

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 22-00327

vs.

Referee Decision No. 0093177471-02

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 holding the claimant ineligible for benefits and overpaid Pandemic Emergency Unemployment Compensation (“PEUC”) totaling \$825 because she was fully employed.¹ The referee’s decision advised that a request for review should specify any and all contentions of error with respect to the referee’s decision, and that contentions of error not specifically raised in the request for review may be considered waived. The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

The Commission’s appellate review is limited to the issues before the referee and the evidence and other pertinent information contained in the official record. The referee has the responsibility to develop the hearing record, weigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. The Commission reviews the evidentiary and administrative record and the referee’s decision to determine whether the referee followed the proper procedures, adequately developed the evidentiary record, made appropriate and properly supported findings, and properly applied the reemployment assistance law established by the Florida Legislature. The Commission cannot reweigh the evidence and the inferences to be drawn from it. Further, absent extraordinary circumstances, the Commission cannot give credit to testimony contrary to that accepted as true by the referee.

¹ PEUC is one of the federal pandemic programs available under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”), created by Public Law 116-136 (Mar. 27, 2020), as amended by the Continued Assistance for Unemployed Workers Act of 2020 (“Continued Assistance Act”) (Dec. 27, 2020) and the American Rescue Plan Act of 2021 (“ARP Act”) (Mar. 11, 2021), codified at 15 U.S.C. Chapter 116.

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 finding that the claimant received benefit payments totaling \$825 for the weeks ending July 31, 2021, through August 14, 2021, is corrected to reflect the claimant received benefit payments totaling \$550 for the weeks ending August 7 and 14, 2021. The finding that the claimant received a benefit payment for the week ending July 31, 2021, is rejected as unsupported by any record evidence.² The referee's material findings, as amended, are supported by competent, substantial evidence in the record. With respect to the issues of the claimant's ineligibility and the overpayment of benefits for the weeks ending August 7 and 14, 2021, the referee also correctly applied the law in deciding the case. Consequently, we affirm those portions of the referee's decision. However, that portion of the referee's decision holding the claimant overpaid benefits for the week ending July 31, 2021, is unsupported by any record evidence and, consequently, is reversed.

In order to be eligible to receive regular state reemployment assistance or PEUC benefits, a claimant must be totally or partially unemployed as defined by Section 443.036(44)(a), Florida Statutes. An individual is partially unemployed in any week of less than full-time work if the earned income payable to the individual for that week is less than his or her weekly benefit amount. §443.036(44)(a), Fla. Stat. Since the claimant was admittedly working full time and earning \$720 per week beginning July 26, 2021, she is ineligible for benefits beginning July 25, 2021, and overpaid the PEUC benefits she acknowledged receiving for the weeks ending August 7 and 14, 2021. However, the claimant testified that her CONNECT account was hacked and that she did not receive a benefit payment for the week ending July 31, 2021. This testimony is consistent with Department of Economic Opportunity ("Department") records. Thus, the claimant has not been overpaid benefits for that week.

² Boilerplate language in the referee's conclusions of law regarding entry of a transaction history and documentation of payment into the record constituting prima facie evidence the claimant received the benefit payments at issue incorrectly suggests the record includes such documentary evidence, which it does not. As stated above, while the claimant acknowledged receiving benefits for the weeks ending August 7 and 14, 2021, she denied receiving benefits for the week ending July 31, 2021, and testified that her CONNECT account had been hacked. The claim history, which reflects multiple instances of the claim settings being changed to opt the claimant out of receiving notification emails from the Department and direct deposit bank routing information being changed, appears to corroborate the claimant's testimony that her CONNECT account was hacked. Additionally, the Department's benefit payment control unit confirmed that benefit payments for the three weeks at issue in this case were paid via direct deposit into two different bank accounts, only one of which is associated with the claimant's claim for benefits.

Although the record is silent regarding whether the claimant reported her work and earnings when claiming benefits for the weeks ending August 7 and 14, 2021, a review of the claimant's weekly claim certifications reveals she responded "N" (for "No") to the question regarding whether she had worked or earned any income during the week. Since the claimant failed to disclose her full-time employment and weekly earnings of \$720 when claiming benefits for these weeks, we refer the issue of fraud to the Department for investigation.

Our review of Department records further reveals that a Notice of Approval Determination, Issue Identification No. 0093835427-01 (December 12, 2021), waived the requirement to repay the \$825 PEUC overpayment associated with the ineligibility and overpayment determination under review in this case. Although the issue of overpayment waiver is not currently before us, we note that guidance from the U.S. Department of Labor regarding waiver of federal pandemic benefit overpayments specifies that overpayments resulting from fraud cannot be waived. Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter No. 20-21, Change 12 at pp.7-8. (Feb. 7, 2022). The federal guidance defines two types of fraudulent overpayment: those that result from eligibility fraud, such as when a claimant provides false information for the purpose of obtaining benefits to which she is not entitled, and those that result from identify theft fraud, such as when a claimant's account is hijacked and benefit payments are redirected. *Id.* at 7. Although neither type of fraud overpayment can be waived, the victim of the identity theft must be protected by such measures as classifying the fraud overpayment as "uncollectible" or moving the fraudulent transactions to a pseudo-account. *Id.* at 8. This would presumably apply to the benefits that were apparently "hijacked" for the week ending July 31, 2021, for which we are reversing the overpayment. Further, if it is determined that the benefit overpayments for the weeks ending August 7 and 14, 2021, were the result of eligibility fraud, the Department will have to redetermine the waiver issue since the \$550 PEUC overpayment for those weeks would no longer be waivable.

That portion of the referee's decision holding the claimant ineligible for benefits beginning July 25, 2021, and overpaid PEUC benefits totaling \$550 for the weeks ending August 7 and 14, 2021, is affirmed. That portion of the referee's decision holding the claimant overpaid \$275 in PEUC benefits for the week ending July 31, 2021, is reversed.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

This is to certify that on

4/12/2022

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



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



*263195236 *

Docket No.0093 1774 71-02

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.

TIMELINESS: Whether an appeal, request for reconsideration, or request to reopen an appeal was filed within twenty days after mailing of the determination or decision to the adversely affected party's address of record or, in the absence of mailing, within twenty days after delivery, pursuant to Sections 443.151(3); 443.151(4)(b)1., Florida Statutes; Rules 73B-10.022(1); 10.022(5); 10.023(1); 11.017(2); 20.002-007, Florida Administrative Code.

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

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, Florida Statutes and 20 CFR 615.8.

Jurisdictional Issue: A determination was distributed to the claimant's Connect inbox on September 13, 2021. The claimant stopped checking her e-mail and Connect after she returned to work on July 26, 2021. On October 20, 2021, the claimant logged into Connect to check on the status of her back pay. She observed the notice of an overpayment. She then observed the determination which she appealed the same day. Therefore, the claimant's appeal is accepted as timely.

Findings of Fact: The claimant filed a claim for reemployment benefits effective April 19, 2020. The claimant's weekly benefit amount was established at \$275. The claimant works as a coordinator for a factory beginning July 26, 2021. The claimant was hired to work full time, 40 hours a week, at a pay rate of \$18, per hour. For the weeks of July 26, 2021, through February 12, 2022, the claimant earned \$720, each week.

The claimant received benefit payments totaling \$825, for weeks ended July 31, 2021, through August 14, 2021.

Conclusions of Law: The law provides that a claimant is "totally unemployed" in any week during which no services are performed and for which earned income is not payable.

The record reflects that the claimant became employed beginning July 26, 2021. The claimant's weekly benefit amount was established at \$275. The evidence shows that the claimant was totally employed the weeks beginning July 25, 2021, through February 12, 2022. Thus, the claimant is not entitled to receive benefits for any week she earned more than her weekly benefit amount.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments.

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 benefit payments totaling \$825, for the weeks ended July 31, 2021, through August 14, 2021. Since the claimant received benefits she was not entitled, the amount of \$825, is considered an overpayment and is subject to recovery or recoupment by the Department.

Decision: The determination dated September 13, 2021, holding the claimant ineligible and overpaid, is affirmed beginning July 25, 2021, through February 12, 2022. The adjudicator will determine future eligibility.

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

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on February 18, 2022.

S. SMITH
Appeals Referee



By:

Tia Lambert, 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 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.

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.