STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 14-00639

vs.

Referee Decision No. 0019760457-02U

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 within the meaning of Section 443.101(1), Florida Statutes.

The referee's findings of fact state as follows:

> The claimant worked for the employer for two weeks at the beginning of October 2013. The claimant was employed as a full-time warehouse worker. The claimant quit due to excessive sweating related to the un-air conditioned warehouse and cramps from dehydration. The claimant was informed about the lack of air conditioning in the warehouse at the time of hire. The claimant made two attempts to address his concerns. The claimant inquired about wearing a hat or carrying a cloth and was told by a supervisor that this was not allowed. The claimant also informed management about his cramps and management

> acknowledged that dehydration related cramps could happen. The claimant did not address the concerns further. The claimant could not carry water with him but was not prevented from getting water when needed while working. The claimant did not consult a medical professional about the cramps or sweating.

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 the referee's decision is not supported by competent, substantial evidence, and, further, is not in accord with the law; accordingly, it is reversed.

Section 443.101(1), Florida Statutes, provides that an individual shall be disqualified from receipt of benefits for voluntarily leaving work without good cause. Good cause includes such cause as is attributable to the employing unit or which consists of illness or disability of the individual requiring separation from work.

The referee held the claimant disqualified from the receipt of benefits, reasoning he voluntarily quit his position without good cause because he did not make a sufficient attempt to preserve his employment prior to quitting. At the hearing before the appeals referee, the claimant presented unrefuted testimony that established he resigned from his position because he was suffering greatly due to the extreme heat at the work site. The claimant testified that the high temperature in the employer's warehouse caused him to sweat profusely and to experience cramping due to dehydration. The record reflects the claimant notified the employer of his condition, was offered no accommodation and, for that reason, he quit his employment.

The record reflects the claimant attempted to perform the job but determined that continuing to work was substantially adversely affecting his health. We conclude that, in a situation such as this, a new job and the claimant's physical inability to physically perform the job duties, the statute and case law dictate the conclusion that the claimant had good cause attributable to illness or disability requiring separation from this position. In *Vajda v. Unemployment Appeals Commission*, 610 So. 2d 645 (Fla. 3d DCA 1992), the appeals referee found that the claimant's migraine headaches were a preexisting condition that was not caused by the employer and therefore did not provide good cause for leaving and disqualified the claimant. The court concluded, however, that the claimant quit her job with good cause attributable to illness or disability, reasoning that "Under the statute, it is not a matter of assigning blame to the employer. The inquiry is whether there is an illness or disability which makes the employee physically unable to perform the duties of the job." More recently, in *Humble v. Unemployment Appeals Commission*,

963 So. 2d 956 (Fla. 2d DCA 2007), the claimant quit his job after only working a short time and testified he was physically unable to handle the strenuous nature of the job (which included lifting heavy ladders and climbing telephone poles). The appeals referee determined that the claimant "felt that he was not suited for the job" and quit "due to the strenuous nature of the job," yet disqualified him because he found no evidence that the employer had misrepresented the nature of the job. The referee, therefore, concluded that Humble "voluntarily quit his job for personal reasons that were not attributable to the employer." The court cited *Vajda* in reversing the referee and the Commission.

The proper inquiry is whether the claimant is physically unable to perform the job duties. *See Large v. Unemployment Appeals Commission*, 927 So. 2d 1066 (Fla. 4th DCA 2006). In this case, the claimant gave unrefuted testimony that he could not physically perform the functions of his job due to the effect the work was having on him. Similar to the claimant in *Humble*, the claimant in this case accepted a job offer without fully understanding the impact the working conditions would have on his health. The claimant made an attempt to perform the job, determined that he was unable to do so without negatively impacting his health, and quit. In a situation such as this, the statute and case law dictate the conclusion that the claimant had good cause attributable to an illness or disability requiring separation from this position.

Although the issue of charges to the employer's tax account is not currently at issue because the claimant's employment did not fall within the base period of his current claim, the employer is advised that, should a future claim be filed, its account is eligible for noncharging because the claimant's quitting was not attributable to the employer. *See* §443.131(3)(a)1., Fla. Stat.

The decision of the appeals referee is reversed. The claimant is not disqualified from receipt of benefits as a result of this claim. If otherwise eligible, the claimant is entitled to benefits.

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 7/15/2014, 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

*23248478 *

Docket No.0019 7604 57-02 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: 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 worked for the employer for two weeks at the beginning of October 2013. The claimant was employed as a full-time warehouse worker. The claimant quit due to excessive sweating related to the un-air conditioned warehouse and cramps from dehydration. The

claimant was informed about the lack of air conditioning in the warehouse at the time of hire. The claimant made two attempts to address his concerns. The claimant inquired about wearing a hat or carrying a cloth and was told by a supervisor that this was not allowed. The claimant also informed management about his cramps and management acknowledged that dehydration related cramps could happen. The claimant did not address the concerns further. The claimant could not carry water with him but was not prevented from getting water when needed while working. The claimant did not consult a medical professional about the cramps or sweating.

Conclusions of Law: The law provides that an individual will be disqualified for benefits who voluntarily leaves work without good cause attributable to the employing unit. Good cause is such cause as "would reasonably impel the average able-bodied qualified worker to give up his or her employment." Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). Moreover, an employee with good cause to leave employment may be disqualified if reasonable effort to preserve the employment was not expended. See Glenn v. Florida Unemployment Appeals Commission, 516 So.2d 88 (Fla. 3d DCA 1987). See also Lawnco Services, Inc. v. Unemployment Appeals Commission, 946 So.2d 586 (Fla. 4th DCA 2006); Tittsworth v. Unemployment Appeals Commission, 920 So.2d 139 (Fla. 4th DCA 2006).

The record reflects that the claimant worked for the employer for two weeks in October 2013. Further, the claimant was informed at the time of hire that the warehouse was not air conditioned. In this case, the claimant did not make a reasonable effort to preserve the employment relationship prior to leaving. The claimant did inquire about his concerns but did not take further action to resolve the issues prior to quitting. The record also shows that the claimant was not prevented from getting water during his shift if needed. Thus, it is concluded that the claimant voluntarily left work without good cause attributable to the employing unit within the meaning of Florida reemployment assistance law. The claimant is disqualified from receiving benefits beginning October 13, 2013 and until earning $4675.

Decision: The determination dated January 17, 2014 is AFFIRMED. The claimant is disqualified from receiving benefits beginning October 13, 2013 and until earning $4675.

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 February 12, 2014

Kelci Kemmerer
Appeals Referee

By: Antonia L Spivey

ANTONIA SPIVEY (WATSON), 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.
