

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 21-01714

vs.

Referee Decision No. 0084169676-02

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for consideration of an appeal of the decision of a reemployment assistance appeals referee that held that the claimant ineligible for Pandemic Emergency Unemployment Compensation (“PEUC”) for the week ending February 27, 2021, because she was not totally or partially unemployed that week. The referee’s decision advised that a request for review should specify any and all contentions of error with respect to the referee’s decision, and that contentions of error not specifically raised in the request for review may be considered waived. The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

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. The referee’s decision, however, was legally erroneous as to the effect of an overpayment waiver. Accordingly, we summarily affirm the referee’s decision as to the conclusion that the claimant was ineligible for benefits she received for the week ending February 27, 2021, which is supported by the record and in any event does not appear to be in dispute. We reverse that portion of the referee’s decision holding the claimant not overpaid. We also clarify the effect of our holdings.

The record below shows that the claimant was overpaid because she received benefits to which she was not entitled. Thus, the overpayment determination should have been affirmed. However, the referee concluded that, because the Department by separate determination granted a waiver of the PEUC overpayment for that

week, the claimant was not overpaid. While the referee's decision was somewhat understandable, it is not legally correct. The existence of an overpayment and the responsibility to repay that overpayment are separate matters, and the referee erred in conflating the two. Thus, we reverse the referee's decision in part and affirm the overpayment established in the underlying determination.

Our reversal does not mean, however, that the claimant must repay the overpayment. As the referee correctly noted, the claimant's overpayment was waived by a separate determination. Under federal guidance, the waiver of an overpayment determination for federal benefits relieves the claimant of any obligation to repay the benefits and precludes any other form of *recovery* of the benefits paid, such as recoupment. Emp. & Training Admin., U.S. Dep't of Labor Unemp. Ins. Program Letter No. 20-21 at p.7 (May 5, 2021). However, the waiver of any overpayment does not preclude the Department of Economic Opportunity from setting off (i.e., taking a credit for) the previously paid benefits held to be overpaid from any amounts otherwise due caused by a benefits program recharacterization or transfer. Emp. & Training Admin., U.S. Dep't of Labor Unemp. Ins. Program Letter No. 20-21, Change 1 at p.19-20 (Feb. 7, 2022). This means if the claimant is paid from one program and later held to have been overpaid benefits for which the overpayment is waived, she will not be entitled to another benefit payment for the same week if subsequently held to have been paid from the wrong program and reassigned to a different benefit program. *Id.*

Although the referee admitted the questionnaire sent to the claimant on March 8, 2021, into evidence at the hearing below, the referee omitted to formally mark the document for identification or to upload the document as an exhibit. We direct the Commission Clerk to mark the document into evidence as Claimant Exhibit No. 1 and include the exhibit in the hearing-level record.

Additionally, although testimony was taken about the Notice of Approval that waived the overpayment, the referee omitted to formally admit and mark the document into evidence as an exhibit. We admit the document and direct the Commission Clerk to mark the document into evidence as R.A.A.C. Exhibit No. 1.

The referee's decision is affirmed to the extent that it held that the claimant was ineligible for the benefits she received for the week ending February 27, 2021. It is reversed to the extent that it held the claimant not overpaid.¹

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Joseph D. Finnegan, Member

This is to certify that on

3/3/2022 ,

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

¹ On the same date that the referee distributed the decision under appeal in this case (October 29, 2021), the referee issued a separate decision, Referee Decision No. 0090699121-02, reversing a separate overpayment determination for the same week ending February 27, 2021, Issue Identification No. 0090699121-01, entered the same day as the determination at issue herein (June 29, 2021). This decision was not specifically identified in the claimant's appeal to the Commission, but because the decision and underlying determination duplicate one of the issues in this case, the Commission should have docketed an appeal to this decision as well. We direct the Commission Clerk to take jurisdiction over the separate decision based on the original request for review and to docket a separate appeal, which will be addressed in a later order. The determination and decision will most likely be quashed as duplicative.



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



*256957803 *

Docket No.0084 1696 76-02

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: REEMPLOYMENT ASSISTANCE: Whether the claimant was totally or partially unemployed, pursuant to Sections 443.036(44); 443.111(4), Florida Statutes.

Findings of Fact: The claimant applied for benefits effective April 05, 2020. The claimant was assigned a weekly benefit amount of \$275. The claimant became employed with the instant employer on February 22, 2021. The claimant began training with the employer that week. The claimant reported her training hours to the Department on a fact-finding form dated March 8, 2021. The claimant was confused by the reporting form. The claimant attempted to report her work hours correctly, however, the numbers she reported on the form were incorrect. The claimant was subsequently disqualified from receiving benefits beginning from February 21, 2021 through February 27, 2021 and held overpaid \$275 in benefits for the week ending February 27, 2021. The claimant sought and was granted an overpayment waiver for the \$275 overpayment for the week ending February 27, 2021.

Conclusions of Law: A week of partial unemployment is a week during which the individual works less than regular, full-time hours for the individual's regular employer, as a direct result of the COVID-19 public health emergency, and earns wages not exceeding the maximum earnings allowance prescribed by the applicable State law. 20 C.F.R. §625.2

The record shows that the claimant did work eight hours each day beginning February 22, 2021 through February 26, 2021 and was paid \$23 per hour for a total of \$920 for the week ending February 27, 2021. The record shows that the fact finding submitted by the claimant was incorrect because the claimant did not understand the format of the questions.

The issue of overpayment is moot. The claimant received an overpayment waiver. The claimant is not overpaid \$275 for the week ending February 27, 2021.

Decision: That portion of the determination dated June 29, 2021 disqualifying the claimant from receiving benefits beginning from February 21, 2021 through February 27, 2021 is AFFIRMED. That portion of the determination dated June 29, 2021 holding the claimant overpaid \$275 for the week ending February 27, 2021 is REVERSED. Future eligibility shall be determined by the adjudicator and the Department.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the department and set forth in a separate overpayment determination, unless specified in this decision. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on October 29, 2021.

G. Jaye
Appeals Referee



By:

MONTY CROCKETT, 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 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.

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