STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

vs.

R.A.A.C. Order No. 14-05305
Referee Decision No. 0023528066-02U

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.

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 recite as follows:

> The claimant began working for the employer on March 16, 1993. The employer had a policy that if an employee had a grievance with management then they could directly address the direct management staff whom they had an issue with, call the employer's hotline or bring the issue to the employer's human resources department. The claimant received a copy of this policy. The claimant gave the employer a resignation letter on November 22, 2013. The reasons the claimant decided to resign from his employment with the employer was because he felt that he had too much job responsibility, because he was receiving unfair treatment from his manager, and because the employer had not included the seven years that the claimant worked from 1993 through 2000 in [Mexico] City into the claimant's retirement plan.

> The claimant accepted the responsibility of three extra job functions five years prior to his separation date with the employer. The claimant accepted the job function of Customer Service, Global Implementation and Program Manager. The claimant tried to tell the employer's manager ten months prior to his separation date he could no longer perform all of these job roles because it was too much responsibility for one person to handle. The employer's manager told the claimant to take it easy and to keep working. Although the claimant would do a great job on the tasks listed on the employer's evaluation metrics, the employer's manager would not give the claimant a 100% evaluation that would allow the claimant to receive a salary increase. The employer's manager would tell the claimant that there was no way that he could be performing his tasks at 100% and would always state that he needed improvement. The claimant would tell other managerial staff about the employer's manager treating him [disrespectfully] but the other managerial staff told the claimant to suck it up and continue on with his employment. The claimant was afraid to contact the human resources Department with his issue because he did not want to go up against his immediate supervisor. The claimant was told by the employer's human resources personnel that the seven years he worked for the employer in Mexico City would be manually added into the employer's system for his retirement. The claimant called in a year prior to his separation to see why the seven years that the claimant worked for the employer was not added to his retirement. The claimant did not receive a response for why the seven years were not included as of his last update with the employer. The seven years the claimant worked for the employer while the claimant was employed for the employer in Mexico City was not included when the claimant received his separation information from the employer. The claimant's last day of working for the employer was on November 22, 2013.

Based upon the above findings, the referee held the claimant voluntarily left work with good cause attributable to the employing unit. Upon review of the record and the arguments on appeal, the Commission concludes the record was not sufficiently developed; consequently, the case must be remanded.

Section 443.101(1), Florida Statutes, provides that an individual shall be disqualified from receipt of benefits for voluntarily leaving 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).

The Commission notes the referee's finding that the claimant accepted the responsibility of three extra job functions five years prior to his separation date with the employer is not supported by competent, substantial evidence. At the hearing, the claimant testified that he accepted the extra job functions two and a half years prior to his separation date.

As the hearing officer in a reemployment assistance proceeding, the appeals referee must seek out all relevant and material evidence that is available from the witnesses who appear at the hearing. *See* Fla. Admin. Code R. 73B-20.024(3)(b). When rendering a decision, the referee must set out a statement of facts that is clear and unambiguous and sufficiently definite to enable a reviewing authority to test the validity under the law of the decision resting upon those facts. *See Hardy v. City of Tarpon Springs*, 81 So. 2d 503 (Fla. 1955). A review of the hearing record and decision reflects these fundamental requirements were not met.

The claimant testified during the hearing that the extra job functions assigned to him resulted in too much responsibility and that he had voiced his concerns regarding the additional responsibilities to his manager on several occasions. However, the claimant also testified that he was meeting 100% of his performance metrics. On remand, the referee is directed to develop the record regarding the claimant's additional responsibilities, including but not limited to, the specific changes the additional responsibilities caused to the claimant's job duties; the amount of any additional hours that had to be worked by the claimant to complete the additional job functions; whether the claimant received additional compensation for performing the additional functions; and any other manner in which the claimant's job changed after he was assigned the additional responsibilities.

The claimant also testified that even though he was meeting 100% of his performance metrics, his manager would not give him a 100% evaluation. The claimant testified that his 98% performance evaluation put him in the "needs improvement" bracket and did not allow the claimant to receive 100% of his planned salary increase. On remand, the referee is directed to develop the record regarding the employer's performance metric and the minimum score required of employees to meet the employer's performance requirements. Additionally, the referee is directed

to develop the record regarding whether the claimant received 98% of his planned salary increase in direct correlation to his performance score and any other impact the claimant's evaluation had on his compensation and raises. Without the above information, the Commission is unable to determine whether the referee correctly held the claimant not disqualified from receipt of benefits.

Finally, we note that the claimant testified that one of the reasons he resigned was a concern over whether he would receive service credit in the employer's pension plan for his years of employment in Mexico. For a variety of reasons, we hold that the issue regarding the pension plan cannot be considered in this appeal on remand. The employer's pension plan would clearly be governed by ERISA. *See* 29 U.S.C. §1003(a). ERISA contains broad preemption of state laws that "relate to" an ERISA-governed benefit plan. 29 U.S.C. §1144(a). *See generally District of Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125, 129-30 (1992). While unemployment compensation benefit laws are specifically excluded from ERISA, in this case the claimant's allegations regarding his discussions about his service credit specifically require reference to the availability of pension benefits and are preempted from consideration. Additionally, while the claimant testified that he was told at times that he would receive service credit, an oral promise regarding an ERISA-covered benefit is generally unenforceable. *Nachwalter v. Christie*, 805 F.2d 956 (11th Cir. 1986). Even commitments in written documents that are not part of the employee benefit plan documents are not enforceable. *See Schena v. Metro. Life Ret. Plan for United States Emples.*, 244 Fed. Appx. 281 (11th Cir. 2007) (holding that transfer agreement promising service credit in new employer retirement plan for service with prior company was not enforceable under ERISA). To circumvent the general rule, the claimant would have to establish the elements of a fiduciary duty claim under §502(a)(3) of ERISA [*see*, *e.g.*, *Jones v. Am. Gen. Life & Accident Ins. Co.*, 370 F.3d 1065 (11th Cir. 2004)], which is far beyond the scope of reemployment assistance proceedings. Finally, we note that the claimant admitted that he did not learn that he had been denied service credit until after he resigned. Thus, the denial of service credit, as opposed to uncertainty of service credit, could not have been motivation for the resignation.

In order to address the foregoing issues, the referee's decision is vacated and the case is remanded for further proceedings. On remand, the referee is directed to hold a supplemental hearing to develop the record as outlined above and render a new decision that contains accurate and specific findings of fact regarding the circumstances surrounding the claimant's job separation and a proper analysis of those facts along with an appropriate credibility determination in accordance with Florida Administrative Code Rule 73B-20.025(3)(d). Any hearing convened subsequent to this order shall be deemed supplemental, and all evidence 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 1/9/2015, 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: Kimberley Pena
Deputy Clerk

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

*32665878 *

Docket No.0023 5280 66-02 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), (13); 443.036(29), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

Findings of Fact: The claimant began working for the employer on March 16, 1993. The employer had a policy that if an employee had a grievance with management then they could directly address the direct management staff whom they had an issue with, call the employer's hotline or bring the issue to the employer's human resources department. The claimant received a copy of this policy. The claimant gave the employer a resignation letter on November 22, 2013. The reasons the claimant decided to resign from his employment with the employer was because he felt that he had too much job responsibility, because he was receiving unfair treatment from his

manager, and because the employer had not included the seven years that the claimant worked from 1993 through 2000 in New Mexico City into the claimant's retirement plan. The claimant accepted the responsibility of three extra job functions five years prior to his separation date with the employer. The claimant accepted the job function of Customer Service, Global Implementation and Program Manager. The claimant tried to tell the employer's manager ten months prior to his separation date he could no longer perform all of these job roles because it was too much responsibility for one person to handle. The employer's manager told the claimant to take it easy and to keep working. Although the claimant would do a great job on the tasks listed on the employer's evaluation metrics, the employer's manager would not give the claimant an a 100% evaluation that would allow the claimant to receive a salary increase. The employer's manager would tell the claimant that there was no way that he could be performing his tasks at 100% and would always state that he needed improvement. The claimant would tell other managerial staff about the employer's manager treating him disrespectful but the other managerial staff told the claimant to suck it up and continue on with his employment. The claimant was afraid to contact the human resources Department with his issue because he did not want to go up against his immediate supervisor. The claimant was told by the employer's human resources personnel that the seven years he worked for the employer in Mexico City would be manually added into the employer's system for his retirement. The claimant called in a year prior to his separation to see why the seven years that the claimant worked for the employer was not added to his retirement. The claimant did not receive a response for why the seven years were not included as of his last update with the employer. The seven years the claimant worked for the employer while the claimant was employed for the employer in Mexico City was not included when the claimant received his separation information from the employer. The claimant's last day of working for the employer was on November 22, 2013.

Conclusions of Law: The record shows the claimant voluntarily quit. 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). 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. The law provides for disqualification of a claimant who voluntarily left work without good cause attributable to the employing unit. The cause must be one which would reasonably impel an average able bodied qualified worker to leave employment. The applicable standards are the standards of reasonableness as applied to the average man or woman, and not to the supersensitive. Uniweld Products, Inc. v. Industrial Relations Commission, 277 So.2d 827, 829 (Fla. 4th DCA 1973).

The claimant being treated unfairly by the employer's management personnel and not given an opportunity to meet the employer's expectations so that he could receive a raise, and an employer given an excess of responsibility that he advised the employer's management was too much, and the claimant being promised he would receive retirement for the years he worked but then not receiving the years of retirement that was promised establishes a prima facie evidence for an employee to quit his employment. In addition, the claimant provided evidence to show that he had addressed his reasons for quitting with the employer's management staff and no accommodations were made to remedy or to address the reason for which he quit. The claimant by presenting good cause reasons to quit his employment because of the employer's actions shifted the burden to the employer to explain why the claimant did not have good cause to quit his employment. The employer did not present any competent evidence to refute the claimant's reasoning for quitting with good cause attributable to the employer. Accordingly, the claimant is not disqualified from receiving benefits because his quitting was attributable to the employer.

Decision: The determination dated August 14, 2014, is REVERSED. The claimant is not 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/mailed to the last known address of each interested party on September 17, 2014.

ERICA THOMAS HILL
Appeals Referee

By:

MEGAN BRIGHTMAN, Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.004, 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 distribución/fecha de envìo 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 distribisyon/postaj. 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.
