STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

CORRECTED
R.A.A.C. Docket No. 19-02025

vs.

Referee Decision No. 0035916654-04U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

I.
Introduction

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

The Commission's review is generally limited to the issues before the referee and the evidence and other pertinent information contained in the official record. The referee has the responsibility to develop the hearing record, weigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. The Commission reviews the evidentiary and administrative record and the referee's decision to determine whether the referee followed the proper procedures, adequately developed the evidentiary record, made appropriate and properly supported findings, and properly applied the reemployment assistance law established by the Florida Legislature. The Commission cannot reweigh the evidence and the inferences to be drawn from it. Further, absent extraordinary circumstances, the Commission cannot give credit to testimony contrary to that accepted as true by the referee.

II.
Issues on Appeal

The claimant challenges the referee's decision on two grounds. First, the claimant argues the employer failed to demonstrate good cause for its nonappearance at the initial hearing. As explained below, the Commission concludes the referee did not err in concluding the employer established good cause for its prior nonappearance. Second, the claimant argues that her actions in violating the employer's policies were inadvertent and, therefore, the policies cannot be fairly enforced to disqualify her from receipt of benefits under Section 443.036(29)(e)1.c., Florida Statutes. As explained below, the Commission concludes the fair enforcement defense is not satisfied in this case.

III.
Discussion

A. Whether the Employer Established Good Cause for Its Nonappearance

The procedural history of this case is as follows:

Subsequent to the claimant's initial claim for benefits, the Department of Economic Opportunity issued a determination holding the claimant disqualified from receipt of benefits. The claimant appealed that determination and the case was scheduled for hearing at 9:30 a.m. Eastern Standard Time on July 25, 2019. The notice of hearing for the July 25, 2019 hearing contained the following notice to the employer:

> Note to Employer: AT LEAST 24 HOURS BEFORE THE HEARING, PROVIDE THE DEPUTY CLERK WITH THE NAME AND TELEPHONE NUMBER OF THE PERSON WHO WILL REPRESENT THE EMPLOYER AT THE HEARING.

The claimant alone appeared at the July 25, 2019 hearing. At the commencement of that hearing, the referee stated she did not receive contact information from the employer but that she would provide the employer with 10 minutes to call in and provide a contact number. When the employer did not call the Department after a 10-minute grace period, the referee proceeded with the hearing in the employer's absence. Based upon the evidence in the record, the referee issued a decision reversing the determination.

After the employer filed a timely request to reopen the hearing, the referee rescinded her decision to provide the employer with an opportunity to present evidence regarding its nonappearance. Another hearing was scheduled for October 21, 2019.

At the October 21, 2019 hearing, the employer's witness testified that, the day prior to the July 25, 2019 hearing, he sent the employer's contact information to the Department by facsimile. The witness was unable to specify the precise time upon which he sent the facsimile transmission; however, he acknowledged it was received by the Department at 11:15 a.m. Central Standard Time. On cross-examination, the witness testified, "As a matter of practice with the State of Florida, this would be considered timely and I have no reason to expect otherwise."

The referee reserved ruling on the issue of nonappearance and proceeded to take evidence on the merits of the case. Following the hearing, the referee issued a decision in which she held the employer established good cause for its nonappearance at the hearing on July 25, 2019, and affirmed the determination holding the claimant disqualified. In her decision, the referee appears to conclude that the employer's nonappearance was due to the employer's contact information not being "properly processed" by the Department.[1]

On appeal, the claimant argues it was the employer's failure to comply with the Department's instructions to provide contact information at least 24 hours prior to the hearing that ultimately led to the employer's nonappearance and consequently that the referee erred in holding the employer established good cause for its failure to appear at the hearing.

The issue of whether an appeals referee erred in determining whether a party had good cause for nonappearance at an appeals hearing and was, therefore, entitled to a supplemental hearing is subject to an abuse of discretion standard. *Rouse v. Unemployment Appeals Commission*, 728 So. 2d 345 (Fla. 4th DCA 1999). In *Canakaris v. Canakaris,* 382 So. 2d 1197, 1203 (Fla. 1980), the Florida Supreme Court explained the "reasonableness test" that must be applied when determining whether a lower tribunal abused its discretion:

> If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.

[1] We defer to this ruling because the referee would be better aware of the general turn-around time for processing call-in numbers. Moreover, we agree that based on our experience, Department staff would typically have uploaded the contact information into the system in time for the hearing notwithstanding the untimely submission by the employer.

The Court went on to explain that "the test requires a determination of whether there is logic and justification for the result," noting that "[j]udges dealing with cases essentially alike should reach the same result." *Id.*

In addressing the issue of good cause, the referee must also apply principles from controlling Florida case law, the Commission's precedent, and most importantly, expectations in the governing federal standards that if a party fails to appear, a referee should "reopen the case . . . upon receiving a timely request and a showing of 'good cause' for nonappearance." U.S. Department of Labor, Employment and Training Administration *Handbook For Measuring Unemployment Insurance Lower Authority Appeals Quality, ET No. 382* (3d Edition March 2011, Appendix B at p. 20 "Nonappearance of Parties").[2]

The law governing nonappearance at reemployment assistance appeals hearings is construed in consistency with the general public policy of Florida that "litigation should, wherever possible, be resolved on the merits rather than on the basis of procedural default." *Coon Clothing Co., Inc., v. Eggers*, 560 So. 2d 1357 (Fla. 3d DCA 1990). Consequently, "[g]ood cause for failure to attend a scheduled hearing is any cause which indicates an additional hearing is reasonably necessary in the interest of justice." *Javier v. Goodwill Indus. of S. Fla., Inc.,* 882 So. 2d 524, 525 (Fla. 3d DCA 2004). "Due process is denied when a party is not given a meaningful opportunity to be heard on the merits of an issue. This applies as much to an employer's right to be heard on the issue as to the employee's right." *Rouse, supra*, at 346. This doctrine is particularly applicable to reemployment assistance proceedings due to their reliance on pro se parties.

In R.A.A.C. Order No. 14-06037 at pg. 8 (July 16, 2015),[3] *aff'd per curium sub nom Dalton v. Reemployment Assistance Appeals Commission*, 184 So. 3d 520 (Fla. 1st DCA 2016), we addressed the issue presented here in this case – whether the referee committed reversible error in reopening a case for good cause where the employer did not appear for a hearing because it was not called due to not providing a contact number 24 hours in advance. Although the facts were slightly different than this case, we concluded that the referee did not err in concluding good cause was shown.

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[2] Available at https://wdr.doleta.gov/directives/attach/ETAH/ET_Handbook_No_382_3rd_Edition.pdf (last accessed December 13, 2019). State compliance with these directives is a requirement to receive federal administrative funding for state UI programs. For this reason, the Florida Legislature has directed that federal compliance is the touchstone for statutory interpretation of the reemployment assistance law. §443.031, Fla. Stat.

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

Good cause is not specifically defined in our rule, but as quoted in *Javier*, *supra,* it includes "any cause which indicates an additional hearing is reasonably necessary in the interest of justice." Establishing good cause does not require proof that a party's efforts have been flawless, and indeed excusable neglect occurs in many cases where good cause is found to exist. Instead, as observed by the court in *Milner v. Unemployment Appeals Commission*, 82 So. 3d 1026, 1028 (Fla. 1st DCA 2011), good cause is defeated by "deliberate action to avoid or decision to miss the hearing." In reviewing cases where the referee has found good cause to reopen, we evaluate the record to determine whether the moving party has shown by its actions a continued interest in participating in the appeals proceeding notwithstanding any errors it may have made and has promptly requested reopening when learning that a hearing was missed. The employer in this case readily passes that standard.

The claimant argues this case is similar to *Javier, supra*, in which the court affirmed a finding that good cause was not shown where the claimant received the hearing notice but did not have the document translated and therefore failed to exercise due diligence to attend the hearing. The Commission finds this case distinguishable from *Javier* since the claimant in that case made no effort to ascertain the nature of the notice she had received from the Department. In this case, the employer made an effort to appear at the hearing by providing its contact information to the Department the day before the hearing. The employer's witness's testimony reflects that, upon not receiving a call from the referee at the time of the hearing, he immediately called the Department, but was unable to reach anyone. The employer's actions in this case demonstrate an intent to participate in the hearing. Furthermore, the instructions to the employer on the notice of hearing for the July 25, 2019 hearing do not advise the employer of the consequences of failing to provide its contact information at least 24 hours in advance.[4] Under these circumstances, we conclude the referee did not abuse her discretion in concluding the employer established good cause for its nonappearance.

[4] At the time of the July 25, 2019 hearing, Florida Administrative Code Rule 73B-20.017 did not expressly require the parties to call the Office of Appeals at least 24 hours before the scheduled hearing to confirm attendance and provide a telephone number where the party can be reached at the time of the hearing. Effective August 5, 2019, the rule was amended by the Commission to include such a requirement. The purpose of the amendment was to give the Department rule authority to dismiss appeals when an appellant did not contact the Department because the Department's workload was being adversely affected by having available hearing times lost due to no-shows. The rule does not preclude a showing of good cause for reopening.

B. Whether the Employer's Policies Were Unfairly Enforced to Disqualify the Claimant

The record reflects the claimant worked as a universal banker for the employer, a bank, and was discharged for violating the employer's security policies by leaving her computer unlocked, leaving her desk while client documents remained unsecured on her desk, and leaving her keys to the branch and secure areas on the printer. The claimant acknowledged knowing that the employer's security policies required her to lock her computer whenever she left the computer; required her to secure all client documents, which contained account and personal information, inside her desk whenever she left her desk; and required her to keep her keys to the branch and secure areas with her at all times. While the claimant acknowledged violating the employer's security policies as asserted by the employer, the claimant argues that, because her actions in violating the policies were inadvertent and due to her "forgetfulness," the policies cannot be fairly enforced to disqualify her from receipt of benefits under Section 443.036(29)(e)1.c., Florida Statutes.

Section 443.036(29)(e), Florida Statutes, provides that "misconduct" includes:

> (e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:
> a. He or she did not know, and could not reasonably know, of the rule's requirements;
> b. The rule is not lawful or not reasonably related to the job environment and performance; or
> c. The rule is not fairly or consistently enforced.
> 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer; or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

In cases involving subparagraph (e), the employer has the initial burden of establishing the requirements of the rule in question, and that the claimant's actions violated the rule.[5] Once the employer has met its initial burden of showing a violation, the burden shifts to the claimant to establish one of the listed defenses:

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[5] Not all policies are rules; however, we have held that security policies and those designed to protect assets are among the classes of policies of sufficient import to constitute "rules." R.A.A.C. Order No. 13-09166 at pg. 6 (July 24, 2014), available at http://www.floridajobs.org/finalorders/raac_finalorders/13-09166.pdf.

that he or she did not know and could not reasonably know of the rule's requirements; that the rule is illegal or not reasonably related to the job; or that the rule is not fairly or consistently enforced. *See Crespo v. Reemployment Assistance Appeals Commission*, 128 So. 3d 49 (Fla. 3d DCA 2012).

In establishing that a violation occurred, the employer is not required to show intent on the claimant's part. However, the claimant's intent is a factor that may be considered as part of the fair enforcement defense. *See* R.A.A.C. Order No. 13-06014 at pg. 4 (October 7, 2013).[6] In a fair enforcement analysis involving inadvertent or negligent violations of a rule, the Commission considers the nature and purpose of the employer's rule and the degree of culpability on the part of the claimant. In considering the nature and purpose of an employer's rule, the Commission examines the reason for the rule; the harm or potential harm the rule is designed to prevent; and the impact of a violation or potential violation on the employer, the claimant, coworkers, customers or clients, or the public at-large. The second consideration, the claimant's culpability, considers the relative degree of fault in the circumstances of the violation. *See* R.A.A.C. Order No. 15-02076 (September 25, 2015).[7] Finally, the weighing of the culpability in comparison with the nature and purpose of the rule considers the legal significance of the rule. Rules that are adopted to comply with governmental or legal mandates or are designed to protect individuals from harm require a claimant to show a significantly lower relative degree of culpability on his or her part to prevail on the defense because the risks to the employer or others are higher in such cases. *See* R.A.A.C. Order No. 16-03433 at pg. 6 (August 24, 2017).[8]

In analyzing the facts of this case, we conclude the fair enforcement defense is not satisfied. As a bank, the employer has both a legal right and a legal duty to maintain the confidentiality of certain types of information; accordingly, the claimant must demonstrate a relatively low level of fault on her part in order to succeed on the defense. Although the claimant asserted her actions were inadvertent, her failure to follow the employer's policies occurred on multiple occasions, which militates against characterizing her actions as simple error or demonstrating a low degree of culpability. None of our prior cases where the fair enforcement defense was established involved more than one relevant instance, unlike the several violations here. The record reflects the claimant's actions potentially exposed confidential client information when she left her computer unlocked and when she failed to properly secure client documents before leaving her desk. Although the employer did not demonstrate it suffered actual harm from the claimant's actions, the claimant's actions created a risk of serious harm to the client with resultant liability to the employer. Additionally, the claimant left her keys to

[6] Available at http://www.floridajobs.org/finalorders/raac_finalorders/13-06014.pdf.
[7] Available at http://www.floridajobs.org/finalorders/raac_finalorders/15-02076.pdf.
[8] Available at http://www.floridajobs.org/finalorders/raac_finalorders/16-03433.pdf.

the branch and secure areas by the printer on two separate occasions. Again, the claimant's actions were not isolated, exposing herself, her coworkers and clients to potential harm. Had the claimant been discharged for one instance of inadvertently violating an employer policy, she may have been able to argue successfully that the employer's policy was not fairly enforced to disqualify her. Given the multiple incidents leading to the claimant's discharge, and the relatively low level of culpability the claimant must demonstrate to prevail on the defense in this case, we conclude the claimant has not met the requirements of the fair enforcement defense.

Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes that the referee sufficiently followed the proper procedures[9] and the case does not require reopening or remanding for further proceedings. The referee's material findings are supported by competent, substantial evidence in the record. The referee also correctly applied the law in deciding the case.[10] However, we conclude the record in this case also establishes misconduct under subparagraph (b) of the definition of misconduct, given the claimant's multiple instances of negligence despite warning and placement on corrective action plans. It was incumbent on the claimant to retrain her thinking to prioritize data security and to develop strategies to do so given the period over which these instances occurred. Unfortunately, despite being an apparently good employee on other measures, this never successfully occurred.

III.
Attorneys' Fees

The Reemployment Assistance Appeals Commission received the request of the claimant's representative for the approval of a fee for work performed in conjunction with the appeal to the Commission, as required by Section 443.041(2)(a), Florida Statutes, and Florida Administrative Code Rule 73B-21.006(4). We review

[9] The referee admitted into evidence the following documents submitted by the employer during the October 21, 2019 hearing: the employer's representative's July 24, 2019 letter advising the Appeals Office of the employer's contact information for the July 25, 2019 hearing; the employer's representative's August 2, 2019 request to reopen the case; and a fax transmission confirmation dated July 24, 2019. However, the referee omitted to formally mark the documents for identification or to upload the document as an exhibit. We direct the Commission Clerk to mark them into evidence as Employer Exhibit No. 2 and include them in the hearing-level record.

[10] Because the claimant's job separation occurred on May 23, 2019, the referee's decision and the determination on appeal are corrected to reflect the period of disqualification is from May 19, 2019 through June 22, 2019, and until the claimant earns $4,675.

fee approval requests under the standards established in R.A.A.C. Order No. 16-02976 (April 26, 2017).[11] The claimant's representative has requested approval of a fee of $500 for services performed in connection with the appeal before the Commission. The requested fee is in addition to the $500 fee the referee has already authorized for representation at the hearings.

Upon consideration of the request in light of the factors established in R.A.A.C. Order No. 16-02976, the Commission approves the requested fee of $500.

The referee's decision is affirmed.

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

4/2/20 ,

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: Benjamin Bonnell
Deputy Clerk

[11] Available at http://www.floridajobs.org/finalorders/raac_finalorders/16-02976.pdf.

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

*81016858 *

Docket No.0035 9166 54-02 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES:

Claimant

Claimant Representative

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.

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.)

c

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 worked full time for the employer, from August 13, 2012, to May 23, 2019. On May 23, 2019, the branch manager discharged the claimant for violation of company policy.

Conclusions of Law: The law provides that a claimant who was discharged for misconduct connected with work will be disqualified for benefits. "Misconduct", irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, conduct demonstrating conscious disregard of an employer's interest and found to be deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee, or carelessness or negligence to a degree or recurrence that manifests culpability, wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.

The law requires benefits will not be charged to the employment record of a contributing employer who furnishes required notice to the Department when the claimant was discharged for misconduct connected with the work.

The record shows that the claimant was discharged. In cases of discharge, the burden is on the employer to establish that the discharge was for misconduct connected with work. The employer did not appear at the hearing and did not meet the burden of proof. The behavior of the claimant, as described by the claimant, did not meet the statutory definition of misconduct. The claimant is thus not subject to disqualification.

The record shows the claimant was discharged for reasons other than misconduct. Benefits paid in connection with this claim will be charged to the employer.

The claimant was represented by an attorney. The claimant's attorney requested a flat rate fee of $500 for representation at the hearing. This amount, to be paid by the claimant, is approved.

Decision: The determination dated June 18, 2019, disqualifying the claimant, and non-charging the employer, is reversed.

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 26, 2019.

S. Neal
Appeals Referee

By:

Tia Lambert, 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.

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

*82857176 *

Docket No.0035 9166 54-04 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

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

APPEARANCES:

Employer

Claimant

Claimant Representative

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.

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rules 73B-20.016; 20.017.

c

Issues Involved:

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rules 73B-20.016; 20.017.

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.)

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.

Nonappearance:A hearing was scheduled in this matter for July 25, 2019 at 9:30 a.m. The employer did not appear at the July 25 hearing because the employer's representative's number was provided by the employer's but the Department did not immediately forward the contact information to the hearing officer. The employer's agent provided the contact information on July 24, but it was not put into the system until after the hearing. The employer's representative immediately tried to contact the appeals office after the time of the hearing but was unable to reach anyone. The employer's agent requested reopening on August 6, 2019.

A case will be re-opened for a hearing on the merits when a party establishes good cause for failure to attend a previous hearing. Good cause includes a compelling reason for failure to attend the previous hearing and exercising due diligence to have the hearing rescheduled. Examples of due diligence include making a request for postponement before the hearing or notifying the Appeals Office as soon as possible after the hearing if an unexpected situation prevented the party from attending. If good cause is not established, the previous decision will be reinstated.

The record reflects that the employer did not appear at the July 25 hearing because the employer's representative's number was provided by the employer's but the Department did not immediately forward the contact information to the hearing officer. The employer's agent sent the information to the Department the day before the hearing, but the information was not properly processed by the Department. Additionally, the agent attempted to contact the Department after he did not receive a call but was unable to reach anyone. The employer's reason for failing to appear is considered compelling. The employer exercised due diligence in requesting reopening. Therefore, the employer has established good cause for nonappearance and is entitled to a hearing on the merits of the case.

Findings of Fact: The claimant worked for the employer as a universal banker from August 13, 2012 through May 23, 2019. The employer's policy provides that bankers must review client identification before allowing a client to enter the safe deposit box area. The employer's policy also provides that computers must be locked when bankers leave their desks. Bankers are required to put sensitive documents that include client information in their drawers prior to leaving their desks.

Additionally, bankers are required to keep the bank issued keys on their person at all times. The claimant was aware of these policies through training and weekly meetings conducted by the manager. All of the policies are in place to protect bank and client security. The employer provided the claimant with several verbal and written warnings prior to her changing locations in March of 2019. The claimant was on probation for violating policies at the time she moved to the new branch. A client provided identification to the claimant to enter his safe deposit box on April 8, 2019. The client's wife accompanied him to an area outside the safe deposit box area to check the contents of the box. The client's wife did not have her identification with her. The claimant told the branch manager that she had allowed the client's wife to accompany her husband to check the contents of the box even though the wife did not have identification. On April 24, 2019, the claimant left her desk without locking her computer. She also left client documents on her desk instead of placing them in her drawer. On April 24 and April 25, 2019, the claimant left her bank keys unattended near the printer. The employer discharged the claimant for violation of the employer's policies.

Conclusions of Law: Under Florida's Reemployment Assistance law, misconduct connected with work, irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, wilful damage to an employer's property that results in damage of more than $50; theft of employer property or property of a customer or invitee of the employer.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:

a. He or she did not know, and could not reasonably know, of the rule's requirements;

b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

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

The record reflects that the employer discharged the claimant for violation of its policies when she let a client who did not have identification enter the safe deposit box area, leaving her computer unlocked while she left her desk, leaving sensitive client documents on her desk when she left the area, and for leaving her bank keys unattended at the printer on two occasions. The claimant had already been warned and retrained regarding her violations of policy prior to moving to a new location in March of 2019. The claimant's violations of the employer's known rules constitute misconduct connect with work under subparagraph (e) above. The employer warned the claimant and tried to help the claimant through additional training, but the claimant continued to violate the employer's policies. Her actions could have resulted in breaches of confidential information which would lead to liability by the employer. The claimant is therefore disqualified under subparagraph (e) above.

The claimant's attorney did not request a fee for his representation in this hearing. Therefore, no fee is approved.

Decision: The determination dated June 18, 2019, disqualifying the claimant and relieving the employer's account of charges, is affirmed.

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 October 22, 2019.

J. SHARP
Appeals Referee

By:

Valarie L. Washington, 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.

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