

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 13-04020

vs.

Referee Decision No. 13-23972U

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

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

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

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

The claimant's request for review contains two allegations of error concerning the appeals referee's conclusion the claimant is disqualified from benefits because he voluntarily quit work without good cause within the meaning of the reemployment assistance statute. The Commission finds both arguments unpersuasive for the reasons stated below.

Section 443.101(1)(a)1., Florida Statutes, provides that "good cause" includes only cause that is attributable to the employing unit which would compel a reasonable employee to cease working or that is attributable to the individual's illness or disability requiring separation from his or her work. The claimant's first argument is that, since he quit to obtain foot surgery, he had good cause. However, the claimant's own testimony reflects that he was physically able to work at the time of his separation. *See Large v. Unemployment Appeals Commission*, 927 So. 2d 1066 (Fla. 4th DCA 2006). As found by the referee, the employer accommodated the claimant's medical restrictions and continuing work was available to him. Accordingly, the findings do not support a conclusion that the claimant had an illness or disability that required his separation from work. In addition, at the time of the separation, the employer was legally obligated by force of judgment of a Judge of Compensation Claims to provide the foot surgery pursuant to its workers' compensation coverage. Therefore, the record does not reflect that, absent an agreement to quit, the employer would not have provided the foot surgery.

The claimant's second argument is that the appeals referee was constrained by *Sullivan v. Florida Unemployment Appeals Commission*, 93 So. 3d 1047 (Fla. 1st DCA 2012), to conclude he had good cause to quit. However, the circumstances under which the claimant quit his employment are materially distinguishable from *Sullivan*. In that case the court held that the employer's assurance that it would not contest Sullivan's claim for reemployment benefits provided the impetus for her to sign a workers' compensation settlement agreement and, therefore, her quitting was attributable to the employer, citing *Rodriguez v. Florida Unemployment Appeals Commission*, 851 So. 2d 247 (Fla. 3d DCA 2003).

In *Rodriguez*, an employee accepted the employer's voluntary buyout offer, which provided that the buyout would not interfere with applications for reemployment assistance benefits and those who accepted the buyout would acquire layoff status. The court held that the employer's assurance of Rodriguez's eligibility for reemployment assistance benefits, designed to induce her to accept the agreement, provided her with good cause to quit that was attributable to the employer.

This claimant's reliance on this line of cases, however, is inapposite. The claimant resigned pursuant to a document entitled "RESIGNATION OF CLAIMANT." That document provided the claimant voluntarily resigned from employment, unlike the employee in *Rodriguez* whose agreement provided she would acquire layoff status. In addition, the agreement in this case separately provided:

I further agree to execute a separate General Release, however, the parties agree such release shall not affect my ability to seek unemployment compensation benefits or waive any potential defenses of the Employer with regard to those benefits.

That language, argues the claimant, assured him that his resignation would have no effect upon his eligibility for reemployment assistance benefits. However, the plain language of the above-cited provision refers only to the effect of the General Release, not the resignation in the preceding paragraph. In any case, the provision makes no assurance that the claimant would be eligible for benefits, as were the circumstances in *Rodriguez*. Contrary to the claimant's assertions to the Commission, the provision merely acknowledges that the General Release, which would ordinarily prevent the claimant from pursuing *any* claim against the employer, would not prevent the claimant from seeking reemployment assistance benefits chargeable to the employer.

Furthermore, the provision does not provide assurance that the employer would not contest a claim for benefits, as were the circumstances in *Sullivan*. To the contrary, the plain language of the agreement specifically reserved for the employer the right to defend against the claimant's application for reemployment assistance. This reservation of the employer's rights also makes this case distinguishable from *Martell v. State of Florida, Unemployment Appeals Commission*, 654 So. 2d 1203 (Fla. 1st DCA 1995).

The claimant has argued that the defenses retained by the employer were "obviously" limited. Conversely, the plain language of the agreement reserved *any* potential defenses. Where a contract is clear and unambiguous in its terms, a reviewing body may not give those terms any meaning beyond the plain meaning of the words contained therein. *Dows v. Nike, Inc.*, 846 So. 2d 595, 601 (Fla. 4th DCA 2003) (citation omitted).

The claimant has also argued that an interpretation of the agreement that reserves for the employer unlimited defenses to a reemployment assistance claim is inconsistent with the parties' intent. Notably, the claimant's request for review does not identify any evidence that would support the assertion that the parties intended to restrict the employer's defenses. In any case, where an agreement's terms are unambiguous, the parties' intent must be discerned from the four corners of the document and the plain meaning controls. *Id.* (citations omitted). Since the agreement in this case reserved for the employer "any" potential defenses, an interpretation that the employer's defenses are restricted is untenable. While the claimant may not have understood the plain meaning of the document, we note the record reflects he was represented by counsel at the time he signed it.

Since the agreement did not restrict the claimant from seeking benefits *and* did not restrict the employer from defending against a claim for benefits, the effect of the agreement was to maintain the status quo rather than to change either party's rights with respect to any future claim for reemployment assistance benefits. Therefore, the circumstances under which this claimant became separated are factually closer to *Lake v. Unemployment Appeals Commission*, 931 So. 2d 1065 (Fla. 4th DCA 2006). In *Lake*, the employee refused an offer of light duty work, but accepted a lump sum settlement on her workers' compensation claim while agreeing to cease employment. The court affirmed the Commission's order holding the employee voluntarily quit without good cause. *See also Calle v. Unemployment Appeals Commission*, 692 So. 2d 961 (Fla. 4th DCA 1997); *In re Astrom*, 362 So. 2d 312 (Fla. 3d DCA 1978). Similar to *Lake*, this claimant declined continuing light duty employment and instead opted to quit pursuant to a workers' compensation settlement. Since his quitting was for personal cause, rather than a cause attributable to the employer, he must be disqualified from benefits.

The Commission notes that the claimant's Notice of Appeal was filed by a representative for the claimant. Section 443.041, Florida Statutes, provides that a representative for any individual claiming benefits in any proceeding before the Commission shall not receive a fee for such services unless the amount of the fee is approved by the Commission. The claimant's representative shall provide the amount, if any, the claimant has agreed to pay for services, the hourly rate charged or other method used to compute the proposed fee, and the nature and extent of the services rendered, not later than fifteen (15) days from the date of this Order.

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
11/20/2013 ,
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 Thomas
Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
POST OFFICE BOX 8697
FORT LAUDERDALE FL 33310

IMPORTANT: For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
IMPORTANTE: Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
ENPÒTAN: Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil you plè pa pràn àmpil tòn, paské tòn limité pou ou ranpli apèl la.

Docket No. **2013-23972U**

Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3659-0

DECISION OF APPEALS REFEREE

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved:

SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(30), Florida Statutes; Rule 73B-11.020, Florida Administrative Code.

OVERPAYMENT: Whether the claimant received benefits to which the claimant was not entitled, and if so, whether those benefits are subject to being recovered or recouped by the Department, pursuant to Section 443.151(6); 443.071(7), 443.1115; 443.1117, Florida Statutes and 20 CFR 615.8.

CHARGES TO EMPLOYMENT RECORD: Whether benefit payments made to the claimant shall 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 employer charges are not at issue on the current claim, the hearing may determine charges on a subsequent claim.)

Findings of Fact: The claimant was employed as a deli clerk for the employer, a supermarket, beginning on December 6, 2003. The claimant suffered a work-related injury in July 2011. Following the injury, the employer provided the claimant work within his medical restrictions. On

June 28, 2012, the claimant voluntarily resigned his position with the employer so that he could pursue a worker's compensation settlement with the employer.

The claimant received reemployment assistance benefits for the claim weeks ending August 4, 2012, through the claim week ending January 5, 2013, in the total amount \$6,325.

Conclusions of Law: The law provides that a claimant who voluntarily left work without good cause or was discharged for misconduct connected with the work will be disqualified for benefits.

The record and evidence in this case show that the claimant voluntarily quit the job, and was not discharged.

The law provides that a claimant who has voluntarily left work without good cause as defined in the statute shall be disqualified from receiving benefits. "Good cause" includes only such cause as is attributable to the employing unit or which consists of an illness or disability of the claimant requiring separation from the work. The term "work" means any work, whether full-time, part-time or temporary.

The record and evidence in this case show that the claimant left work so that he could pursue a worker's compensation settlement with the employer. An individual who leaves work voluntarily, as the claimant did, carries the burden to show that the leaving was with good cause attributable to the employer, in order to qualify for unemployment compensation benefits. That burden has not been met in this case. The claimant has failed to show that the employer violated the agreement of hire, or that the separation was attributable to the employer. Therefore, it is concluded that the claimant is disqualified from the receipt of benefits.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments.

The entry into evidence of a transaction history generated by a personal identification number establishing that a certification or claim for one or more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person or by direct deposit via electronic means, constitutes prima facie evidence that the person claimed and received reemployment assistance benefits from the state.

Since this decision finds the claimant disqualified from the receipt of reemployment assistance benefits, the monies received by the claimant do constitute an overpayment and is liable for repayment.

The appeals referee was presented with conflicting testimony regarding whether the employer instructed the claimant not to work on the wet floors and other material issues of fact and is charged with resolving these conflicts. The Reemployment Assistance Appeals Commission set forth factors to be considered in resolving credibility questions. These include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the appeals referee finds the testimony of the employer to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

Decision: The determination of the claims adjudicator dated March 7, 2013, holding the claimant disqualified from the receipt of reemployment assistance benefits from July 1, 2012, and until the claimant earns \$4,675,

because the claimant voluntarily left work without good cause, noncharging the employer's account and holding the claimant overpaid \$6,325, is AFFIRMED. The claimant was overpaid. The employer's account is noncharged.

The claimant was represented at the hearing by an attorney who is not charging the claimant a fee. Therefore, no fee is approved.

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 mailed to the last known address of each interested party on April 17, 2013.

JEAN PENA
Appeals Referee

By: _____
NIBIAN RAMOS GORDON, 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 mailing 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 below 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 <https://iap.floridajobs.org/> or by writing to the address at the top of this decision. The date the confirmation number is generated will be the filing date of a request for reopening on the Appeals Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org/>. If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for

these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la fecha 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 <https://iap.floridajobs.org/> o escribiendo a la dirección en la parte superior de esta decisión. La fecha en que se genera el número de confirmación será la fecha de registro de una solicitud de reapertura realizada en el Sitio Web de la Oficina de Apelaciones.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Desempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org/>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [*docket number*] y el número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

ENPÒTAN – DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20^{yèm} 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, <https://iap.floridajobs.org/> oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat yo pwodui nimewo konfimasyon an se va dat yo prezante demann nan pou reouvri kòz la sou Sitwèb Apèl la.

Yon pati ki te asiste seyans la epi ki pat satisfè desizyon yo te pran an gen dwa mande yon revizyon nan men Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org/>. Si ou voye l pa lapòs, dat ki sou tenb la ap dat ou depoze apèl la. Si ou depoze apèl la sou yon sitwèb, ou fakse li, bay li men nan lamèn, oswa voye li pa yon sèvis mesajri ki pa Sèvis Lapòs Lèzetazini (*United States Postal Service*), oswa voye li pa Entènèt, dat ki sou resi a se va dat depo a. Pou evite reta, mete nimewo rejis la (*docket number*) avèk nimewo sekirite sosyal moun k ap fè demann lan. Yon pati k ap mande revizyon dwe presize nenpòt ki

alegasyon erè nan kad desizyon abit la, epi bay baz reyèl oubyen legal pou apiye alegasyon sa yo. Yo p ap pran an konsiderasyon alegasyon erè ki pa byen presize nan demann pou revizyon an.

Any questions related to benefits or claim certifications should be referred to the Claims Information Center at 1-800-204-2418. An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.
