STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-00447

vs.

Referee Decision No. 0019580063-02U

Employer/Appellee

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 the claimant disqualified from receipt of benefits.

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. By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record.

The issue before the Commission is whether the claimant voluntarily left work without good cause attributable to the employing unit or was discharged by the employer for misconduct connected with work within the meaning of Section 443.101(1), Florida Statutes.

The referee's findings of fact state as follows:

> The claimant was employed by [the employer] as a mechanic, beginning on May 16, 2007. The claimant was injured on the job and a worker's compensation claim was filed. The claimant was offered a worker's compensation settlement, which was entitled General Release, which the claimant accepted and signed on October 28, 2013. The claimant wanted to continue working for the employer. However, the settlement agreement that the claimant signed included information that the claimant agreed to voluntarily separate from the employer, and agreed to not seek a re-hire with the employer.

Based on these findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit. Upon review of the record and the arguments on appeal, the Commission concludes that the record was not sufficiently developed; consequently, the case must be remanded.

The record reflects the claimant voluntarily resigned employment pursuant to the terms of a mediated workers' compensation settlement agreement. It appears undisputed that the terms of the agreement are not embodied entirely within the document entitled General Release, as suggested by the referee's findings of fact. Rather, an additional document set forth many of the terms of the agreement, but that document was not before the referee. The claimant alleges that the additional document included an assurance by the employer regarding the claimant's entitlement to reemployment assistance following the job separation.

The claimant's allegation regarding the employer's assurances with respect to reemployment assistance, if proven, could be critical to the outcome of the case. In *Sullivan v. Florida Unemployment Appeals Commission*, 93 So. 3d 1047 (Fla. 1st DCA 2012), *reh'g denied*, (July 11, 2012), the court held that the employer's assurance that it would not contest Sullivan's claim for reemployment benefits provided the impetus for her to sign a workers' compensation settlement agreement and, therefore, her quitting was attributable to the employer. Similarly, in *Rodriguez v. Florida Unemployment Appeals Commission*, 851 So. 2d 247 (Fla. 3d DCA 2003), an employee accepted the employer's voluntary buyout offer, which provided that the buyout would not interfere with applications for reemployment assistance benefits. The court held that the employer's assurance of Rodriguez's eligibility for reemployment assistance benefits was designed to induce her to accept the agreement and, consequently, provided her good cause to quit that was attributable to the employer. In the case at hand, however, the record is insufficient to determine the applicability of *Sullivan* and *Rodriguez*.

The claimant and his witness (an attorney who represented the claimant at both the reemployment assistance hearing as well as in the course of settling his workers' compensation claim) presented oral testimony regarding the alleged terms of a mediated written agreement executed contemporaneously with the claimant's resignation and General Release. They also testified regarding oral assurances made by the employer during the mediation conference that led to the written agreement. However, the law strictly limits the use of such parol evidence, as discussed below. Based on the present record, the Commission cannot determine whether the parol evidence offered by the claimant may be considered for the purposes of establishing the terms of the settlement agreement and, therefore, the applicability of *Sullivan* and *Rodriguez*.

As a general rule, evidence outside a written contract's language, which is known as parol evidence, may be considered only when the contract language contains a latent ambiguity. *Toussaint v. Toussaint*, 107 So. 3d 474, 477 (Fla. 1st DCA 2013). The party seeking to introduce parol evidence has the burden of first establishing that the written agreement is ambiguous and in need of interpretation. *King v. Bray*, 867 So. 2d 1224, 1226 (Fla. 5th DCA 2004). A latent ambiguity exists if the parties read the same document and came to opposite, but equally reasonable conclusions. *Toussaint*, 107 So. 3d at 479. In determining whether a contract term is ambiguous, the contract must be examined in its entirety. *Gowni v. Makar*, 940 So. 2d 1226, 1229 (Fla. 5th DCA 2006) ("the meaning of a contract is not to be gathered from any one phrase or paragraph, but from a general view of the writing as a whole, with all of its parts being compared and construed, each with reference to the others"). If a written agreement is ambiguous and the intent of the parties cannot be determined from an inspection of the written instrument, then parol evidence may be received in order to properly interpret the instrument. *Lemon v. Aspen Emerald Lakes Assocs*., 446 So. 2d 177, 180 (Fla. 5th DCA 1984).

At the hearing below, it was revealed that the claimant became separated pursuant to a written agreement that was not proffered as evidence by either party. In such circumstances, a referee should immediately ascertain from the parties whether the written agreement in its entirety can be produced and, if so, postpone the hearing for the express purpose of receiving the agreement as evidence. If the parties do not produce the written instrument, the condition precedent to the introduction of parol evidence is not met. If, however, the written agreement becomes a documentary exhibit in the case, and the parties dispute the meaning of its provisions, the referee must determine whether the disputed provisions are ambiguous. Only if the referee first determines that the written terms are ambiguous is parol evidence then admissible to prove the intent of the parties at the time they entered the agreement.

If the evidence is not admissible under the parol evidence rule as discussed above, we note an additional caveat. Generally, evidence that may not be used to support a finding of fact is still admissible for other purposes under the relaxed evidentiary standards in reemployment assistance proceedings. *See* §443.151(4)(b)5., Fla. Stat. ("residual exception"). However, prior to accepting evidence regarding mediation communications, a referee must consider an additional limitation that could affect the admissibility of evidence under the residual exception. In Florida, mediation communications are generally confidential and privileged, unless the parties have agreed otherwise. *See* §44.405, Fla. Stat. A mediation party has a privilege to refuse to testify and to prevent any other person

from testifying regarding mediation communications in a subsequent proceeding. *See* §44.405(2), Fla. Stat. Generally, the privilege may be deemed waived absent an objection by the party invoking the privilege; however, in reemployment assistance proceedings, a privilege should not be deemed waived by an unrepresented party absent an explicit waiver.

To be clear, the confidentiality and privilege provisions for mediations have no effect on a party's ability to present parol evidence to prove the parties' intent with respect to an ambiguous term in a written agreement a party seeks to enforce. *See O'Neill v. Scher*, 997 So. 2d 1205 (Fla. 3d DCA 2008) (holding that a trial court did not err in failing to conduct an evidentiary hearing for the presentation of parol evidence where the terms of a mediated written agreement were not ambiguous). However, the confidentiality and privilege provisions, unless explicitly waived in the agreement itself or by the parties at the hearing, do operate to prohibit evidence regarding mediation communications from being generally admissible under the residual exception.

On remand, any party intending to rely upon the written agreement to establish the circumstances under which the claimant became separated must produce the agreement in its entirety so that it may be examined by the referee as outlined above. The referee must adhere to the parol evidence rule in determining whether oral testimony regarding the terms of the agreement is admissible. From the admissible evidence, the referee must determine whether the employer made assurances to the claimant regarding reemployment assistance benefits that provided her good cause to quit under the rationale of *Sullivan* and *Rodriguez*.

The decision of the appeals referee is vacated and the case is remanded for further proceedings.

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 6/24/2014, 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: Juanita Williams
Deputy Clerk

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

*20514929 *

Docket No.0019 5800 63-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant ***EMPLOYER/Appellee***

APPEARANCES
Claimant
Employer
Claimant Representative

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.

Findings of Fact: The claimant was employed by the employer, as a mechanic, beginning on May 16, 2007. The claimant was injured on the job and a worker's compensation claim was filed. The claimant was offered a worker's compensation settlement, which was entitled General Release, which the claimant accepted and signed on October 28, 2013. The claimant wanted to continue working for the employer. However, the settlement agreement that the claimant signed included information that the claimant agreed to voluntarily separate from the employer, and agreed to not seek a re hire with the employer.

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 shows that the claimant resigned his position to settle a worker's compensation claim. The burden of proof is on the claimant who voluntarily quit work to show by a preponderance of the evidence that quitting was with good cause. Uniweld Products, Inc., v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). In this case, that burden has not been met. Although the claimant's reasons for settling the worker's compensation claim and resigning his position was personally compelling, it is not with good cause attributable to the employer and, as such, the claimant is disqualified from receiving benefits.

Consideration was given to the contention of the claimant that he was forced to leave his employment, but this contention is respectfully rejected. It is clear that the claimant knew or should have known that if he settled the worker's compensation claim, he could no longer work for the company. The claimant, as such of his own free will, signed the agreement and gave up his employment in order to receive a monetary settlement. The claimant as such is disqualified from receiving benefits.

Decision: The determination dated November 25, 2013, is AFFIRMED to hold that the claimant is disqualified from receiving benefits.

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 to the last known address of each interested party on Enero 9, 2014

DON HYMAN
Appeals Referee

By: 

YVETTE HARVEY, 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 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, 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 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, 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 definitif sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20yèm 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, 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, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (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 nimewo 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.
