STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket Nos. 22-00480
22-00481
22-00482
22-00483
22-00484
22-00485
22-00486

vs.

Referee Decision Nos. 0090454437-02
0090983814-02
0090987976-02
0091236478-02
0091238379-02
0092185969-02
0092185990-02

Employer/-None

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This consolidated matter comes before the Commission for consideration of appeals of seven decisions of a reemployment assistance appeals referee. Each decision held the claimant ineligible for a week of Pandemic Emergency Unemployment Compensation (PEUC)[1] benefits because she was not able to and available for work as provided in Section 443.091(1)(d), Florida Statutes, due to an inadequate work search, and one decision also held the claimant overpaid benefits she received the week ending June 5, 2021. The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

[1] PEUC is a temporary federal benefits program that provides additional weeks of benefits for individuals who have exhausted a regular reemployment assistance claim after July 1, 2019. 15 U.S.C. §9025.

The weeks addressed under the respective R.A.A.C. Docket Nos., the overpayment, and the underlying Referee Docket Nos., are as follow:

RAAC Docket No.	Referee Docket No.	Week(s) Addressed	Overpayment
22-00480	0090454437-02	5/30/21 - 6/5/21	Overpaid $247
22-00481	0090983814-02	6/6/21 - 6/12/21	
22-00482	0090987976-02	6/13/21 - 6/19/21	
22-00483	0091236478-02	6/20/21 - 6/26/21	
22-00484	0091238379-02	6/27/21 - 7/3/21	
22-00485	0092185969-02	7/4/21 - 7/10/21	
22-00486	0092185990-02	7/11/21 - 7/17/21	

The Commission's appellate review is generally 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.

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 cases do not require reopening or remanding for further proceedings. The referee's finding that the claimant was laid off in March 2021 is corrected to reflect she was laid off in March 2020**.** While the claimant testified that she was laid off in March 2021, Department records reflect she was laid off in March 2020.[2] This, however, does not affect the legal correctness of the referee's ultimate decisions. The referee's material findings, as amended, are supported by competent, substantial evidence in the record. The referee also correctly applied the law in deciding the cases.

[2] The Commission Clerk is directed to mark the November 10, 2020 Notice of Approval determination into evidence as R.A.A.C. Exhibit 1.

Florida's reemployment assistance law requires claimants to be "able to work" and "available for work" in order to be eligible for reemployment assistance benefits during any week.[3] §443.091(1)(d), Fla. Stat. This includes conducting a work search consisting of a minimum of five job contacts per week.[4] *Id.* During the hearing and on appeal to the Commission, the claimant argued she did not conduct the required work search because she was on a temporary layoff from the employer and she could not find any job within her customary occupation. The referee rejected the claimant's explanation that she was on a temporary layoff because she was unemployed longer than eight weeks. Although the referee's analysis is incomplete in that it does not account for the statutory amendment to the definition of "temporary layoff" in 2021, we conclude that consideration of the amendment does not change the outcome of the decision.

As of the 2021 amendment, Section 443.036(43), Florida Statutes, defines "temporary layoff" to mean:

> (a) An individual's job separation due to lack of work which does not exceed 8 consecutive weeks and which has a fixed or approximate return-to-work date; or
> (b) An individual's employer-initiated furlough that causes a mandatory complete stoppage of work if such furlough is temporary and the individual remains job attached and is expected to return to work with the employer.

In this case, the employer did not give the claimant a specific or anticipated date when she was expected to return to work. Further, the claimant was unemployed for over a year. Under these circumstances, the claimant's unemployment cannot be considered a "temporary layoff" and the claimant did not establish that an exception to the statute is applicable, as is her burden. *See Wilson v. Department of Administration, Division of Retirement*, 538 So. 2d 139, 141-42 (Fla. 4th DCA 1989) (the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal). The possibility or even likelihood that the claimant may return to work with the employer at some point in the future is not sufficient. The purpose of the temporary layoff exception to the work search requirement is to avoid the need for a work search when the claimant is awaiting return to work at a reasonably specified time in the near future and such return to work is certain. In a temporary layoff, the claimant remains fully job attached, and a work search is counterproductive. That is not the case here.

---

[3] The terms and conditions of state law that apply to a regular state reemployment assistance claim generally apply to a PEUC claim. 15 U.S.C. §9025(a)(4)(b).

[4] The prior waiver of the work search requirement due to the pandemic expired as of May 29, 2021, pursuant to DEO Emergency Order 21-015 (April 26, 2021). As a result, as of the week ending June 5, 2021, the work search requirement has been reapplied.

Regarding the claimant's argument that she could not find a job within her customary occupation, Florida Administrative Code Rule 73B-11.021 provides, in part, that to be eligible for a claimed week of unemployment, a claimant must be "[f]ree of personal circumstances which would substantially limit or restrict the claimant from conducting an active work search or accepting an offer of suitable work." Florida Administrative Code Rule 73B-11.019 states work is not suitable *within the first 60 days of unemployment* if it, "(1) Pays less than 90% of the claimant's average weekly wage during the base period; or (2) Would require a material change in occupation for the claimant." After 60 days, a claimant must search for work outside his or her customary occupation. The claimant is, therefore, ineligible to receive benefits during the seven weeks at issue and was overpaid PEUC benefits she received for the week ending June 5, 2021.[5]

The referee's decisions are affirmed.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

This is to certify that on

4/29/2022

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: Kady Ross
Deputy Clerk

[5] Department records reflect that on July 29, 2021, a Notice of Approval determination (Issue Identification No. 0092196642-01) was issued waiving the PEUC overpayment that was created by the July 26, 2021 determination under appeal in this case.

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

*263867036 *

Docket No.0090 4544 37-02 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:

ABLE AND AVAILABLE FOR WORK: Whether the claimant has been able and available for work, pursuant to Sections 443.036(1); 443.036(6); 443.091(1)(d), Florida Statutes; Rule73B-11.021, Florida Administrative Code.

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.

Findings of Fact:The claimant filed for reemployment benefits assistance effective March 22, 2020. During the week of May 30, 2021, through June 5, 2021, the claimant did not make any job contacts. The claimant got laid off from her job in March

c

2021, due to the pandemic.

The claimant's weekly benefit amount is $247. For the week ending May 30, 2021 through June 5, 2021, the claimant received one payment of $247.

Conclusion of Law: Department regulations provide that a claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to finding work, including contacting at least five prospective employers for each week of unemployment claimed. Claimants residing within a county that has a population of 75,000 or below shall contact at least three prospective employers for each week of unemployment claimed.The law provides that a claimant must report at least biweekly to receive unemployment benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and had contacted at least five prospective employers or reported in person to a one-stop career center for reemployment services for each week of unemployment claimed, and, if she or he has worked, to report earnings from that work. Effective May 17, 2013, a claimant's proof of work search efforts may not include the same prospective employer at the same location in three consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. For each week of unemployment claimed, each report must, at a minimum, include the name, address, and telephone number of each prospective employer contacted, or the date the claimant reported to a one-stop career center.

The record reflects the claimant did not make the five job searches during the week in question. The claimant was on an extended lay off from her job, that closed due to the pandemic. While careful consideration has been given to the claimant being on a lay off from her employer. The extended lay off period lasted over 8 weeks of her last day of work.

Therefore, the claimant was not exempt from making the five required job contacts during the week of May 30, 2021, through June 5, 2021.

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 the claimant received $247 in benefits during the week in question. It was shown that the claimant was not eligible during this week. Therefore, the claimant has been overpaid benefits in in the amount of $247, for the week ending June 5, 2021.

Decision: The determination dated July 26, 2021, is AFFIRMED. The claimant is ineligible for benefits the week ending June 5, 2021.

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 March 8, 2022.

C. Griffin
Appeals Referee

By:

Keyshaunna Coney, 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 envìo 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 mesaje lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans 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.