerdo con toda la exposición anterior, el reclamante es inadmisibile a los beneficios PUA durante las semanas comprendidas desde el 02 de febrero del 2020 y el 17 de octubre del 2020.

Sobrepago


Las normas federales estipulan que, una persona que recibió un pago de beneficios a los que la persona no tenía derecho, debe reembolsar al Departamento los beneficios pagados en exceso. 20 C.F.R. §625.14.

El acta refleja que, cada una de las semanas comprendidas entre el 02 de febrero del 2020 y el 05 de septiembre del 2020, el reclamante recibió \$125.00 brutos en concepto de beneficios por PUA. Dado que la decisión sostiene al reclamante inadmisibile a recibir los beneficios por PUA correspondientes a esas semanas, los beneficios recibidos por el reclamante correspondientes a esas semanas serán sostenidos como pagos excesivos en conexión con esta decisión.

Decisión: Se CONFIRMA la determinación fechada el 21 de septiembre del 2020, sosteniendo la inadmisibilidat del reclamante y el pago excesivo. El reclamante es inadmisibile a recibir la asistencia con los beneficios de reempleo por las semanas comprendidas entre el 02 de febrero del 2020 y el 17 de octubre del 2020. Los beneficios por PUA recibidos por el reclamante correspondientes a las semanas comprendidas entre el 02 de febrero del 2020 y el 05 de septiembre del 2020 serán sostenidos como pagos excesivos en conexión con esta decisión.

This is to certify that a copy of the above decision was mailed to the last known address of each interested party on October 26, 2020.

R. Pahota
Appeals Referee

By: 
C. Zeitler, 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 mailing 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 www.connect.myflorida.com or by writing to the address at the top of this decision. The date the confirmation number is generated will be the filing date of a request for reopening on the Appeals 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 fecha 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 www.connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha en que se genera el número de confirmación será la fecha de registro de una solicitud de reapertura realizada en el Sitio Web de la Oficina de Apelaciones.

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 nou poste sa a ba ou. Si 20^{yèm} 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, www.connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat yo pwodui nimewo konfimasyon an se va dat yo prezante demann nan pou reouvri kòz la sou Sitwèb Apèl la.

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 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.

Any questions related to benefits or claim certifications should be referred to the Claims Information Center at PHN_CLMS_INFO. An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.



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



*162505209 *

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. 0063 6760 75-02

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 the claimant refused an offer of suitable work or a referral to suitable work, pursuant to 20 CFR, Chapter V, Sections 625.4 and 625.13.

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

THE SPANISH TRANSLATION IS PROVIDED FOR REASONS OF CONVENIENCE ONLY. THE ENGLISH VERSION IS THE OFFICIAL VERSION.

Findings of Fact: The claimant applied for Pandemic Unemployment Assistance ("PUA") benefits effective the week of February 02, 2020. Prior to February 02, 2020, the claimant was an independent contractor for the companies Lyft and Uber providing rides to potential customers. In order to obtain customers, the claimant would open up the applications for either Lyft and Uber and wait until a customer appears on the application. Normally, when the claimant logged into the application for either business, the claimant is able to find a customer who needs ride sharing services. During the week of February 02, 2020, the claimant stopped performing services through either Lyft or Uber. From February 02, 2020 through October 17, 2020, the claimant did not log into either application for Uber or Lyft in order to attempt to find prospective customers. The claimant did not request any COVID-19 guidance from either Uber or Lyft during the weeks beginning February 02, 2020 through October 17, 2020. Also during those weeks, the claimant did not perform any services as an independent contractor for Lyft or Uber while having customers use protective equipment, such as masks, or have those customers subject to a screening, such as through temperature readings, before entering the claimant's vehicle. The claimant received PUA benefits in the amount of \$125.00 for the week ending February 08, 2020.

Conclusions of Law:**Pandemic Unemployment Assistance/Suitable Work**

The law provides disqualification for refusal to accept suitable work without good cause. A position is not considered suitable if the circumstances present any unusual risk to the health, safety, or morals of the individual, or if it is impracticable for the individual to accept the position. Additionally, a position is not considered suitable if it is vacant due to a strike, lockout, or other labor dispute; if the wages, hours, or other conditions are substantially less favorable than those prevailing for similar work in the locality; or if, as a condition of employment, the individual would be required to join a company union or resign from or refrain from joining any bona fide labor organization. 20 C.F.R. §625.13; §26 U.S.C 3304 and §443.101(2), Florida Statutes.

The record reflects that during the period of time which includes the week of February 02, 2020 through February 08, 2020, the claimant did not utilize the Uber or Lyft applications to seek work by providing rides to customers through the Uber or Lyft companies. Before the claimant's application for PUA, the claimant was an independent contractor who provided rides to customers through Uber or Lyft. To obtain work, the claimant would need to log into the applications for either business and wait for work to appear. The claimant would generally receive work after logging into the application. Here, the claimant made no attempt to obtain work as an independent contractor, as he had previously done, by failing to log into the applications from February 02, 2020 through October 17, 2020 to seek prospective work. While the claimant cites that he was afraid of contracting COVID-19, the record reflects that the claimant failed to contact either Uber or Lyft to obtain COVID-19 guidance to see what safety measure, if any, the claimant could have taken which would have reduced the claimant's probability of contracting COVID-19. Furthermore, during the week of February 02, 2020 through February 08, 2020 the claimant took no attempt to perform work while utilizing safety protocols, such as requiring customers to use masks or have the customers submit to screening before entering the claimant's vehicle. Without these types of efforts, the appeals referee cannot find that the claimant's work as driver through Uber or Lyft would present an unusual risk to the claimant's health. Accordingly, the appeals referee finds that the claimant's failure to log into the application to accept work, or to even see if work was available, is a refusal to apply for or accept suitable work. The claimant is therefore disqualified from the receipt of reemployment assistance benefits in connection with this decision.

Overpayment

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 claimant received PUA benefits in the amount of \$125.00 for the week ending February 08, 2020. Since this decision disqualifies the claimant from the receipt of PUA for that week, the claimant's receipt of PUA in the amount of \$125.00 for the week ending February 08, 2020 shall be held as overpayment in connection with this decision.

Decision: The determination dated September 21, 2020, disqualifying the claimant and holding the claimant overpaid, is **AFFIRMED**. The claimant is disqualified from the receipt of reemployment assistance benefits for the week ending February 08, 2020 and until the claimant has earned \$2,125.00. The claimant's receipt of PUA benefits in the amount of \$125.00 for the week ending February 08, 2020 shall be held as overpayment in connection with this decision.

LA TRADUCCIÓN AL ESPAÑOL SE FACILITA SOLAMENTE CON PROPÓSITOS DE ASISTENCIA. LA VERSIÓN EN INGLÉS ES LA VERSIÓN OFICIAL.

Asistencia de desempleo por pandemia (PUA, en inglés): Si el reclamante recibió o no beneficios de PUA a los que el reclamante no tenía derecho y, de ser así, si dicho pago está o no sujeto a recuperación o reembolso, de conformidad con 20 CFR, Capítulo V, Artículo 625.14.

Asistencia de desempleo por pandemia (PUA, en inglés): Si el reclamante rechazó o no una oferta de trabajo apropiada o una recomendación de trabajo apropiada, de conformidad con 20 CFR, Capítulo V, Artículos 625.4 y 625.13.

Determinación de los hechos: El reclamante solicitó Asistencia de desempleo por Pandemia ("PUA", en inglés) válida a partir del 02 de febrero del 2020. Antes del 02 de febrero del 2020, el reclamante era una trabajador independiente con la compañía Lyft y Uber que prestaba servicios de transporte a posibles clientes. Para poder obtener clientes, el reclamante abría las aplicaciones, tanto la de Lyft como de Uber y esperaba a que el cliente apareciera en la aplicación. Normalmente, cuando el reclamante inicia sesión en la aplicación de cualquiera de estas compañías, puede encontrar un cliente que necesite servicios de transporte compartido. La semana del 02 de febrero del 2020, el reclamante cesó de prestar servicios con Lyft o Uber. Entre el 02 de febrero del 2020 y el 17 de octubre del 2020, el reclamante no se conectó ni a la aplicación de Uber o a la de Lyft, en el intento de buscar potenciales clientes. Las semanas comprendidas entre el 02 de febrero del 2020 y el 17 de octubre del 2020, el reclamante no solicitó ninguna guía a Uber o Lyft sobre el COVID-19. Además, el reclamante tampoco desempeñó ningún servicio como trabajador independiente para Lyft o Uber durante esas semanas haciendo que los clientes usaran equipo protector, tales como máscaras, o haciendo que se sometieran a una criba, como la lectura de temperatura, antes de que entraran al vehículo del reclamante. La semana que finalizó el 08 de febrero del 2020, el reclamante recibió \$125.00 en beneficios por PUA.

Conclusiones legales:

Asistencia por Desempleo Pandémico/ Empleo apropiado.

La ley contempla la descalificación por rechazar aceptar trabajo apropiado sin causa justificada. Un puesto no se considera apropiado si las circunstancias conllevan cualquier riesgo fuera de lo común para la salud, la seguridad o la moralidad de la persona, o si es impracticable para la persona aceptar el puesto. Además, un puesto no se considera apropiado si está vacante debido a una huelga, cierre patronal u otro conflicto laboral; si el salario, las horas u otras condiciones son considerablemente menos favorable que aquellas predominantes para un trabajo similar en esa localidad; o si, como una condición laboral, la persona tendría que formar parte de un sindicato empresarial o renunciar, o abstenerse de formar parte, de cualquier asociación laboral legal. 20 C.F.R. §625.13; §26 U.S.C 3304 y §443.101(2), Leyes de Florida.

El acta refleja que la semana del 02 al 08 de febrero del 2020, el reclamante no utilizó las aplicaciones de Uber o Lyft para buscar trabajo prestando servicios de transporte a clientes con las compañías Uber y Lyft. Antes de la solicitud de reclamante para PUA, era un trabajador independiente que prestaba servicios de transporte a clientes de Uber y Lyft. Para obtener trabajo, el reclamante necesitaría conectarse a las aplicaciones de ambas compañías y esperar que surgiera el trabajo. Generalmente, el reclamante recibe trabajo tras haberse conectado a la aplicación. Aquí, desde el 08 de febrero del 2020 hasta el 17 de octubre del 2020, el reclamante no hizo ningún intento en obtener trabajo como trabajador independiente al no conectarse a las aplicaciones para buscar algún trabajo, como lo hacía anteriormente. Si bien el reclamante menciona que tenía miedo a contraer el COVID-19, el acta refleja que éste incumplió con contactar tanto Uber como Lyft para obtener guía sobre el COVID-19 y ver qué medidas de seguridad pudiera tomar, de existir, para reducir las probabilidades de contraer el COVID-19. Adicionalmente, la semana del 02 al 08 de febrero del 2020, el reclamante no trató de trabajar de acuerdo con los protocolos de seguridad, tales como el requerimiento del uso de la máscara por parte de los clientes o hacer que éstos se sometieran a una criba antes de entrar en su vehículo. Sin este tipo de esfuerzos, el árbitro de apelaciones no puede encontrar que el trabajo como taxista del reclamante con Uber o Lyft presentara un riesgo inusual para la salud del reclamante. Por lo tanto, el árbitro de apelaciones encuentra que el incumplimiento del reclamante a conectarse con la aplicación para aceptar trabajo, o incluso para ver si había trabajo disponible, es una negativa a solicitar o aceptar un trabajo apropiado. Por ende, el reclamante queda descalificado para recibir asistencia con beneficios de reemplazo en conexión con esta decisión.

Sobrepago.

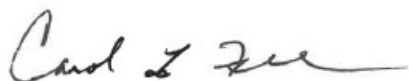
Las normas federales estipulan que, una persona que recibió un pago de beneficios a los que la persona no tenía derecho, debe reembolsar al Departamento los beneficios pagados en exceso. 20 C.F.R. §625.14.

El acta refleja que la semana que finalizó el 08 de febrero del 2020, el reclamante recibió \$125.00 en concepto de beneficios por PUA. Dado que la decisión sostiene al reclamante inadmisibles a recibir beneficios por PUA correspondientes a esa semana, los \$125.00 recibidos por el reclamante en concepto de beneficios por PUA correspondientes a la semana que finalizó el 08 de febrero del 2020 serán sostenidos como pagos excesivos en conexión con esta decisión.

Decisión: Se CONFIRMA la determinación fechada el 21 de septiembre del 2020, sosteniendo la inadmisibilidad del reclamante y el pago excesivo. El reclamante es inadmisibles a recibir la asistencia con los beneficios de reemplazo por la semana que finalizó el 08 de febrero del 2020 y hasta que haya ganado \$2,125.00. Los \$125.00 recibidos por el reclamante en concepto de beneficios por PUA por la semana que finalizó el 08 de febrero del 2020 serán considerados como pagos excesivos en conexión con esta decisión.

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 26, 2020.

R. PAHOTA
Appeals Referee



Carol Zeitler, 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 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-21.003(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 retounen 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 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 mètni 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.