

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 22-00712

vs.

Referee Decision No. 0089278164-02

Employer/-None

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the claimant's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision holding that an overpayment of federal benefits will not be waived.

Pursuant to the appeal filed in this case, the Reemployment Assistance Appeals Commission has conducted a complete review of the evidentiary hearing record and decision of the appeals referee. *See* §443.151(4)(c), Fla. Stat. The Commission's review is generally limited to the evidence and issues before the referee and contained in the official record.

The issue before the Commission is whether the claimant is eligible for waiver of repayment of an overpayment of federal benefits to which the claimant is not entitled. 15 U.S.C. §9025(e)(2).

The referee made the following findings of fact:

The claimant filed an application for reemployment assistance benefits effective May 17, 2020, and the claimant establishing a weekly benefit amount of \$258.00. The claimant received benefits from May 30, 2020, to April 14, 2021. Thereafter, the Department issued a notice of disqualification on June 8, 2021, finding that the claimant was overpaid for the benefits received because the claimant was on a leave of absence. The claimant appealed the determination but did not attend the hearing and the appeal was dismissed. The claimant did not request a reopening. The claimant requested a waiver of the overpayment, and on July 8, 2021, the Department notified the claimant that the overpayment waiver was denied. The claimant is currently employed.

Based on these findings, the referee affirmed the determination holding that the overpayment of benefits would not be waived. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is not in accord with the law; accordingly, the referee's decision is reversed.

The overpayment waiver determination under review in this case held that a \$3,354 benefit overpayment associated with Issue Identification No. 0059671723 would not be waived from benefits received for the weeks ending May 10, 2020, through July 7, 2021. The underlying determination associated with Issue Identification No. 0059671723 is a Notice of Disqualification (June 8, 2021), which held the claimant ineligible beginning May 10, 2020, because he was on a leave of absence. It also held the claimant overpaid for the weeks ending May 30, 2020, through April 17, 2021. Department of Economic Opportunity ("Department") records reflect the \$3,354 overpayment consists of Pandemic Emergency Unemployment Compensation ("PEUC") for the weeks ending August 22, 2020, through November 14, 2020.

Under federal law, a claimant who has received PEUC benefits to which he or she is not entitled must repay those benefits. 15 U.S.C. §9025(e)(2). However, the Department may waive repayment of a PEUC overpayment if it determines the claimant was without fault for the overpayment and that repayment would be contrary to equity and good conscience. *Id.* Federal guidance states that, generally, an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility. Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter No. 20-21, Change 1 at pgs. 9-10 (Feb. 7, 2022).

The PEUC overpayment at issue resulted from the claimant going on a leave of absence. The claimant, however, was forthcoming in reporting to the Department that he went on a leave of absence and chose not to return to work because he had a new baby in his home, and he did not want to expose the baby to COVID-19. The claimant made no contacts with prospective employers for the weeks at issue either.¹

¹ The claimant's initial application dated July 29, 2020, and waiver request/fact-finding form were included in the packets of documents sent with the notices of hearing. We direct the Commission Clerk to mark those documents into evidence as R.A.A.C. Exhibit No. 1 and 2, respectively. We also direct the Commission Clerk to mark the claimant's fact-finding questionnaire dated July 29, 2020, into evidence as R.A.A.C. Exhibit 3; the claimant's application for PEUC dated November 10, 2020, as R.A.A.C. Exhibit 4; and the claimant's application for PUA dated December 3, 2020, as R.A.A.C. Exhibit 5.

In this case, as noted above, the claimant was forthcoming about his situation in his applications, fact-finding questionnaire, and weekly claim certifications. “Fault” for purposes of overpayment waiver should be applied to scenarios where the claimant’s actions resulted in a loss of substantive entitlement to benefits or where there was a failure to act in good faith or with due diligence in seeking benefits. *See* R.A.A.C. Docket No. 22-00265 at p. 5 (April 27, 2022).² Under the facts of this case, we conclude that the claimant is not at fault for the PEUC overpayments within the meaning of federal guidance.

As for the second element, the referee questioned the claimant regarding his monthly expenses, but did not question the claimant regarding the impact having to repay the overpayments would have on his financial situation. Nevertheless, the claimant stated in his overpayment waiver request/fact-finding form that having to repay the overpayments would pose a significant financial hardship and that all of his current income is needed to meet his ordinary and necessary living expenses. Therefore, contrary to the referee’s conclusion, the hearing and administrative records reflect that repayment of the overpayment would be contrary to equity and good conscience. Accordingly, the claimant has met the requirements for waiver of the overpayments and he is eligible for waiver of the overpayments associated with the weeks ending May 30, 2020, through April 17, 2021.

The referee decision under review in R.A.A.C. Docket No. 22-00712 is reversed. The decisions under review in R.A.A.C. Docket Nos. 22-00710 and 22-00711, which were previously dismissed on May 24, 2022, are not altered by this Order.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

This is to certify that on

6/30/2022,

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: Veronica Jones
Deputy Clerk

² Available at http://www.floridajobs.org/finalorders/raac_finalorders/22-00259.pdf.



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



*264902094 *

Docket No.0089 2781 64-02

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:

OVERPAYMENT WAIVER: Whether the repayment of an overpayment from an approved Federal unemployment compensation benefit paid to the claimant is waived, pursuant to The Continued Assistance for Unemployed Workers Act of 2020; Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Pub. L. 116-136), and 5 C.F.R. Part 845 Subpart C.

FINDINGS OF FACT: The claimant filed an application for reemployment assistance benefits effective May 17, 2020, and the claimant establishing a weekly benefit amount of \$258.00. The claimant received benefits from May 30, 2020, to April 14, 2021. Thereafter, the Department issued a notice of disqualification on June 8, 2021, finding that the claimant was overpaid for the benefits received because the claimant was on a leave of absence. The claimant appealed the determination but did not attend the hearing and the appeal was dismissed. The claimant did not request a reopening. The claimant requested a waiver of the overpayment, and on July 8, 2021, the Department notified the claimant that the overpayment waiver was denied. The claimant is currently employed.

CONCLUSIONS OF LAW: Federal regulation provides that States may waive recovery of overpayments on PUA, PEUC, FPUC, MEUC, and the first week of regular UC that is reimbursed, only when the individual is not at fault for the payment and repayment would be contrary to equity and against good conscience.

The record reflects that the claimant received benefits which was later determined to be an overpayment. The claimant did not provide any new information to show that the claimant has met the criteria for an overpayment waiver. Accordingly, it is held that the claimant has not met the criteria for an overpayment waiver.

DECISION: The determination of the claim's adjudicator dated July 8, 2021, finding that the claimant has not met the criteria for an overpayment waiver is AFFIRMED. The claimant has not met the criteria for an overpayment waiver.

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 April 1, 2022.

P. Robinson
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.

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.