STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Order No. 14-02355

vs.

Referee Decision No. 0021919883-02U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the employer's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision which held the claimant not 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.

Procedural error requires this case to be remanded for further proceedings; accordingly, the Commission does not now address the issue of whether the claimant is disqualified for benefits.

The referee's findings of fact state as follows:

> The claimant was employed from August 19, 1990, through November 19, 2013. Claimant is a teacher. Claimant was charged with six counts of Sexual Battery on a Child by a Person in Familial or Custodial Authority. The case is pending. At time of arrest claimant was moved to a non-student contact position. Employer felt they had justification to suspend and terminate claimant October 23, 2013, and November 11, 2013, respectively.

Based on these findings, the referee held the claimant was discharged for reasons other than misconduct connected with work. Upon review of the record and the arguments on appeal, the Commission concludes procedural error requires this case be remanded.

When the issue before the appeals referee relates to the claimant's separation from employment, the employer bears the initial burden of proving either the claimant was discharged for misconduct connected with the work or the claimant voluntarily quit, in which case the burden shifts to the claimant to show good cause for the quitting. *See Lewis v. Lakeland Health Care Ctr., Inc.*, 685 So. 2d 876, 878 (Fla. 2d DCA 1996). The proof necessary to carry this burden must consist of competent, substantial evidence. *See Tallahassee Housing Authority v. Unemployment Appeals Commission*, 483 So. 2d 413 (Fla. 1986); *De Groot v. Sheffield*, 95 So. 2d 912 (Fla. 1957).

Disqualification for Commission of Criminal Acts

While the referee is not required to set out in detail every fact brought out in the evidence, his statement of facts should be clear and unambiguous and should be sufficiently definite to enable the reviewing authority to test the validity under the law of the decision resting upon those facts. *Hardy v. City of Tarpon Springs*, 81 So. 2d 503, 506 (Fla. 1955). In this case, the findings of fact and conclusions of law are severely lacking because of legal error.

The referee concluded:

> [T]he standard for receiving benefits is whether the claimant was convicted of the offense, made an admission of guilt in a court of law, or entered a plea of guilty or nolo contendere. Claimant's culpability for the charge cannot be established since the case is still pending disposition.

Section 443.101(9)(a) and (b), Florida Statutes, do provide that an individual shall be disqualified for benefits if the Department of Economic Opportunity or the Reemployment Assistance Appeals Commission finds the individual was terminated from work for (a) a violation of any criminal law under any jurisdiction, which was in connection with his or her work, and the individual was convicted, or entered a plea of guilty or nolo contendere or (b) any dishonest act in connection with his or her

work. However, the standard for denying benefits is not limited to whether a claimant is convicted of an offense, admitted guilt or pled nolo, or committed a dishonest act. Section 443.101(9) is simply one provision of the statutory section regarding disqualification, and subsection (9) is not the only one applicable to discharge for allegedly criminal conduct.

Contrary to the referee's assumption, the fact that a claimant has a criminal charge pending does not preclude the referee from analyzing whether the claimant voluntarily quit based on his failure to pursue available procedures to challenge the allegations against him or from finding misconduct based on the claimant's actions if the employer presents a prima facie case against the claimant and the claimant fails to overcome the evidence against him. The Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them. *Baxter v. Palmigiano*, 422 U.S. 308, 318 (1976). In addition, Section 443.171(8), Florida Statutes, specifically provides:

> PROTECTION AGAINST SELF-INCRIMINATION.—A person is not excused from appearing or testifying, or from producing books, papers, correspondence, memoranda, or other records, before the Department of Economic Opportunity, its tax collection service provider, the commission, or any authorized representative of any of these entities or as commanded in a subpoena of any of these entities in any proceeding before the department, the commission, an appeals referee, or a special deputy on the ground that the testimony or evidence, documentary or otherwise, required of the person may incriminate her or him or subject her or him to a penalty or forfeiture. That person may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which she or he is compelled, after having claimed her or his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the person testifying is not exempt from prosecution and punishment for perjury committed while testifying.

Because Section 443.171(8), Florida Statutes, in effect, forbids the later use of testimony in a reemployment assistance hearing to prosecute the testifying party, it does not excuse a party from testifying merely because the testimony would otherwise be subject to Fifth Amendment protections. In this case, the referee appears to have believed the claimant could decline to testify without consequence. On remand, the referee is to develop the record on the misconduct issue and advise the claimant of this subsection.

Preservation of Employment

A major issue in this case is whether the claimant took reasonable steps to preserve his employment. In *Glenn v. Florida Unemployment Appeals Commission*, 516 So. 2d 88 (Fla. 3d DCA 1987), the claimant was provided with a copy of a disciplinary report recommending his dismissal from employment. The document provided that the claimant could respond orally or in writing to the charges against him, and his response would be made a part of the report to be considered prior to a final determination regarding the recommendation. The letter discharging the claimant from employment was issued only after the claimant declined to take any action regarding the dismissal recommendation. The letter of dismissal also informed the claimant he had certain post-termination appeal rights which he declined to exercise. The court stated:

> Whenever feasible, an individual is expected to expend reasonable efforts to preserve his employment. The average, prudent person in the claimant's situation would have made a good faith effort to defend himself against a discharge recommendation when afforded that opportunity. In allowing his dismissal to be implemented forthwith because he would not appropriately acknowledge or respond to the disciplinary action report recommendation, the claimant chose not to avail himself of an accessible avenue by which he might have retained his employment. Under those circumstances, it must be concluded that the claimant voluntarily relinquished his position without good cause attributable to the employer within the meaning of section 443.101(1)(a), Florida Statutes. *Board of County Commissioners, Citrus County v. Florida Department of Commerce*, 370 So. 2d 1209 (Fla. 2d DCA 1979); *Quick v. North Central Florida Community Mental Health Center*, 316 So. 2d 301 (Fla. 1st DCA 1975)

On the other hand, in *LeDew v. Unemployment Appeals Commission*, 456 So. 2d 1219 (Fla. 1st DCA 1984), the claimant was not penalized for failing to avail himself of grievance procedures where the record indicated that doing so would have been futile. The court indicated that the issue was whether the claimant had a voluntary choice. According to the court, the claimant in *LeDew*, had no choice because the school superintendent demanded his resignation and while the superintendent did not have the authority to discharge the claimant, he had the de facto power to do so where the school board routinely followed his recommendations.

On remand, the referee is directed to address in the findings the procedures that were available to the claimant to challenge the allegations against him, specifically the October 16, 2013 letter wherein the Superintendent informed him that a recommendation would be filed with the School Board to suspend him without pay and to ultimately terminate him. The referee must also address the evidence relied upon in making the recommendation, and the policies and rules that were allegedly violated. The referee must also address the evidence that the claimant was specifically advised that he had the right to appear or be represented at the October 22, 2013 meeting and present any appropriate information, and was further advised a recommendation would be filed with the School Board to terminate him based on the reasons given in the letter. The letter advised:

> As you are entitled to a hearing under Florida Statutes, Section 120.57, no action will be taken with regard to the above recommendation for termination for a period of twenty-one (21) days following receipt of this letter . . . . If you do not file a request for a hearing within the time above stated, you will be deemed to have waived your right to an administrative hearing. In that event, the School Board will act on the recommendation for termination of your employment at the November 19, 2013, public hearing.

The referee is also to make findings regarding what, if any, action the claimant took in response to the letter and what efforts he made to defend himself and to challenge the allegations against him at the October 22, 2013 school board meeting to address his suspension and the November 11, 2013 meeting to address his termination. The referee should also address whether the claimant availed himself of the chapter 120 hearing referenced in the letter. While the claimant may have an ongoing criminal case and may have, on advice of counsel, not appeared at the school board meetings or requested a chapter 120 hearing, an individual is expected to expend reasonable efforts to preserve his employment. The average, prudent person in the claimant's situation would have made a good faith effort of some type to defend himself against a discharge recommendation when afforded that

opportunity, even if it did not involve testifying. Moreover, a claimant who files a claim for reemployment assistance benefits has the burden to defend himself when allegations are made by the employer concerning the reason for discharge. The referee must address whether the claimant chose not to avail himself of an accessible avenue by which he might have retained his employment when he failed to respond to the Superintendent's recommendation to suspend and then terminate him, and therefore effectively voluntarily quit. The referee must also address whether the claimant raised the *LeDew* defense that following the grievance process would have been futile.

Misconduct

If the referee finds that this separation is not to be deemed a voluntary leaving, the referee is directed to further develop the record and make findings regarding the testimony and evidence presented at the hearing to determine whether the employer has met its burden of establishing by competent, substantial evidence that the discharge was for misconduct connected with work.

Effective May 17, 2013, Section 443.036(30), Florida Statutes, states that misconduct connected with work, "irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other":

> (a) Conduct demonstrating a conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; or theft of employer property or property of a customer or invitee of the employer.
>
> (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
>
> (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

> (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
>
> (e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:
> a. He or she did not know, and could not reasonably know, of the rule's requirements;
> b. The rule is not lawful or not reasonably related to the job environment and performance; or
> c. The rule is not fairly or consistently enforced.
> 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

Specifically, the referee should address subparagraphs (a), (b), and (e), as well as (d), if applicable. The referee is directed to make specific findings regarding the rules or policies that were allegedly violated and to make specific findings regarding the evidence presented, including the testimony of the alleged victims.

The testimony of the employer's witnesses was that the claimant was terminated for the reasons stated in the letter dated October 16, 2013, from the Superintendent to the claimant. In the letter, the Superintendent stated he was recommending suspension and then termination based on the claimant's violation of:

> -The Code of Ethics of the Education Profession in Florida – State Board of Education Rule 6B 10.080(1)(2)(3)[1]
> -The Principles of Professional Conduct of the Education Profession in Florida -State Board of Education Rule 6B 10.081 (3)(a)(e)(f)(g)(h), (4)(c) and (5)(a)[2]

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[1] This appears to be a scrivener's error. At the hearing, the employer's witness pointed out that the Code was renumbered and although the letter states Rule 6B 10.080(1)(2)(3), the applicable Florida Administrative Code Rule is 6A-10.080(1)(2)(3). The claimant's representative stated they were aware that the numbers had changed.

[2] This appears to be a scrivener's error. At the hearing, the employer's witness pointed out that the Code was renumbered and the claimant's representative stated they were aware the numbers had changed. The Florida Administrative Code Rules are 6A-10.081(3)(a)(e)(f)(g)(h), (4)(c), and (5)(a).

-[County] School Board Policies 6.50 – Professional Ethics
-[County] School Board Policy 6.51 – Violation of Local, State and/or Federal Laws
-[County] School Board Policy 6.84 – Relationships with Students.

The employer has asserted that these violations represent conduct unbecoming an employee with the School Board as well as immorality and misconduct in office as defined in State Board of Education Rule 6A-5.056 – Criteria for Suspension and Dismissal.

School Board Policy 6.84, which was submitted into evidence, specifically prohibits, between a school board employee and a student, "any kissing or touching of an intimate, romantic or sexual nature, sexual contact or sexual relations, any touching otherwise prohibited by law or objected to by the student . . . making verbal or written comments of a romantic or sexual nature or reflecting romantic or sexual innuendo to or about a student, or any other like activity." The employer also submitted as an exhibit a signed acknowledgment of staff conduct and responsibilities, one tenet of which was to report abuse, and another provision the claimant had initialed that cites to policy 6.84 which contains a prohibition against "any touching of an intimate or sexual nature, sexual contact, sexual relations, any touching otherwise prohibited by law or objected to by the student . . . making comments of a sexual nature."

Florida Administrative Code Rule 6A-5.056, Criteria for Suspensions and Dismissals, defines "immorality" as "conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community." It defines "misconduct in office" as one or more of the following: "(a) a violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.[3]; (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.[4]; (c) a violation of the adopted school board rules . . . ." The employer also submitted the Code of Ethics, Principles of Professional Conduct and school board rules into evidence.

The record reflects the claimant was a school board employee from August 19, 1991, to November 20, 2013. He was working as a special education teacher when the school board received information in October 2011 from the Florida Department of Law Enforcement that the claimant had been arrested for sexual contact with minors. The claimant was originally suspended with pay and later placed in a

[3] Rule 6B-1.001, F.A.C. has been transferred to 6A-10.080, F.A.C.
[4] Rule 6B-1.006, F.A.C. has been transferred to 6A-10.081, F.A.C.

non-student contact position, warehouse work. The Executive Director for Legal Services testified that he became aware that the state attorney had deposed the alleged victims, and he had obtained a copy of a redacted deposition of the claimant's stepson who was now an adult. He was also advised there would be an evidentiary hearing in the criminal case on October 8, 2013, at which time the alleged victim and a second alleged victim would testify. The October 8, 2013 proceeding was open to the public and the record of the proceeding is a public record. That hearing was a Williams Rule evidentiary hearing. All testimony at the October 8, 2013 hearing was taken under oath and subject to cross-examination by the opposing party.

The Executive Director for Legal Services obtained a recording of the October 8, 2013 proceeding held in the criminal case, had it transcribed, and submitted it as evidence in this case. He gave a copy of the transcript to the Superintendent and the then Executive Director of Human Resources.

During the October 8, 2013 evidentiary hearing, the first victim, the claimant's stepson, testified that the claimant married his mother when he was three or four years old and began sexually abusing him when he was 13 years old. He testified:

> He (the claimant) basically approached me and he said that, you know, I'm at the age to where, you know, I'm going to start, you know, dating and getting into girls and having girlfriends. And he wanted to teach me about sex. And he masturbated me until the point of an orgasm. So that was the very first time that I ever experienced a sexual encounter at all. (EXH p.43)

The victim was asked "And that was his bare hand touching your unclothed penis?" and responded "Yes, ma'am. That's correct." (EXH at 43).

The victim further testified that the second incident occurred a month or so later during the school year. He testified:

> The second incident he became a little bit more aggressive. You know, manipulated me . . . . Basically what I mean by manipulate is, you know, he approached me with, you know, the whole I'm gonna teach you about sex thing. And then he basically started masturbating me, but this time he performed oral sex or fellatio on me. So he – he took it to another level, you know, than the masturbation. (EXH at 53)

The victim was asked "And by oral sex then you mean his mouth on your penis?" and the victim responded: "His mouth on my penis. That's correct." The victim testified he could not count how many more times it happened after the second incident. He indicated that anytime the claimant had access to him alone, the claimant would sexually abuse him and testified "it could be anywhere between four or five days" a week. (EXH 54). He testified the abuse continued from 1998 until 2002 when he was in his senior year at the school where the claimant worked. (EXH 55). He further testified that, prior to performing oral sex, the claimant would touch the victim's genitals, rub his chest, kiss his legs, kiss the lower parts of his body, massage him, and "stuff like that." (EXH 56). He testified the claimant would also masturbate in front of him. (EXH 56). The victim testified that most of the abuse happened at home; however, it also happened at school. The victim testified:

> Well, like I said, he was my – my ride to school[,] and so there was – there were several occasions where, you know, he would arrive to school a bit early, and it would just be, you know, me and him, and we would go in, campus is still dark, none of the other staff is really there yet and, you know, he just made me in the bathroom, in the student's bathroom, cause the way their bathrooms are, he worked as a special ed teacher assistant so the special ed kids, their bathroom is actually in the classroom. So he had full access to me at the school. (EXH 61).

The stepson testified that throughout the abuse, the claimant told him that no one would believe him if he said anything, and they would all say see how much the claimant has done for the victim's family. The claimant also threatened to kill himself or the victim. (EXH 62). The claimant's abuse of his stepson stopped after the stepson brought it to his mother's attention in front of the claimant in 2002. The abuse was not reported at that time, and the stepson went away to college in 2002. (EXH 62).

The second victim, the claimant's nephew, testified that the claimant abused him in 2003 when he was 12 years old and in the 7th grade and again when he was 13 at beginning of 8th grade. The nephew testified that, on the first occasion, his uncle asked his mother if he could take him to the movies but, instead of seeing a movie, his uncle took him back to his home. The nephew testified "[h]e (the claimant) kissed me and was doing oral sex on me and rubbing on me and stuff and telling me, you know, nobody needs to know about this." (EXH 118). He testified

that the second incident occurred when he was over at his uncle's house when the stepson was home from school. The nephew testified that, while he was asleep, the claimant came in, put his hands under his nephew's clothes and started "playing with" his nephew's penis. The nephew testified he woke up and ran to the bathroom. (EXH 112-119).

The referee must determine, based on the testimony and evidence presented in the record and the applicable law, whether the employer met the burden of proving the discharge was for misconduct connected with work under Section 443.036(30)(a) and (e), Florida Statutes. When an employer establishes prima facie evidence of misconduct, the burden shifts to the employee to come forward with proof of the propriety of that conduct. *Alterman Transport Lines, Inc. v. Unemployment Appeals Commission*, 410 So. 2d 568 (Fla. 1st DCA 1982). The burden of proof in an employee discharge matter is initially upon the employer to prove misconduct. *See Donnell v. University Community Hosp.*, 705 So. 2d 1031 (Fla. 2d DCA 1998). When the employer meets that initial burden, the employee is required to demonstrate the propriety of his/her actions. *See Sheriff of Monroe County v. Unemployment Appeals Commission*, 490 So. 2d 961 (Fla. 3d DCA 1986). The employer shifted the burden to the claimant to come forward with evidence to explain the propriety of the actions. The referee must determine whether the claimant met that burden.

In order to address the points raised above, the referee's decision is vacated and the case is remanded. On remand, the referee is directed to review the record and evidence before her and render a decision that contains accurate and specific findings of fact and a proper analysis of those facts under the appropriate statute and case law. If the referee finds the record needs to be further developed, any hearing convened subsequent to this order shall be deemed supplemental, and all evidence currently in the record shall remain in the record.

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 11/21/2014, 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: Kady Thomas
Deputy Clerk

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

*25977331 *

Docket No.0021 9198 83-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES Claimant Representative

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 violation of any criminal law punishable by imprisonment or for any dishonest act or misconduct in connection with the work, pursuant to Section 443.101(1); 443.101(9), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

Findings of Fact: The claimant was employed from August 19, 1990 through November 19, 2013. Claimant is a teacher. Claimant was charged with 6 counts of Sexual Battery on a Child by a Person in a Familial or Custodial Authority. The case is pending. At time of

arrest claimant was moved to a non student contact position. Employer felt they had justification to suspend and terminate claimant October 23, 2013 and November 11, 2013, respectively.

Conclusions of Law: As of May 17, 2013, the Reemployment Assistance Law of Florida defines misconduct connected with work as, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50; theft of employer property or property of a customer or invitee of the employer.
(b) Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer.
(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:
a. He or she did not know, and could not reasonably know, of the rule's requirements;
b The rule is not lawful or not reasonably related to the job environment and performance; or
c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

As of June 27, 2011, the law provides that a claimant who was discharged for violating a criminal law punishable by imprisonment, in connection with the work, will be disqualified for benefits if the claimant was convicted of the offense, made an admission of guilt in a court of law, or entered a plea of guilty or nolo contendere.

The claimant was arrested and charged with criminal sexual misconduct on a minor. At the time of arrest claimant was moved to a non student contact position. Thereafter, employer terminated claimant based on violations of Code of Ethics of Profession in Florida and Policies. Although justifiable for a termination by employer, the standard for receiving benefits is whether the claimant was convicted of the offense, made an admission of guilt in a court of law, or entered a plea of guilty or nolo contendere. Claimant's culpability for the charge cannot be established since the case is still pending disposition. Therefore, claimant is qualified to receive benefits from October 20, 2013.

At the time of the hearing, the employer presented insufficient competent evidence to establish the claimant was culpable of criminal activity. The employer, however, is advised that a request for redetermination can be filed with the Department pursuant to Section 443.151(3)(c), Florida Statutes, following the resolution of any criminal and/or administrative proceedings.

Decision: The determination dated February 26, 2014 is AFFIRMED and claimant is qualified to receive benefits beginning October 20, 2013.

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 April 17, 2014

Melissa Dembicer
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 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.
