STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 15-03226

vs.

Referee Decision No. 0025739293-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

Upon appeal of an examiner's determination, a referee schedules a hearing. Parties are advised prior to the hearing that the hearing is their only opportunity to present all of their evidence in support of their case. The appeals referee has the responsibility to develop the hearing record, weigh the evidence, resolve conflicts in the evidence, and render a decision supported by competent and substantial evidence. Section 443.151(4)(b)5., Florida Statutes, provides that any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding Section 120.57(1)(c), Florida Statutes, hearsay evidence may support a finding of fact if the party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing and the appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

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

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

The 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 as a technical support representative, beginning on July 29, 2013. In November 2014, the director of product support met with the claimant regarding the claimant's employment. The claimant requested to be allowed to shadow his supervisor in order to learn more for possible advancement. The director of product support informed the claimant that he could shadow his supervisor in order to learn other duties. On January 30, 2015, the claimant filed a complaint of sexual harassment against the manager. In February 2015, [the] human resources generalist interviewed the supervisor and the manager regarding the claimant's sexual harassment complaint against the manager. The investigations resulted in no findings of sexual [harassment] having [occurred]. In February 2015, the manager was required to take training on sexual harassment. On February 3, 2015, the human resources generalist interviewed the claimant regarding the allegations of sexual harassment. On February 3, 2015, at the end of the investigation the claimant was informed that should he have any further issues, he should contact upper management or human

> resources. On February 16, 2015. [sic] During a meeting the supervisor informed the director of product support that she felt that the claimant [was] spending too much time shadowing her and she did not know or to stop the claimant [sic]. The claimant was absent from work on March 23, 2015, March 24, 2015, and March 25, 2015. On March 25, 2015, the supervisor contacted to the human resources generalist regarding the claimant needing a doctor's note for March 23, 2015, March 24, 2015, and March 25, 2015, which [were] days the claimant was absent from work. The human resources generalist informed the supervisor that the claimant would need a doctor's note for the days he was absent. On March 25, 2015, the claimant submitted his resignation due to concerns that he was going to be raped and refused to work for an [in]appropriate manager or belittling director.

In reaching her conclusion, the referee recognized that conflicting evidence was presented by the parties and resolved material evidentiary conflicts in favor of the employer. The referee also reached the following conclusions of law:

> It was shown that the claimant quit. The record reflects that the claimant filed a complaint of sexual harassment against the manager. Consideration [was] given to the claimant's contention that after the investigation of sexual harassment he was being targeted due to the director would no longer say good morning to him and the manager limited the amount of time the claimant would shadow his supervisor. However, the claimant was informed at the conclusion of the sexual harassment investigation that should he have any further issues he was to report it to human resources or upper [management]. The record is devoid of substantial competent evidence to show that the claimant made any further complaints to human resources or upper management of his being harassed or targeted. Hence, the claimant failed to provide substantial competent evidence which substantiated his being targeted by the manager or the director of product support which led to his quitting his employment. Thus, while the claimant may have been frustrated with his work environment and being informed that he had to limit the amount of time he shadowed his supervisor, the claimant's decision to abandon his job because he felt he was being targeted is not considered good cause attributable to the employer. In determining whether an individual quit with good cause attributable to the employer, the standards of review are those that apply to the average reasonable

> person, and not the supersensitive. As a result, it has been shown that the claimant['s] decision to quit was a personal choice. In determining whether a separation is voluntary, examining the intent of the worker is necessary. The word "voluntary" connotes something freely given and proceeding from one's own choice or full consent. St. Joe Paper Company v. Gautreaux, 180 So.2d 668 (Fla. 1st DCA 1968). As a result, while the claimant may have had good personal reasons for abandoning his job[,] the claimant['s] decision to quit was not shown with good cause attributable to the employer. Accordingly, the claimant is disqualified from the receipt of unemployment benefits.

Based on these findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit, and held him disqualified from benefits. The claimant filed a timely request for review.

The Record Evidence

The claimant was employed as a technical support representative for the employer. During his employment, he concluded that he was subjected to sexual harassment by his manager, who was his immediate supervisor's superior. The claimant alleged that three incidents occurred in the fall of 2014.[1] In September 2014, he was in his supervisor's cubicle when the manager approached and asked them if the claimant put his "sweet and skinny in her mouth," referring to the supervisor. Around the same time the manager also asked if the claimant's lunches with his supervisor had "happy endings." Although the claimant discussed the incidents with his supervisor, the claimant did not report the incidents to the employer's human resources department or upper management at the time they occurred. Then, in November 2014, the claimant overheard the manager tell his supervisor that he only speaks to the claimant because he knows "it kills him inside."

At the end of November 2014, the claimant received permission from the director, who was visiting the office from out of state, to shadow his supervisor. The claimant complained that after the shadowing began, the manager would question the claimant and his supervisor on the duration of time the claimant spent in his supervisor's cubicle, the frequency of the lunches they took together, and, in one instance, asked why the claimant was under the supervisor's desk (when the claimant had gone under her desk to plug in a charger).

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[1] The claimant could not remember the dates when each incident occurred.

Sometime in February or March 2015, the claimant received and attempted to challenge his performance appraisal. The claimant complained that the manager was present during the meetings wherein he challenged the appraisal, asserted that only his supervisor should have been present, and contended that the employer did not accept his supervisor's rate changes to his appraisal. The claimant then testified he reported the harassment to a third party in February 2015 because he was being sexually harassed and he was being withheld from the rating his supervisor said he deserved.[2]

The employer's human resources generalist clarified that the report was made on January 30, 2015, and the director testified the claimant contacted him with a complaint on February 4, 2015. The claimant acknowledged that the human resources generalist conducted an investigation and testified the human resources generalist told the claimant what the manager did was wrong, that he would not have to worry about it again, and that the manager would not be harassing him any longer. The human resources generalist testified he told the claimant that he had a right to a workplace free of sexual harassment and retaliation. The claimant was further informed that he could report any concerns to any member of management or human resources. The referee's finding that the investigation resulted in no findings that sexual harassment occurred is not wholly accurate: the human resources generalist explained that, while the employer could not support adverse job action based on the conflicting reports, at the conclusion of the investigation the manager was sent to sexual harassment training and given an exam on his training.

The claimant acknowledged that after the investigation the manager ceased making sexually harassing remarks. The claimant, however, complained that the manager continued to "bother" him. Specifically, he complained that the manager continued to question the amount of time he spent in his supervisor's cubicle; that the manager offered to also learn the reports the claimant was learning (explaining that he could complete them if the claimant was not at the office, was sick, or left employment); and, finally, that the manager informed him that the director instructed that the claimant's shadowing of his immediate supervisor should be limited to one hour per week. The director acknowledged that he did not put an initial time limit on the claimant's shadowing of his supervisor, but explained that shadowing historically occurs only one to two hours per week. He testified the first time he became aware of the amount of time the claimant was spending shadowing his supervisor was when the supervisor herself expressed concerns in a meeting about the amount of time the claimant was spending in her cubicle.

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[2] Again, the claimant's chronology was not clear, but he testified that he considered the appraisals as a motivating factor in deciding to report the alleged harassment.

The claimant acknowledged that upper managers had the authority to give him instructions on his job but asserted that was not the employer's usual practice. When asked if he spoke with management about his concerns after his initial complaint, the claimant testified he brought his subsequent concerns to his immediate supervisor. When asked why he was concerned about his safety, he referenced the comments the manager made in September or October 2014 and the fact that the manager would come to his desk. When questioned regarding the allegation in his resignation letter that he was concerned about being raped, he replied that working with the manager was his main concern. The claimant then asserted he left his employment without further complaint as he felt he was being targeted because the human resources generalist would no longer greet him and because the director restricted the amount of time he could shadow his supervisor, which he believed affected his ability to advance. The claimant also felt he was being targeted because the manager attempted to "write him up" about his attendance. However, he acknowledged that the manager ultimately did not write him up after his attendance history was clarified. Although the claimant aired his grievances to his immediate supervisor, he presented no further complaints to a member of management or human resources before resigning.

As noted above, the referee's finding that the human resources generalist interviewed the supervisor and manager is modified to reflect the human resources generalist interviewed the claimant, the supervisor, and the manager; the referee's finding that the investigation resulted in a finding of no sexual harassment is modified to reflect the employer could not support adverse job actions based upon the conflicting reports it received; the finding that the claimant was told to report to upper management after his initial complaint is modified to reflect the claimant was told to report additional issues to management or human resources; and, finally, the referee's findings, contained in the conclusion, that the director did not return the claimant's greetings is modified to reflect the claimant's testimony that the human resources generalist did not return the claimant's greetings. Modification of each of the aforementioned findings does not affect the legal correctness of the referee's ultimate decision.

Analysis

On appeal, the claimant contends that the employer did not provide certain documents for the appeals hearing. Each party, however, must present their own case. At the outset of the hearing the claimant denied receiving the documents the Department included with the notice of hearing. The claimant waived his rights to these documents, acknowledging that such waiver may impinge his ability to present evidence. The claimant further acknowledged that, while he was entitled to file an appeal of an unfavorable decision, he could not appeal on grounds pertaining to documents. Additionally, the claimant did not demand these documents during the hearing or ask how he could procure the employer's documents at that time. The claimant was aware of the existence of these documents prior to the hearing; thus, they are not newly discovered evidence. *See* Fla. Admin. Code R. 73B-22.005. Consequently, the claimant is not entitled to an additional opportunity to procure or request his desired documents at this time and is not entitled to relief in this regard.

Good Cause Attributable to the Employer

Section 443.101(1)(a), 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. Under the statute, "the term 'good cause' includes only that cause attributable to the employing unit which would compel a reasonable employee to cease working." §443.101(1)(a)1., Fla. Stat. In *Uniweld Products, Inc. v. Industrial Relations Commission*, 277 So. 2d 827, 829 (Fla. 4th DCA 1973), the court clarified that "the applicable standards are the standards of reasonableness as applied to the average man or woman, and not to the supersensitive." *See also Brown v. Unemployment Appeals Commission*, 633 So. 2d 36, 39 (Fla. 5th DCA 1994), *rev. denied* 642 So. 2d 1362 (Fla. 1994), *cert. denied*, ____ U.S. ____, 115 S.Ct. 733, 130 L.Ed.2d 636 (1995) ("The standard is not that of the highly emotional, super sensitive employee").

On appeal, the claimant misplaces the burden in this case, effectively arguing that the employer did not prove he did not have good cause to quit. When an employee leaves work voluntarily, the employee carries the burden to show that their leaving was with good cause attributable to the employer. *See Brown, supra.* The claimant, however, failed to meet his burden of establishing he had good cause to quit.

As noted above, the referee concluded, based on the specific findings and credibility determination, that the claimant failed to establish that his voluntary resignation was with good cause attributable to the employer. Because the issue of good cause is an ultimate issue, the Commission views it as a mixed issue of fact and law. *See S. Fla. Cargo Carriers Ass'n v. Dep't of Bus. & Prof'l Regulation*, 738 So. 2d 391, 392-94 (Fla. 3d DCA 1999) (adopting order of the agency, and citing *McDonald v. Dept. of Banking and Finance*, 346 So. 2d 569, 578-79 (Fla. 1st DCA 1977)). *See also Tourte v. Oriole of Naples, Inc.,* 696 So. 2d 1283, 1284 (Fla. 2d DCA 1997) (noting that courts have held the issue of good cause to be an issue of fact, an issue of law, and a mixed issue of law and fact). Thus, while the referee's basic or "subsidiary" findings are reviewed under the competent, substantial evidence standard, the referee's ultimate conclusion must be supported by subsidiary findings, and comport with numerous established legal principles. Depending on the case, the outcome may functionally turn on resolution of the contested subsidiary facts, or on the application of the legal standards to the subsidiary findings. *See, e.g.*, R.A.A.C. Order No. 14-06037 at pg. 9 (July 16, 2015).[3] The outcome of this case turns on the application of the legal standards to the subsidiary facts.

Both Florida courts and the Commission have held that gender discrimination and harassment constitute good cause to quit. *See, e.g.*, *Fowler v. Unemployment Appeals Commission*, 670 So. 2d 1202 (Fla. 4th DCA 2002). *See also* R.A.A.C. Order No. 13-05313 (February 18, 2014).[4] Additionally, both Title VII and the Florida Civil Rights Act make it unlawful to discriminate on the basis of sex in the "terms, conditions or privileges of employment." 42 U.S.C. §2000e-2(a)(1); §760.10(1)(a), Fla. Stat. "This provision obviously prohibits discrimination with respect to employment decisions that have direct economic consequences, such as termination, demotion, and pay cuts." *Vance v. Ball State University*, 133 S. Ct. 2434, 2440 (2013).

Additionally, when an employer creates or permits a working environment that is so hostile that it interferes with the employee's ability to do his or her job, the employee has been deprived of a term, condition or privilege of employment. As the Supreme Court noted in *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986), to be actionable, harassment "must be sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'" Title VII bans discrimination and harassment "because of . . . sex" even if the alleged victim and alleged perpetrators are of the same sex. *Oncale v.*

[3] Available at http://www.floridajobs.org/finalorders/raac_finalorders/14-06037.pdf.
[4] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-05313.pdf.

Sundowner Offshore Services, Inc., 523 U.S. 75, 79 (1998). In *Oncale,* the Court emphasized that the environment must be "objectively hostile or abusive" and that the "objective severity of the harassment should be judged by a reasonable person in the plaintiff's position, considering 'all the circumstances.'" *Id.* at 81 (citing *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993)).

Furthermore, under equal employment opportunity law, a constructive discharge claim typically requires a more significant deprivation of rights than a garden-variety discrimination or harassment claim. *See, e.g., Pa. State Police v. Suders*, 542 U.S. 129, 146-47 (2004). *See also McCoy v. Macon Water Authority*, 966 F. Supp. 1209, 1218 (M.D. Ga. 1997) (denying employer's motion for summary judgment as to plaintiff's sexual harassment claim because the supervisor, who was interested in men, used his authority to require the plaintiff to come to his office and engage in lengthy conversations about sexual matters, but granting summary judgment to the employer on the plaintiff's constructive discharge claim). While the Commission does not conclude that harassing conduct need necessarily reach a level sufficient to implicate Title VII or the Florida Civil Rights Act, in a reemployment assistance proceeding involving a voluntary separation we are guided by the standards that would be applied in a court proceeding regarding such prohibited conduct. *See* R.A.A.C. Order No. 13-08300 at p.4, n.2 (February 6, 2014).[5] *See also* R.A.A.C. Order No. 13-05581 at pg. 12 (January 28, 2014).[6]

It is also well established that "whenever feasible, an individual is expected to expend reasonable efforts to preserve his employment." *Glenn v. Unemployment Appeals Commission*, 516 So. 2d 88, 89 (Fla. 3d DCA 1987). As discussed in R.A.A.C. Order No. 13-05313 (February 18, 2014),[7] this doctrine has been applied to hostile environment cases by both the courts and the Commission. *See Rivera v. Unemployment Appeals Commission*, 99 So. 3d 505 (Fla. 3d DCA 2011); R.A.A.C. Order No. 13-06892 (December 3, 2013); R.A.A.C. Order No. 12-01947 (March 23, 2012); R.A.A.C. No. 10-08280 (September 3, 2010). In cases where harassment continues after the employer has taken an initial step in response to an employee complaint, the employee generally has a duty to advise the employer that the initial remedy has not provided relief. *Coates v. Sundor Brands, Inc.,* 164 F.3d 1361, 1365 (11th Cir. 1999). This provides the employer the opportunity to utilize more extreme measures to end the harassment. *See generally* R.A.A.C. Order No. 13-05581 at pgs. 13-14.

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[5] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-08300.pdf.
[6] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-05581.pdf.
[7] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-05313.pdf.

We review this case as both a general workplace environment case and as a sexual discrimination/harassment case. Our review of the evidence makes clear that, as a matter of law, the evidence is insufficient to establish either good cause generally or good cause specifically due to sexual harassment. The specific behavior complained of did not establish that the claimant was discriminated against because of sex, nor do the allegations of harassment rise to the level that would provide one good cause attributable to the employer to quit.

In examining whether an environment is "hostile" or "abusive," one may consider the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, *supra*, at 23. An employee's "subjective feelings and personal reactions are not the complete measure of whether conduct is of a nature that interferes with job performance. If it were, the most unreasonably hypersensitive employee would be entitled to more protection than a reasonable employee." *Gupta v. Florida Board of Regents,* 212 F. 3d 571, 586 (11th Cir. 2000). In this case, there is no indication that the harassment included physical contact, threats of physical contact, requests for sexual favors, or threats of adverse job consequences. The claimant testified to two sexual comments in a six-month period. Even a handful of comments made during that time period would not have "so great an emotional impact" as to amount to a hostile work environment for one of reasonable sensibilities. *Baskerville v. Culligan International Co.,* 50 F. 3d 428, 431 (7th Cir. 1995) (citations omitted). Indeed, actions much worse than those detailed in this case have been held not to constitute actionable harassment. *See Mendoza v. Borden*, 195 F.3d 1238, 1246-7 (11th Cir. 1999) (providing a multi-circuit analysis of claims of sexual harassment that were deemed to lack the level of severity or pervasiveness to constitute discrimination in violation of Title VII); *Maldonado v. Publix Supermarkets*, 939 So. 2d 90 (Fla. 4th DCA 2006).

More significantly, once the claimant complained to the employer regarding the boorish comments made by the manager in the fall of 2014, the comments the claimant perceived as sexually harassing ceased. In *Baskerville, supra*, Judge Posner noted that the employer took prompt remedial action and opined that "what is reasonable depends on the gravity of the harassment." *Id.* at 432. *See generally* R.A.A.C. Order No. 13-05581 at pg. 13. "In some situations, particularly where there is some doubt as to the seriousness or the veracity of the charge . . . less drastic measures, such as warning the accused harasser, or reiterating the policy on

harassment, will be more appropriate." *McCoy, supra* at 1219 (noting that it was significant that the informal steps taken by the employer resulted in the cessation of sexually harassing conduct). This employer appropriately exercised its discretion in curing the problem presented to it by holding an investigation and sending the manager to training, and achieved a meaningful result.[8]

The claimant then alleges that the employer engaged in retaliatory behaviors after he filed his report, but the record, even crediting his testimony, does not support a finding that such occurred. The claimant must first establish that some meaningful adverse action occurred, and second, that it was retaliation for his protected activity in complaining to human resources.

There was no indication that the claimant suffered any job consequence such as loss of pay or other opportunities. While a tangible employment action is not required to establish retaliation (*Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53 (2006)), something more than the lightest perceived slights is necessary to establish good cause to quit. While the claimant believed his reduction in shadowing time impaired his ability to be promoted, that is too speculative a prospect to establish immediate injury. *See generally* R.A.A.C. Order No. 14-02560 (December 30, 2014).[9]

Additionally, while the claimant challenged the manager's attempts to issue him written warnings, "[a] proposed action that is corrected as soon as the proper official is made aware of it and before it goes into effect, so that the employee does not actually suffer any consequences, is not 'adverse.'" *Gupta, supra*, at 588. The actions complained of after the claimant reported his grievance to the employer are "simply a work environment that exhibits the monitoring and job stress typical of life in the real world. Normal job stress does not constitute a hostile or abusive work environment." *Trujillo v. Univ. of Colo. Health Serv. Ctr.*, 157 F.3d 1211, 1214 (10th Cir. 1998).

"Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action." *Univ. of Texas Southwestern Medical Ctr. v. Nassar*, 133 S. Ct. 2517, 2527 (2013). The claimant's testimony, at most, indicates that he objected to his manager's attempts to manage, the director's direction to shadow within the historically observed temporal limitations for shadowing, and the human resources generalist's failures to return some greetings.

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[8] Although the record is silent as to whether the claimant was informed that the manager was sent to training, even if the claimant was unaware that the manager was sent to training and subject to examination, the claimant was aware the sexual harassment ceased after his employer's investigation.

[9] Available at http://www.floridajobs.org/finalorders/raac_finalorders/14-02560.pdf.

That the human resources generalist and the manager may have socialized on occasion also does not amount to retaliation against the claimant, and the claimant has also failed to prove that such actions would not have occurred in the absence of a wrongful motive on the part of the employer. The claimant's testimony was often vague, lacked dates, and did not adequately support his claim. Conclusory assertions are not sufficient to prove discrimination. *Harrison v. IBM Corp.*, 378 Fed. Appx. 950, 955 (11th Cir. 2010).

Finally, although we note that the claimant's contentions regarding his work environment would not cause the average person to leave their employment, the record also reflects the claimant failed to expend reasonable efforts to preserve his employment by presenting his post-investigation issues to upper management, the employer's human resources generalist, or even the third-party complaint line he used to initiate his first complaint. While the claimant contends he spoke to his supervisor, he knew that his prior conversations with his supervisor had yielded no results and results were only obtained when he spoke to human resources. Although he points to the camaraderie amongst management and the human resources generalist's purported failure to return greetings to validate his decision not to make a second complaint, the claimant had evidence that complaining to management and human resources yielded results and his speculation about possible future outcomes does not eliminate his obligation to seek redress from the employer as to any additional issues or to work further with the employer on the issues. *See generally Brown, supra.*

As a whole, the evidence failed to demonstrate that the conduct challenged in this case was sufficiently severe to create a hostile working environment. The record supports the referee's conclusion that the claimant was overly sensitive to the workplace events after his complaint, and, therefore, did not have good cause attributable to the employer to quit.

The referee's decision is affirmed. The claimant is disqualified from receipt of benefits. The employer's account is relieved of charges in connection with this claim.

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

12/17/2015 ,

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: Kady Ross
Deputy Clerk

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

*43523781 *

Docket No.0025 7392 93-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES Claimant

Employer

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.

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

Findings of Facts: The claimant worked for the employer as a technical support representative, beginning on July 29, 2013. In November 2014, the director of product support met with the claimant regarding the claimant's employment. The claimant requested to be allowed to shadow his supervisor in order to learn more for possible advancement. The director of product support informed the claimant that he could shadow his supervisor in order to learn other duties. On January 30, 2015, the claimant filed a complaint of sexual harassment against the manager. In February 2015, human resources generalist interviewed the supervisor and the manager regarding the claimant's sexual harassment complaint against the manager. The investigations resulted in no findings of sexual harrassment having occured. In February 2015, the manager was required to take training on sexual harassment. On February 3, 2015, the human resources generalist interviewed the claimant regarding the allegations of sexual harassment. On February 3, 2015, at the end of the investigation the claimant was informed that should he have any further issues, he should contact upper management or human resources. On February 16, 2015. During a meeting the supervisor informed the director of product support that she felt that the claimant would was spending too much time shadowing her and she did not know or to stop the claimant. The claimanmt was absent from work on March 23, 2015, March 24, 2015, and March 25, 2015. On March 25, 2015, the supervisor contacted to the human resources generalist regarding the claimant needing a doctor's note for March 23, 2015, March 24, 2015, and March 25, 2015, which where days the claimant was absent from work. The human resources generalist informed the supervisor that the claimant would need a doctor's note for the days he was absent. On March 25, 2015, the claimant submitted his resignation due to concerns that he was going to be raped and refused to work for an appropriate manager or belittling director.

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

The record reflects that the claimant was the moving party in the separation. Therefore, the claimant is considered to have 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). It was shown that the claimant quit. The record reflects that the claimant filed a complaint of sexual harassment against the manager. Consideration as given to the claimant's contention that after the investigation of sexual harassment he was being targeted due to the director would no longer say good morning to him and the manager limited the amount of time the claimant would shadow his supervisor. However, the claimant was informed at the conclusion of the sexual harassment investigation that should he have any further issues he was to report it to human resources or upper managment. The record is devoid of substantial competent evidence to show that the claimant made any further complaints to human resources or upper management of his being harassed or targeted. Hence, the claimant failed to provide substantial competent evidence which substantiated his being targeted by the manager or the director of product support which led to his quitting his employment. Thus, while the claimant may have been frustrated with his work environment and being informed that he had to limit the amount of time he shadowed his supervisor, the claimant's decision to abandon his job because he felt he was being targeted is not considered good cause attributable to the employer. In determining whether an individual quit with good cause attributable to the employer, the standards of review are those that apply to the average reasonable person, and not the supersensitive. As a result, it has been shown that the claimant decision to quit was a personal choice. In determining whether a separation is voluntary, examining the intent of the worker is necessary. The word "voluntary" connotes something freely given and proceeding from one's own choice or full consent. St. Joe Paper Company v. Gautreaux, 180 So.2d 668 (Fla. 1st DCA 1968). As a result, while the claimant may have had good personal reasons for abandoning his job the claimant decision to quit was not shown with good cause attributable to the employer. Accordingly, the claimant is disqualified from the receipt of unemployment benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. In Order Number 2003 10946 (December 9, 2003), the Commission set forth factors to be considered in resolving credibility questions. These factors include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon

considering these factors, the hearing officer finds the testimony of the employer to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

Decision: May 12, 2015, is REVERSED. The clamant is disqualified from receipt of reemployment assistance benefits for the week ending March 28, 2015, plus five weeks and until the claimant earns $4,675.

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 July 2, 2015.

G. WRIGHT
Appeals Referee

By: 

DESYREE JONES, 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.
