STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellee

R.A.A.C. Docket No. 18-00490

vs.

Referee Decision No. 0032675330-02U

Employer/Appellant

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

I.
Jurisdiction

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 distributed on February 1, 2018, wherein the claimant was held monetarily qualified for 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.

II.
The Decision Below

In the decision, the referee made the following findings of fact:

> The claimant filed a claim for benefits effective June 11, 2017, establishing a base period for the claim to be January 1, 2016 to December 31, 2016. The claimant was previously employed by [the employer] as a reservations lead from May 16, 2016, to May 4, 2017. During the second quarter of 2016, [the employer] paid the

> claimant wages of $1157.50. During the third quarter of 2016, [the employer] paid the claimant wages of $3245.00. During the fourth quarter of 2016, [the employer] paid the claimant wages of $360.00. The claimant earned additional wages of $210.00 as an employee during the base period.
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> The claimant enrolled at [the employer] in 2014 as a part[-]time student seeking a bachelor degree in theater. The claimant became a full[-]time student in 2015. The claimant worked at [the employer] while enrolled and taking classes. The claimant worked in the school's student union front office, handling a wide range of administrative tasks. The claimant's employment was unrelated to her field of study. The claimant ended her employment when she graduated with her theater degree.

Based on these findings, and relying on a reading of *Reese v. Reemployment Assistance Appeals Commission*, 103 So. 3d 195 (Fla. 3d DCA 2012), the referee held the claimant's employment with the employer was covered under the reemployment assistance law and the claimant therefore received sufficient wages during her base period to establish monetary qualification for benefits. The referee apparently held that, because the claimant's employment did not have a substantive connection with her particular field of study, the employment was not exempt: "The claimant has shown that her employment with the university was unrelated to her field of study. There is no nexus between the claimant's administrative office work and her educational pursuit in theater."

III.
Issues on Appeal

The principal issue before the Commission is whether the claimant was paid sufficient wages for insured work during the base period to establish monetary qualification within the meaning of Section 443.091(1)(g), Florida Statutes. Resolution of that issue requires a determination of whether the claimant's wages earned from the employer were exempt from coverage under the reemployment assistance law by virtue of being earned in excluded employment; specifically, whether her work for the employer was excluded employment by virtue of Section 443.1216(13)(i)2., Florida Statutes.

IV.
Analysis

A. Relevant Statutory Provisions

Monetary Qualification and Covered Employment

To be eligible to receive benefits, the claimant must first establish monetary qualification – that is, she must have sufficient "wage credits" in her base period from "insured work." §443.091(1)(g), Fla. Stat. *See also* §443.111(2), Fla. Stat. Only claimants who establish earnings from "insured work," that is, employment covered by the reemployment assistance law, are eligible to receive benefits. *See* §443.1217(1), Fla. Stat. (defining "wages" under the statute as earned from "employment" as defined in §443.1216, Fla. Stat.). Under the facts of this case, the claimant's monetary qualification ultimately depends on whether the statutory exclusion from "employment" contained in Section 443.1216(13)(i)2., Florida Statutes, applies to some or all of her employment with the employer. This provision "exempts," *i.e*. excludes, from covered employment "[s]ervices performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university." §443.1216(13)(i)2., Fla. Stat.

FUTA and Florida law

Understanding this exemption requires a brief explanation of the relationship between the Florida reemployment assistance law in Chapter 443 and the Federal Unemployment Tax Act (FUTA), which, among other things, defines employment subject to FUTA taxes. Both the federal government and state governments tax wages for purposes of providing unemployment insurance benefits. FUTA tax revenue funds the administration of both the U.S. Department of Labor (DOL) unemployment programs *and* state unemployment and certain reemployment-related programs. State unemployment insurance (UI) taxes, by contrast, pay for the benefits themselves. FUTA imposes a tax on wages paid by employers who are engaged in covered "employment" as defined by the act. *See* 26 U.S.C. §3301. Many categories of employment are excluded, however. *See* 26 U.S.C. §3306(c)(1)-(21). When employment is excluded by FUTA, states generally adopt a parallel exclusion to avoid inconsistent treatment – and inconsistent taxation – of "employment" between federal and state law.[1]

[1] In some instances, these parallel provisions are mandated by federal law. *See, e.g.,* 26 U.S.C. §3304(a)(6).

Thus, the "student exemption" of Florida's reemployment assistance law was adopted in conformity with FUTA. The Florida student exemption is substantively identical to the student exemption found in FUTA, 26 U.S.C. §3306(c)(10)(B), and the Federal Insurance Contributions Act ("FICA"), 26 U.S.C. §3121(b)(10), which defines employment subject to Social Security and Medicare taxes.

B. Legal Analysis

1. Guiding Principles

Legislative Intent and Statutory Construction

Where a provision in Chapter 443 is adopted to mirror and conform to federal law, the Commission, in line with the legislative intent of Chapter 443, will construe the provision as consistently with applicable federal law as possible. *See* §443.031, Fla. Stat.; R.A.A.C. Order No. 17-01710 (December 29, 2017). *See also Reese, supra.*[2]

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[2] *Reese* also held that the statute should be given liberal construction because it was adopted in the public interest, citing cases *not* involving reemployment assistance benefits. The *Reese* court did so despite noting in footnotes three and four of its decision that, in 2011, the Florida Legislature replaced the prior definition requiring liberal construction in favor of claimants with language requiring liberal construction "to promote employment security." We do not assume this change in language was meaningless. *Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 126 (Fla. 2016) (citing *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So. 2d 362, 364 (Fla. 1977) ("When a statute is amended to change a key term or to delete a provision 'it is presumed that the Legislature intended it to having meaning different from that accorded before the amendment'").

In our view, based on the legislative history, the amended language must be considered in light of the overall purposes of the 2011 amendments, which were to restore solvency to the reemployment assistance program and ensure program integrity and sustainability. Fla. S. Comm. On Com., recording of proceedings (Feb. 22, 2011) (on file with comm.) (statement of Sen. N. Detert, bill sponsor) (describing the need for unemployment compensation reform where unemployment compensation trust fund, which had an historic balance of $2 billion, had become insolvent for the first time ever in 2009, necessitating borrowing from the federal government and the consequent accumulation of $61.4 million in interest alone which created a crushing burden on Florida employers); *accord Final Bill Analysis, Bill #CS/CS/HB 7005* (June 29, 2011), available at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7005z.EAC.DOCX&DocumentType=Analysis&BillNumber=7005&Session=2011. We conclude that the guiding precept of the amended version of the statutory construction provision is conformity with federal law; while we generally construe the statute broadly to effectuate its purposes, this tenet of broad construction is secondary to the precept of federal conformity.

Burden of Proof

The claimant bears the burden of proof as to issues regarding eligibility. *Florida Industrial Commission v. Ciarlante*, 84 So. 2d 1, 4-5 (Fla. 1957). This includes the issue of whether her wages were from "insured work," that is, whether they were earned in covered employment. *His Kids Daycare v. Unemployment Appeals Commission*, 904 So. 2d 477, 479 (Fla. 1st DCA 2005).

2. The Student Exemption

Only one Florida court has applied the student exemption. In *Reese*, the court adopted an "expansive reading" of the exemption based on its analysis of the IRS regulations and concluded the exemption shall apply only "where the educational pursuit is related to his employment and the educational aspect of the relationship with a school or university predominates over the employment aspect." 103 So. 2d at 199.

Relying on *Reese*, the referee in this case concluded the claimant's employment with the employer fell outside the exemption:

> There is no nexus between the claimant's administrative office work and her educational pursuit in theater. Therefore, while the claimant's status as a student employee would ordinarily exclude her wages from coverage, it does not in this case because her work was unrelated to her field of study.

Having found that the claimant's employment with this employer was not exempt, the referee concluded the claimant had sufficient wages to establish monetary qualification.

We reject the referee's analysis of the student exemption on the grounds that (1) it is not required by *Reese*, or in our view, consistent with *Reese;* and (2) it is inconsistent with both the plain language of the Florida statute *and* the federal regulations. Our conclusion that the referee's analysis is not required by *Reese* is drawn from the facts of *Reese*, and the grounds of the decision. The factual findings in the referee's decision in *Reese*, which the Commission and court accepted, were that there was no relationship *whatsoever* between Reese's work and his classes.[3] The *Reese* court held that the exemption applies only where "the student's

[3] Ironically, in our review of the *Reese* case in preparation of this order, we discovered that based on publicly available information, the facts found in Reese were erroneous. Reese appeared with counsel at the evidentiary hearing before the referee, while the employer failed to appear. Reese's truthful answers to the specific, limited questions of his counsel gave the *impression* that no

educational pursuit *is related to his employment* and the educational aspect of the relationship with a school or university predominates over the employment aspect." 103 So. 3d at 199 (emphasis added). The *Reese* court did not expressly hold that the relationship between the educational pursuit and the employment must be substantive in the sense that the nature of the work performed in employment must correspond to the substantive coursework taken. We recognize that this is one possible interpretation of the ambiguous language of *Reese*, but it is not the only one, nor the best one, nor, for the reasons discussed below, the one we think the court intended.[4]

Our holding that the referee's decision is inconsistent with the federal regulations is based on two subsidiary determinations. First, the federal regulations make clear that the applicability of the student exemption turns on whether the claimant is predominantly a student and only incidentally an employee. And second, under the predominance inquiry, the regulations do not attach weight to whether the character of the remunerative work substantively relates to the course of study.[5] To the contrary, they disclaim the necessity of such a relationship.

As explained in this order, based on our application of the plain language of the student exemption as interpreted in the federal regulations, we conclude that the claimant's employment with the employer during the regular academic term is exempt and the claimant's employment during the summer term is non-exempt. However, because the record lacks competent, substantial evidence regarding the claimant's wages in any one of the quarters in her base period, we are unable to rule on whether the claimant established monetary qualification under Section 443.091(1)(g), Florida Statutes.

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relationship existed at all between his employment as a graduate assistant coach and his educational pursuit, and the referee so found. However, that impression is not true. Under NCAA bylaws at the time, Reese could have been employed as a "graduate assistant coach" only *if he were pursuing a graduate education simultaneously*. *See* NCAA Bylaw 11.01.3(a) (2009-10), available at https://www.ncaapublications.com/p-3934-2009-2010-ncaa-division-i-manual.aspx (last visited July 25, 2018) (requiring that "[t]he individual shall be enrolled in at least 50 percent of the institution's minimum regular graduate program of studies"). Stated differently, Reese's employment was contingent upon his being at least a half-time graduate student. Because this fact was unknown to the referee, Commission, and court, however, we interpret *Reese* based on the factual findings as they exist.

[4] In the highly unlikely event that the *Reese* court *did* intend this result, we would not feel compelled to follow it, for three reasons. *First*, it would constitute dicta in a case which did not present this specific issue; *second,* the *Reese* court recognized that the FUTA and FICA regulations should be followed as guidance, but the *Reese* decision would have necessarily overlooked the specific language of the federal regulations on this issue and their interpretation in agency guidance; *third*, none of the decisions by sister states cited in *Reese* support that interpretation. To the contrary, they, and others, support the Commission's interpretation herein.

[5] The *Reese* court's formulation of a separate "relationship test" simply elevates one *aspect* of the predominance test to a separate issue.

The Student Exemption under FUTA and FICA

Like Section 443.1216(13)(i)2., Florida Statutes, the plain language of the student exemption of FUTA and FICA requires that an employee be "enrolled and regularly attending classes" to have the status of a student. 26 C.F.R. §31.3121(b)(10); 26 C.F.R. §31.3306(c)(10). Those regulations provide that an employee is considered "enrolled" if he or she is registered for a course or courses creditable toward an education credential as described in the regulations. 26 C.F.R. §31.3121(b)(10)-2(d)(1); 26 C.F.R. §31.3306(c)(10)-2(d)(1). The employee must also be "regularly" attending classes. *Id.* While the regulations do not define "regularly," this language, along with the requirement that the educational aspect be predominant, which we discuss below, implies that a qualifying individual will spend only a limited amount of time on non-student activities such as work.

The status as a student "enrolled and regularly attending classes" is limited to those who perform services "incident to and for the purpose of pursuing a course of study." 26 C.F.R. §31.3121(b)(10)-2(d)(3); 26 C.F.R. §31.3306(c)(10)-2(d)(3). This standard is satisfied only if "[t]he educational aspect of the relationship between the employer and the employee, as compared to the service aspect," is "predominant." *Id.* The regulations set forth relevant factors to consider when evaluating the education and service aspects of an employee's relationship with the employer. For instance, the education aspect is generally evaluated based on the employee's course workload. 26 C.F.R. §31.3121(b)(10)-2(d)(3)(iv); 26 C.F.R. §31.3306(c)(10)-2(d)(3)(iv). With respect to the service aspect, the following factors are relevant, but not dispositive: (1) the hours worked; (2) whether the employee is a professional employee[6]; (3) whether the employee is required to be licensed to work in the field in which he or she is performing services; and (4) whether the employee receives certain employment benefits. 26 C.F.R. §31.3121(b)(10)-2(d)(3)(v); 26 C.F.R. §31.3306(c)(10)-2(d)(3)(v). These factors are reevaluated if the employee's relationship with the employer changes significantly during any given academic term. 26 C.F.R. §31.3121(b)(10)-2(d)(3)(ii); 26 C.F.R. §31.3306(c)(10)-2(d)(3)(ii).

Notably, the regulations do not require that the remunerative work correspond to the course of study or provide or improve upon job skills in the field that the student is pursuing— considerations which were ostensibly dispositive in the referee's decision. *To the contrary, the regulations expressly clarify that, in conducting the predominance inquiry, the Treasury does not attach weight to*

[6] A professional employee is an employee who performs work: (1) requiring knowledge of an advanced type in a field of science or learning; (2) requiring the consistent exercise of discretion and judgment; and (3) that is predominantly intellectual and varied in character. 26 C.F.R. §31.3121(b)(10)-2(d)(3)(v)(B); 26 C.F.R. §31.3306(c)(10)-2(d)(3)(v)(B).

whether the remunerative work may itself have an educational or training element. 26 C.F.R. §31.3121(b)(10)-2(d)(3)(i); 26 C.F.R. §31.3306(c)(10)-2(d)(3)(i) ("The evaluation of the service aspect of the relationship is not affected by the fact that the services performed by the employee may have an educational, instructional, or training aspect"). While one possible reading of that language is that the services should not be recharacterized as education merely because they support an educational purpose, agency guidance suggests that the language has a broader meaning. The following example of exempted employment under FICA, which sets forth facts materially similar to this case, is illustrative:

> Employee C is employed by State University T to provide services as a clerk in T's administrative offices, and is enrolled and regularly attending classes at T in pursuit of a B.S. degree in biology. C has a course workload during the academic term which constitutes a full-time course workload at T. C is considered a part-time employee by T during the academic term, and C's normal work schedule is 20 hours per week, but occasionally due to work demands unforeseen at the start of the academic term C works 40 hours or more during a week. C is compensated by hourly wages, and receives no other compensation or employment benefits.

26 C.F.R. §31.3121(b)(10)-2(e), Example 1. Applying the relevant factors set forth above, the regulations explain that C's employment is exempt. *Id.* Significantly, the regulations highlight the dispositive fact that "C's part-time employment relative to C's full-time course workload indicates that the education aspect of C's relationship with T is predominant." *Id.* The fact that C's administrative work was not directly related to her pursuit of a B.S. degree in biology was of no import.

Other states with substantively identical student employment exemptions have applied the predominance test as we describe it herein. For instance, in *Bachrach v. Dep't of Indus., Labor & Human Relations*, 336 N.W. 2d 698 (Wis. Ct. App. 1983), a Wisconsin case, the court acknowledged that the federal regulations intended to differentiate between (1) a person whose primary relation to the university is an employee but who also takes courses, and (2) a person whose primary relation to the university is as a student but who also is employed by the university. *Id.* at 702. Applying that rationale, the court concluded the services of doctoral candidates who were working on their dissertations while employed as teaching or research assistants were exempt from coverage because their primary relationship to the university was that of students.

In *Pima Community College v. Arizona Dep't of Econ. Sec.*, 714 P. 2d 472 (Ariz. Ct. App. 1986), an Arizona court expressly agreed with the interpretation in *Bachrach*. In that case, the claimant attended community college part time and, while enrolled, qualified for and received financial aid pursuant to a federally-funded work-study program. Under the program, the claimant worked as a groundskeeper. When the claimant withdrew from all his courses, he became ineligible for the position and filed for benefits. The court concluded the claimant's services were exempt acknowledging that "[a] common thread which runs through [other state] cases construing this language on facts similar to our own is that if the student would not have been employed at the college or university but for his status as a student at that institution, the statutory exemption is applicable and the student is not entitled to receive unemployment benefits." *Id.* at 474.

None of the cases analyzing the FUTA or FICA provisions have required the character of the employment to substantively relate to the course of study, and in *Davenport v. Unemployment Ins. Appeals Bd.*, 24 Cal. App. 4th 1695 (1994), the court expressly rejected this contention. In that case, the claimant argued that since his job was in the business school and his course of study was in the cinema department, his job was not exempt because it did not directly further his course of study. Though not specifically discussing the federal regulations, the court implicitly applied the predominance test and stated the following:

> Davenport was employed in a position available only to students regularly enrolled in the university, the purpose of which was to provide financial assistance to students to enable them to pursue their studies. In these circumstances, the job, regardless of its character or place performed, was incidental to the studies, not the other way around.

Id. at 1699.

The Commission's review of the federal regulations and the approach of sister states with similarly-worded exemptions give us no reason to interpret Florida's student exemption any differently. Nor do we believe the *Reese* court – which cited many of the cases above as well as the federal regulations – nonetheless would have intended *sub silentio* a requirement inconsistent with these authorities. In our view, *Reese* simply addressed the issue before it: whether a full-time employee who, according to the found facts, attended school on a half-time basis and whose education was *completely* unrelated to his employment, would have been engaged in excluded employment under the predominance test, and held that the obvious answer was no. We therefore reject the referee's reading of *Reese* to the extent it is inconsistent with the above-cited authority.

Whether the Claimant's Work Falls Within the Scope of the Student Exemption under Section 443.1216(13)(i)2., Florida Statutes

In this case, as the findings reflect, the claimant enrolled as a part-time student at the employer in the fall of 2014 and became a full-time student in the fall of 2015. The claimant was pursuing a bachelor's degree in theater. On May 16, 2016, the claimant began working in the student union administration office where she performed administrative duties. Beyond these findings, the undisputed evidence reflects the claimant worked an average of 20 hours per week during the regular academic term and an average of 30 hours per week during the summer term, during which time the claimant indicated she was not enrolled in courses. On May 17, 2017, the claimant's employment ended because she graduated. *Significantly, the undisputed evidence reflects that the claimant's employment was in a position available only to students.*[7]

Based on the facts of this case, including those we find above, the claimant's services during the regular academic term fall within the plain language of Florida's student exemption, as the claimant was employed at a university and, while performing remunerative work for the university, was also enrolled and regularly attending classes. §443.1216(13)(i)2., Fla. Stat. We further conclude that applying the predominance inquiry of the regulations interpreting the statute's mother provisions in FUTA and FICA supports the conclusion that the claimant was "enrolled and regularly attending classes" for purposes of the exemption. That is, the claimant's full-time course workload during the regular academic term compared to her part-time employment indicates the education aspect of the claimant's relationship with the employer was predominant. Additional facts supporting this conclusion include that the claimant was not a professional employee nor was she required to hold a professional license to perform her duties. We also find highly material the fact that the job was offered and available only to students. *See Pima Community College*, 714 P. 2d at 474. And we find irrelevant the facts that the claimant's job involved administrative tasks unrelated to theater and that it was located in the student union office as opposed to the theater department. *See Davenport*, 24 Cal. App. 4th at 1699. For these reasons, the Commission concludes that the claimant's work during the regular academic term is exempted from coverage under Section 443.1216(13)(i)2., Florida Statutes.

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[7] The referee did not address this evidence in the findings. Ordinarily, when we conclude the findings are incomplete, perhaps due to the referee's misapprehension of the governing legal standards, we remand for additional fact-finding. We do not do so here, however, because (1) there is no dispute in the evidence on these facts, and thus no credibility issue for the referee to consider; and (2) the facts we recite are clearly material given the governing law, and the referee would have no discretion on this record *not* to make such a finding. *See* R.A.A.C. Order No. 15-03751 at pg. 3 (February 16, 2016), available at http://www.floridajobs.org/finalorders/RAAC_finalorders/15-03751.pdf.

As to the summer term, the record suggests that the claimant was not enrolled in any courses and worked an average of 30 hours per week. While the claimant's status as a student did not cease during the summer term, if these are the facts, her activities in that capacity were no longer predominant during that term. Consequently, applying the same factors set forth above, it would appear that the claimant's work during the summer term does not fall within the exemption under Section 443.1216(13)(i)2., Florida Statutes. *Accord IRS Rev. Proc.* 2005-11 (noting the FICA student exemption does not apply to services performed by an individual who is not enrolled in classes during school breaks of more than five weeks including summer breaks).[8]

Upon review of the record and the arguments on appeal, the Commission concludes the referee's holding that the claimant's entire employment with the employer was covered employment is not in accord with the law. The Commission holds the claimant's employment during the regular fall and spring academic terms are exempt from coverage. However, because the record was not developed sufficiently to fully address the issue of the claimant's status during the summer term, or to determine the amount of wages the claimant was paid during the summer term,[9] the case must be remanded for the referee to address whether wage credits should be granted, and whether those wages alone are sufficient to establish monetary qualification.

V.
The Proceedings on Remand

On remand, the referee must further develop the record to determine the claimant's eligibility. To establish eligibility, the claimant must have a minimum of $3,400 in wage credits from insured work over two or more quarters in her base period, and the total wage credits must be at least 1.5 times the credits in her high quarter, i.e., the quarter with the greatest amount of wages paid. *See* §443.111(2), Fla. Stat.; §443.036(24), Fla. Stat. To properly address this issue in accord with the

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[8] The *Pima* court reached the opposite conclusion as to the summer work. While we recognize the values of consistency and administrative convenience in the result in *Pima*, and may have reached the same conclusion writing on a blank slate, we follow the federal guidance as our primary source of interpretation.

[9] Summer term does not refer to any base period quarter, but to the specific weeks in a summer session or sessions as defined by the university calendar. These weeks may overlap the second and third calendar quarters. For example, according to the employer's calendar published online, the employer had one long summer session with classes beginning May 16, 2016, and ending August 9, 2016, and two shorter sessions with classes beginning May 16, 2016 and June 28, 2016, and ending June 27, 2016 and August 9, 2016, respectively. Moreover, classes in the fall semester 2016 did not start until August 22, 2016.

Commission's ruling in this order, the referee must *first* develop the record and make findings to determine whether there was a definite school term or terms of more than five weeks in duration during which the claimant was employed, but was not enrolled in course work or otherwise earning academic credit. If so, the referee should make findings regarding the dates of the terms and the total wages earned for the weeks during that term. Second, the referee should determine whether the wages, if any, earned under such conditions are sufficient to meet the requirements for monetary qualification.

Finally, Department of Economic Opportunity (DEO) records reflect that following the referee's decision in this case, DEO Adjudication issued two nonmonetary determinations, Issue ID #0031 1701 09-05 and #0031 2296 53-03, which excluded the claimant's wages earned from the employer on the ground that the claimant's employment was exempt from coverage. These determinations appear to have been entered in error since they were inconsistent with the referee's decision in this case which awarded wage credits on the ground that the claimant's employment with the employer was *nonexempt*. The claimant appealed the determinations, and that appeal is now pending before the Office of Appeals. Because these determinations pertain to the same issues as this case and are, in part, inconsistent with the Commission's ruling, the referee shall take jurisdiction over those cases to address them consistent with this order.

VI.
Conclusion

The referee's decision is vacated and the case is remanded. On remand, the referee shall develop the record with respect to the claimant's status and earnings during the summer term(s). The referee must then render a new decision consistent with the Commission's ruling that the claimant's employment is exempt from coverage during the regular academic term and determining whether the claimant has wages from insured work during the summer term(s), and if so, whether these are sufficient to qualify her for benefits. The referee must also take jurisdiction over the claimant's appeal of the nonmonetary determinations listed above and address those cases consistently with this order. Any hearing convened subsequent to this order shall be deemed supplemental, and all evidence currently in the record shall remain in the record.

The decision of the appeals referee is vacated and the case is remanded for further proceedings.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Thomas D. Epsky, Member
Joseph D. Finnegan, Member

This is to certify that on 8/6/2018, 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

*68763396 *

Docket No.0032 6753 30-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES:

Employer

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.

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Issues Involved:

WAGE CREDITS: Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

ADDITIONAL WAGE CREDITS: Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

INSURED WORK: Whether services performed by the claimant during the base period constitute "employment," pursuant to Sections 443.036(21), 443.036(27); 443.1216, Florida Statutes.

Findings of Fact: The claimant filed a claim for benefits effective June 11, 2017, establishing a base period for the claim to be January 1 2016 to December 31, 2016. The claimant was previously employed by as a reservations lead from May 16, 2016, to May 4, 2017. During the second quarter of 2016, paid the claimant wages of $1157.50. During the third quarter of 2016, paid the claimant wages of $3245.00. During the fourth quarter of 2016, paid the claimant wages of $360.00. The claimant earned additional wages of $210.00 as an employee during the base period.

The claimant enrolled at in 2014 as a part time student seeking a bachelor degree in theater. The claimant became a full time student in 2015. The claimant worked at while enrolled and taking classes. The claimant worked in the school's student union front office, handling a wide range of administrative tasks. The claimant's employment was unrelated to her field of study. The claimant ended her employment when she graduated with her theater degree.

Conclusion of Law: Section 443.1216(13)(i)2. Florida Statutes exempts from coverage service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and regularly attending classes at the school, college, or university. Additionally, the Florida Third District of Appeal has held that Fla. Stat. 443.1216(13)(i)2. should only apply to students whose educational pursuit is related to the employment and wherein the educational aspect of their relationship with the school or university is predominant over the employment aspect, in Reese v. Reemployment Assistance Appeals Comm'n, 103 So.3d 195 (Fla. 3d DCA 2012).

The claimant has the burden to prove that work should be considered insured work, under His Kids Daycare v. Florida Unemployment Appeals Commission, 904 So.2d 477, 479 (Fla. 1st DCA 2005). The record shows that the claimant was employed by as a student employee while taking classes at the university. However, the claimant has shown that her employment with the university was unrelated to her field of study. There is no nexus between the claimant's administrative office work and her educational pursuit in theater. Therefore, while the claimant's status as a student employeewould ordinarily exclude her wages from coverage, it does not in this case because her work was unrelated to her field of study. Accordingly, the wages are covered and may be used to establish a claim for benefits.
To qualify for Reemployment Assistance benefits, the claimant must have:
(a) Base period wages for insured work in two or more calendar quarters of the base period; and
(b) Total base period wages equaling at least 1.5 times the wages paid during the high quarter of the base period, but not less than $3400.

The "base period" is the first four of the last five completed calendar quarters immediately preceding the first day of the benefit year. The "high quarter" is the calendar quarter in which the most wages were paid. The weekly benefit amount equals one twenty sixth of the total wages paid during the high quarter, but not less than $32 or more than $275. Available benefits equal twenty five percent of total base period wages, with a maximum established by law.

For claims submitted during a calendar year, the duration of benefits is limited to:
1. Twelve weeks if this state's average unemployment rate is at or below 5 percent.

2. An additional week in addition to the 12 weeks for each 0.5 percent increment in this state's average unemployment rate above 5 percent.

3. Up to a maximum of 23 weeks if this state's average unemloyment rate equals or exceeds 10.5 percent.

The maximum amount of benefits for any claims filed in the calendar year 2017 is $3,300, or 12 weeks times the weekly benefits amount, based on an unemployment rate of 4.7%.

The record and evidence show that the claimant was paid wages in at least two quarters of the base period. The claimant's total base period wages were $4972.50. The highest quarter of the base period was the third quarter of 2016, where the claimant earned $3245.00. The law requires the claimant earn total base period wages of at least 1.5 times the wages earned in the high quarter. In this specific case, the claimant would have to earn at least $4867.50 be monetarily eligible for benefits. The claimant's total base period wages exceed this amount. The claimant has earned wages for insured work in two or more quarters of the base period. The claimant has earned over $3,400 in base period wages, and his total base period wages are greater than 1.5 times the high quarter. The claimant has met all of the requirements necessary to qualify for reemployment assistance benefits. Therefore, the claimant is monetarily eligible for the receipt of reemployment assistance benefits.

Decision: The determination dated December 29, 2017, finding that no change will be made to the monetary determination is REVERSED. The monetary determination dated November 7, 2017, is MODIFIED and REVERSED to show wages of $1157.50 for the second quarter of

2016, wages of $3245.00 for the third quarter of 2016, and wages of $360.00 for the fourth quarter of 2016 paid by (EAN). The claimant is monetarily eligible for 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 February 1, 2018.

D. Ellis
Appeals Referee

By: Jodee Gomillion

JODEE GOMILLION, 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.

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.