

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 13-05849

vs.

Referee Decision No. 13-47345U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of an appeal of the decision of a reemployment assistance appeals referee pursuant to Section 443.151(4)(c), Florida Statutes. The referee's decision stated that a request for review should specify any and all allegations of error with respect to the referee's decision, and that allegations of error not specifically set forth in the request for review may be considered waived.

The referee's finding that the claimant's original schedule request was to be off work by 4 p.m. on Sundays is corrected to reflect that his original request was to be off between 9 a.m. and 11 a.m. on Sundays. The referee's finding that the claimant was told on Monday, April 15, 2013, that the employer could no longer accommodate his Sunday requests and that it was mandatory that he work on Sundays is corrected to reflect that this occurred on April 13, 2013. Modification of these findings, however, does not affect the legal correctness of the referee's ultimate decision. The Commission also notes that the employer's witness, the director of housekeeping, testified that he could have accommodated the claimant's schedule requests, but that he chose not to do so. Under Title VII, a covered employer¹ is required to provide reasonable accommodations for an employee's religious practice if it can do so without undue hardship on the conduct of the employer's business. 42 U.S.C. §§2000e(j) & 2000e-2(a)(1). Reasonable accommodations for an employee's religious practice include schedule adjustments. 29 C.F.R. §1605.2(d). The employer's witness's testimony did not establish that providing this accommodation would be an undue hardship. We also note that denying the claimant unemployment compensation for a separation brought about by failure to work a

¹ Although the specific issue of Title VII coverage was not addressed, the employer's witness at one time stated that more than 30 employees worked in one department of the client location, which is twice the coverage threshold. See 42 U.S.C. §2000e(b).

specific schedule due to religious practices may violate the First Amendment. *Hobbie v. Unemployment Appeals Commission*, 480 U.S. 136 (1987). Based on these legal principles, the Commission concludes that the referee properly held that claimant had good cause attributable to the employer for voluntary separation.

Upon appeal of an examiner's determination, a referee schedules a hearing. Parties are advised prior to the hearing that the hearing is their only opportunity to present all of their evidence in support of their case. It is the referee's responsibility to develop the hearing record, weigh the evidence, resolve conflicts in the evidence, and render a decision supported by competent and substantial evidence. While hearsay evidence is admissible at a hearing, it can only be used to supplement or explain other evidence, and is not sufficient in itself to support a finding of fact unless admissible over objection in a civil action. Fla. Admin. Code R. 73B-20.024(3)(d). Such evidence, in fact, may not be considered as "competent evidence." The "Appeals Information" pamphlet provided to the parties prior to the hearing placed them on notice that "the best type of evidence is testimony from someone who was present when an event occurred and can answer specific questions about what happened" and that documents or affidavits standing alone are normally regarded as "hearsay" and may be insufficient to prove a case.

By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record. A decision of an appeals referee cannot be overturned by the Commission if the referee's material findings are supported by competent and substantial evidence and the decision comports with the legal standards established by the Florida Legislature. The Commission cannot reweigh the evidence or consider additional evidence that a party could have reasonably been expected to present to the referee during the hearing. Additionally, it is the responsibility of the appeals referee to judge the credibility of the witnesses and to resolve conflicts in evidence, including testimonial evidence. Absent extraordinary circumstances, the Commission cannot substitute its judgment and overturn a referee's conflict resolution.

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 to the referee. Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes that no legal basis exists to reopen or supplement the record by the acceptance of any additional evidence sent to the Commission or to remand the case for further proceedings. The Commission concludes the record adequately supports the referee's material findings and the referee's conclusion is a correct application of the pertinent laws to the material facts of the case.

The referee's decision is 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

11/27/2013 ,

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 Thomas
Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
MSC 344 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

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 limité pou ou ranpli apèl la.

Docket No. 2013-47345U

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3651-0

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:

SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(30), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

CHARGES TO EMPLOYMENT RECORD: Whether benefit payments made to the claimant shall be charged to the employment record of the employer, pursuant to Sections 443.101(9); 443.131(3)(a), Florida Statutes; Rules 73B-10.026, 11.018, Florida Administrative Code. (If employer charges are not at issue on the current claim, the hearing may determine charges on a subsequent claim.)

Findings of Fact: The claimant was hired as a Laundry Attendant for the employer, an employee leasing agency, by the client company, _____, on August 14, 2012. All employees for the client are leased employees with the employer. The client retains the right to hire and fire employees. Accommodations were made to the claimant's scheduled due to his attendance of religious meetings on Sundays. The claimant's original scheduling accommodation was to be off work by 4 P.M. on Sundays. During the last two months of his employment, the schedule accommodation was between the hours of 9 A.M. and 11 A.M., on Sundays due to a change in the meeting time. The claimant properly requested and was granted off Sunday, April 14, 2013. On Monday, April _____

15, 2013, the claimant was told by the director of housekeeping that as a result of an increase in business he would no longer accommodate his Sunday, requests and that it was mandatory he work the first shift of 8 A.M. to 4:30 P.M., on Sundays. The claimant offered to work the second or third shift on Sundays, to which the director replied that he would no longer have a job if he could not work the first shift on Sundays, without accommodations. The claimant requested that he be allowed to work until the end of the pay period Thursday, April 18, 2013.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause as defined in the statute will be disqualified for benefits. "Good cause" includes only cause attributable to the employing unit or illness or disability of the claimant requiring separation from the work. However, a claimant who voluntarily left work to return immediately when called to work by a permanent employing unit that temporarily terminated the claimant's work within the previous 6 calendar months, or to relocate due to a military-connected spouse's permanent change of station, activation, or unit deployment orders, is not subject to this disqualification.

The record reflects the claimant quit as a result of his scheduling accommodations being revoked. Good cause for voluntarily leaving a job is such cause as will reasonably impel the average, able-bodied, qualified worker to give up employment. Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). Where the record reflects that accommodations to the claimant's Sunday schedule had been granted and that the employer had two other shifts for which the claimant was available to work, the claimant established that the employer's decision to deny the claimant's request to be off two hours out of twenty-four one day a week was unreasonable. While it is accepted that the employer's business demand had increased, the claimant's request for two hours was within reason. The record is devoid of competent evidence that working 8 A.M., to 4:30 P.M., on Sundays, was a condition of employment at the time of hire. Furthermore, where the evidence shows the claimant's request had been granted during his employment then revoked, the employer essentially violated the claimant's terms of employment. Accordingly, the claimant's leaving was with good cause attributable to the employer. The claimant; therefore, is not subject to disqualification. The employer shall be charged accordingly.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. In

Order Number 2003-10946 (December 9, 2003), the Unemployment Appeals Commission set forth factors to be considered in resolving credibility questions. These factors include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the claimant to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the claimant.

Decision: The determination dated May 20, 2013, is REVERSED. If all other requirements are met the claimant is entitled to Reemployment Assistance. The employment record of the employer (1637422) will be charged its share of benefits paid in connection to this claim.

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 mailed to the last known address of each interested party on June 21, 2013.

CATHERINE
MILLER
Appeals Referee

By: 
GAIL ALLEN, 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 below 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 <https://iap.floridajobs.org/> 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 <https://iap.floridajobs.org/> 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 Desempleo; 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, <https://iap.floridajobs.org/> 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 seyans la epi ki pat satisfè desizyon yo te pran an gen dwa mande yon revizyon nan men Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org/>. Si ou voye l pa lapòs, dat ki sou tenb la ap dat ou depoze apèl la. Si ou depoze apèl la sou yon sitwèb, ou fakse li, bay li men nan lamen, oswa voye li pa yon sèvis mesajri ki pa Sèvis Lapòs Lèzetazini (*United States Postal Service*), oswa voye li pa Entènèt, dat ki sou resi a se va dat depo a. Pou evite reta, mete nimewo rejis la (*docket number*) avèk nimewo sekirite sosyal moun k ap fè demann lan. Yon pati k ap mande revizyon dwe presize nenpòt ki alegasyon erè nan kad desizyon abit la, epi bay baz reyèl oubyen legal pou apiye alegasyon sa yo. Yo p ap pran an konsiderasyon alegasyon erè ki pa byen presize nan demann pou revizyon an.