STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 16-02189

vs.

Referee Decision No. 0028379634-02U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the claimant's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision holding the claimant disqualified from receipt of benefits.

Pursuant to the appeal filed in this case, the Reemployment Assistance Appeals Commission has conducted a complete review of the evidentiary hearing record and decision of the appeals referee. *See* §443.151(4)(c), Fla. Stat. The Commission's review is generally limited to the evidence and issues before the referee and 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 made the following findings of fact:

> The claimant was hired on March 21, 2016, and worked in the laundry room of a hotel. When the claimant was originally hired she was told that she would be doing rooms. The claimant was told that [she] would get six or seven hours a day but that the hours varied and there were no set hours. The claimant would be paid $10.00 per hour. The claimant was then told that she would be working in laundry because they were short staffed there. The claimant's duties were to fold sheets and towels. The claimant worked six days the first week. The claimant worked from 6:30 pm to 12:00 am. The claimant was paid $9.00 per hour. The claimant was called into the office on March 25, 2016 and told that

> the employees' days were cut. The claimant worked three days during the week ending April 8, 2016. The claimant was called to confirm that she was working on April 10, 2016, the claimant informed the employer that she was but that it would be her last day. On April 10, 2016, the claimant quit.

Based on these findings, the referee held the claimant voluntarily left work without good cause attributable to the employing unit. Upon review of the record and the arguments on appeal, the Commission concludes the referee did not adequately address one issue in the legal analysis, and the employer was not given the opportunity to participate in the hearing; consequently, the case must be remanded.

The claimant testified at the hearing that she accepted a position to work six days per week and six or seven hours per day, with no set hours. Her rate of pay was to be $10.00 per hour. She further testified that after she began work, her supervisor apologized to her and advised that both her hours per day and her days per week would be reduced. The claimant was scheduled three days of work the following week, and was scheduled shorter shifts. While the claimant had accepted some variability in her schedule, she had not anticipated her schedule would be cut by more than half. Additionally, she was paid $9.00 per hour, rather than the $10 she was promised.

This testimony was different, however, than the claimant's statement given to the adjudicator during the fact-finding investigation. In that statement, the claimant only referenced a commitment as to the number of hours per day and not the number of days per week. The referee apparently rejected the claimant's hearing testimony that she was promised six days per week due to that discrepancy. This portion of the decision was within the referee's province as finder of fact. However, the referee's findings also reflect that she accepted the claimant's testimony that the claimant was promised a rate of pay of $10.00 per hour, and that the claimant was only paid $9.00 per hour.

As a matter of *contract* law, commitments by the employer as to hours and rate of pay are not generally enforceable prospectively absent a contract for a definite term of employment. *Demarco v. Publix Super Mkts. Inc.*, 360 So. 2d 134 (Fla. 3d DCA 1978), *affirmed, Demarco v. Publix Super Mkts., Inc.*, 384 So. 2d 1253 (Fla. 1980). This is even true under promissory estoppel. *W.R. Grace & Co. v. Geodata Services, Inc.*, 547 So. 2d 919 (Fla. 1989). However, under reemployment assistance law, the courts have long held that an employer's unilateral and

substantial[1] change to an employee's agreed terms of employment may constitute good cause for the employee to quit. *Curras v. Unemployment Appeals Commission*, 841 So. 2d 673 (Fla. 3d DCA 2003); *Lecroy v. Unemployment Appeals Commission*, 654 So. 2d 1054 (Fla. 1st DCA 1995).[2] The fact that an employer is legally entitled to change an employee's terms of employment under the at-will employment doctrine, in the absence of a contract for a definite term, is not controlling in determining whether such a change constitutes good cause to quit. *Manning v. Unemployment Appeals Commission,* 787 So. 2d 954 (Fla. 4th DCA 2001); *Ferguson v. Henry Lee Co.*, 734 So. 2d 1161 (Fla. 3d DCA 1999); R.A.A.C. Order No. 13-07307 (April 18, 2014). Although not explained as such, the rationale in these cases is essentially a reliance theory: an employer makes an offer of a job, and an employee accepts it, with certain mutual understandings about the job. Had those job terms been different, the employee may have declined the job, or may have accepted another job with terms more to her liking. Thus, a unilateral and substantial modification of those commitments *may* provide good cause to quit, depending upon the circumstances. *See* R.A.A.C. Order No. 15-03751 at pgs. 4-5 & n.1 (February 16, 2016).[3]

Reviewing the decision in light of these principles, the referee failed to address the significance of the alleged unilateral reduction in rate of pay. A one dollar per hour reduction is clearly substantial, particularly for an individual making only a little above the state minimum wage. In *Lecroy,* the court concluded a five percent reduction in pay supported a finding of good cause. On remand, the referee must consider whether the prior salary was actually promised to the claimant, and if so, whether the employer unilaterally altered that agreement.

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[1] Some of our cases have used the word "material" as an alternative to "substantial." "Material" in this usage in synonymous with "substantial." For purposes of clarity, however, we modify any prior precedent to conform to the "unilateral and substantial" language of *Curras v. Unemployment Appeals Commission*, cited herein.

[2] Some older cases quote referees' decisions that discuss a "violation" or "breach" of the employment agreement. *See, e.g., San Roman v. Unemployment Appeals Commission,* 711 So. 2d 93 (Fla. 4th DCA 1998); *Wilson v. Unemployment Appeals Commission*, 604 So. 2d 1274 (Fla. 4th DCA 1992). This language is inaccurate because, as explained in cases such *Ferguson v. Henry Lee Co.*, cited herein, the proper rationale is not a breach or violation of a legal duty, but *instead* a doctrine developed under unemployment law nationally that provides good cause in such cases notwithstanding the employer's right to change the conditions of a job under the employment at will doctrine.

[3] Available at http://www.floridajobs.org/finalorders/raac_finalorders/15-03751.pdf.

Finally, prior to the hearing, the employer provided two contact names and three telephone numbers on documents submitted to the Department, including the fact-finding statement that was attached to the notice of hearing. Nevertheless, the referee made no attempt to contact the employer for the hearing. Accordingly, the referee's decision is vacated and the cause is remanded to provide the employer an opportunity to appear at a hearing.

The parties are *warned* that the testimony of the witnesses not subject to cross-examination at prior hearings due to the absence of the opposing party will most likely be rejected as incompetent and, as such, given no consideration if the witnesses are not available during subsequent hearings. *See Altimeaux v. Ocean Construction, Inc.*, 782 So. 2d 922 (Fla. 2d DCA 2001). The referee shall specifically notice the parties of this fact when appropriate and record all attempts to telephone the parties.

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 12/8/2016, 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

*52808883 *

Docket No.0028 3796 34-02 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 was hired on March 21, 2016, and worked in the laundry room of a hotel. When the claimant was originally hired she was told that she would be doing rooms. The claimant was told that would get six or seven hours a day but that the hours varied and there were no set hours. The claimant would be paid $10.00 per hour. The claimant was

then told that she would be working in laundry because they were short staffed there. The claimant's duties were to fold sheets and towels. The claimant worked six days the first week. The claimant worked from 6:30 pm to 12:00 am. The claimant was paid $9.00 per hour. The claimant was called into the office on March 25, 2016 and told that the employees' days were cut. The claimant worked three days during the week ending April 8, 2016. The claimant was called to confirm that she was working on April 10, 2016, the claimant informed the employer that she was but that it would be her last day. On April 10, 2016, the claimant quit.

Conclusions of Law: The record reflects the claimant quit. In cases of a quit, the burden is on the claimant to establish that the quitting was for good cause attributable to the employer. 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.

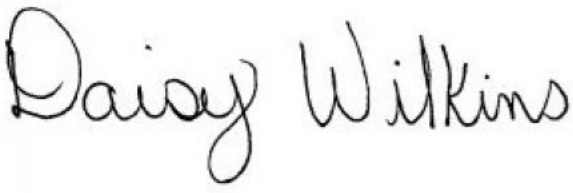
Since the claimant left employment for reasons other than those listed above, Florida Reemployment Assistance law requires disqualification. The claimant quit because she wanted more days. The claimant was not promised a set schedule. There were conflicts in the claimant's hearing and pre-hearing statements. The referee is charged with resolving these conflicts. The referee finds that the claimant was not promised a set schedule, therefore was not promised six days a week. The claimant contended that she needed more money and could not work just three days. However, there was ongoing work available at the time the claimant quit. Although the claimant's reasons for leaving the job may have been personally compelling, they do not meet the qualification requirements for Reemployment Assistance benefits. Therefore, the claimant is disqualified for the receipt of benefits.

Decision: The determination dated May 3, 2016, is AFFIRMED the claimant is disqualified from the receipt of benefits from April 9, 2016, and until the claimant earns $2,856.00.

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 June 13, 2016.

H. FINN
Appeals Referee



By:

DAISY L. WILKINS, 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 the last five digits of the 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.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

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 los últimos cinco dígitos del 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.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

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 senk dènye chif nimewo sekirite sosyal demandè a 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.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

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