VOLUME 2, ISSUE 2

December 2015

FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY

STATE OF FLORIDA REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

RAAC

APPEALS QUARTERLY

# Analyzing Separation Agreements in RA Law

This issue of the newsletter addresses the impact of separation agreements on a benefits claim. RAAC Order #15-02275 (Dec. 7, 2015) analyzes many of the issues involved in such cases. Relevant court cases and RAAC orders are summarized in this issue.

Section 443.101(1), Florida Statutes, provides that a claimant is disqualified from benefits for voluntarily quitting work unless it was for good cause, which includes illness or disability that requires separation from work or cause attributable to the employer which would compel a reasonable employee to cease working. In the cases of In Re Astrom and Calle, involving early retirement agreements, the courts established a general rule that a claimant who voluntarily quits as a condition of an agreement does not have good cause within the meaning of the statute. This general rule was later applied to a workers' compensation settlement agreement in Lake.

There are exceptions to the general rule, as these court cases involved resignations that were truly voluntary because continuing appropriate work was available to the employees who, instead, resigned in exchange for an additional benefit. Thus, the first issue is whether continuing work was otherwise available to the claimant. If the employer would not have permitted the claimant to continue working (or return to work) had the agreement not been reached, the claimant may have been constructively discharged. However, the mere fact that the claimant is required to resign in order to receive the benefit provided in the agreement does not mean the agreement is not voluntary if the claimant had the choice to continue working.

In injury cases the proper inquiry is whether the claimant could return to available regular or similar work that was consistent with any medical restrictions. If the claimant had an injury that prevented return to work with or without accommodation in the foreseeable future, the injury may have required separation, in which case the claimant had good cause to quit under the statutory provision for "illness or disability."

The next issue is whether, despite the voluntary resignation, the claimant's quitting was with good cause attributable to the employer. In Rodriguez and Sullivan, the courts held that an employer has given a claimant good cause to quit if the separation agreement contains an assurance regarding RA benefits, such as that the claimant will be eligible or that the employer will not contest an RA claim. However, an agreement term regarding RA benefits will not be construed as good cause attributable to the employer where it contemplates a neutral effect with respect to RA benefits, such as reserving rights of the claimant to apply for benefits but also reserving rights of the employer to defend against such claims.

In 15-02275, RAAC rejected the claimant's argument that the employer gave her good cause to quit by refusing to pay for a particular medical treatment that might have improved her condition. Because the issue of whether an employer complied with the workers' compensation law's statutory obligations is reserved to the workers' compensation system to decide, RA claimants cannot collaterally challenge an adverse compensation outcome in RA proceedings to establish that quitting was with good cause attributable to the employer.

The RAAC orders discussed in this issue address application of court precedent in several recent cases involving separation agreements, as well as evidence issues that commonly arise in cases involving separation agreements, such as application of the parol evidence rule and mediation confidentiality.

## In this Issue:

# Areas of Inquiry in RA Cases Involving Separation Agreements

- Did the claimant resign as a term of a written agreement that provided an additional benefit, or that settled a disputed claim?
- Is the full agreement in the record?
- If the parties had not entered into the agreement, was continuing working available to the claimant in his/her regular work or similar work?
- If continuing work was available, was it within any medical restrictions the claimant had?
- If the parties had not entered into the agreement, would an illness or injury of the claimant have required separation?
- Did the separation agreement contain any terms regarding RA benefits? If so, did the employer make assurances or was the term neutral in effect?

# DCA Opinions Regarding Separation Agreements in RA Law

**In re Astrom, 362 So. 2d 312 (Fla. 3d DCA 1978)**

The employer, an airline, announced it was contemplating moving its maintenance base from Miami to New York. The employer offered employees the option of taking early retirement with increased retirement benefits or continuing to work until a future undesignated discharge date. To induce employees to select the early retirement option, the employer would provide a 50% increase in the amount of the employees' pension payments until a certain age, would pay an additional 13 weeks of severance, and would allow employees the option of continuing health insurance benefits. The Commission held employees who opted for early retirement were disqualified from benefits for voluntarily quitting employment. The court affirmed, reasoning that certainty of an eventual layoff at a future undetermined date while work was available at the time the employees opted for early retirement was not tantamount to discharge.

**Martell v. Unemployment Appeals Commission, 654 So. 2d 1203 (Fla. 1st DCA 1995)**

Martell accepted a reduction-in-force separation package and was held disqualified from receipt of benefits for voluntarily quitting without good cause attributable to the employer. The court reversed, holding that the record did not support the finding that the claimant's voluntarily leaving work was not with good cause. The separation package included a provision stating, "This release does not include, however, a release of employee's rights to a vested pension or a waiver of any rights to workman's compensation or unemployment insurance that employee may have." Without specific analysis, the court held that "the circumstances of the case" amounted to good cause that would impel the average reasonable worker to voluntarily quit employment. The decision did not address the fact that the language did not provide the claimant with any greater rights than the statutory provision in Section 443.041(1), Florida Statutes.

**Calle v. Unemployment Appeals Commission, 692 So. 2d 961 (Fla. 4th DCA 1997)**

Calle separated from employment when she accepted an early retirement package the employer offered to employees over fifty years of age. Calle's department was scheduled to close at an undetermined future date, and the employer encouraged her to accept the early retirement package. The court rejected the contention that the employer's doing so constituted a constructive discharge and affirmed disqualification for voluntarily quitting. The court reasoned that Calle was not faced with imminent discharge or even a certainty that she would be discharged, and noted that the employer simply imparted information and its concern to Calle, then left it to her to decide upon the best course of action for her own interests. Finding the case comparable to In re Astrom, the court held Calle was not wrongfully impelled to quit and that her decision was not involuntary.

# DCA Opinions Regarding Separation Agreements in RA Law *(continued)*

**Rodriguez v. Unemployment Appeal Commission, 851 So. 2d 247 (Fla. 3d DCA 2003)**

The employer sent certain employees letters explaining the terms of an offered voluntary buyout agreement. The agreement stated the buyout would not interfere with the applications for unemployment benefits and those who accepted the buyout would acquire layoff status. Rodriguez's department was informed that three employees in the department would be laid off. Rodriguez accepted the buyout package and signed the agreement. The court found the claimant's leaving employment when she agreed to the voluntary buyout and accepted a separation package was with good cause attributable to the employer because she was specifically told the agreement did not include a release of her rights to a vested pension or a waiver of any rights, workers' compensation, or unemployment insurance. The court concluded the employer's assurance of Rodriguez's eligibility for reemployment assistance benefits was designed to induce her to accept the agreement and, therefore, provided her good cause attributable to the employer for voluntarily quitting.

**Lake v. Unemployment Appeals Commission, 931 So. 2d 1065 (Fla. 4th DCA 2006)**

Lake rejected the employer's offer of light duty work and instead accepted a lump sum settlement of her workers' compensation claim. The settlement agreement provided that she would not return to work for the employer. The court affirmed disqualification for voluntarily quitting employment, citing In re Astrom. Although a short opinion, Lake provides the general rule, subject to certain exceptions, that a workers' compensation settlement in which the employee voluntarily resigns as part of the agreement constitutes voluntary separation under disqualifying circumstances.

**Sullivan v. Unemployment Appeals Commission, 93 So. 3d 1047 (Fla. 1st DCA 2012)**

Sullivan resigned pursuant to a workers' compensation settlement agreement which contained a provision that the employer would not contest the claimant's application for unemployment benefits. During settlement negotiations, the claimant insisted that this provision be added, and the claimant's attorney added the provision to the agreement, which the parties ultimately signed. The Commission affirmed the referee's decision holding the claimant disqualified because she voluntarily quit employment pursuant to the workers' compensation agreement. The court reversed, holding that the employer's assurance that it would not contest Sullivan's claim for reemployment benefits provided the impetus for her to sign the workers' compensation settlement agreement and, therefore, her quitting was attributable to the employer.

# RAAC Orders Regarding Separation Agreements in RA Law

**R.A.A.C. Order No. 13-04020**
**(November 20, 2013)**

The claimant voluntarily resigned pursuant to a workers' compensation settlement agreement. At the time he resigned, the claimant was physically able to work and continuing light duty work was available within his medical restrictions, so his quitting was not necessitated by illness or disability requiring separation from employment.

The resignation agreement he executed specified that he was voluntarily quitting and that a separately executed general release would not affect his ability to seek reemployment assistance benefits or waive any potential employer defenses regarding those benefits. On appeal to the Commission, the claimant argued he was entitled to benefits pursuant to Rodriguez and Sullivan. The Commission found those cases distinguishable since the claimant's signed agreement did not specify he was acquiring layoff status, made no assurances regarding his entitlement to reemployment assistance benefits, and made no assurances that the employer would not contest a claim for benefits. Since the agreement maintained the status quo by not restricting the claimant from seeking benefits and by not restricting the employer from defending against a claim for benefits, it could not be construed as providing assurances that induced the claimant to quit. Therefore, the agreement did not constitute good cause attributable to the employer for quitting. The Commission found the claimant's separation was factually similar to Lake since he declined light duty work and voluntarily quit pursuant to a workers' compensation settlement, and affirmed disqualification.

**R.A.A.C. Order No. 13-04350**
**(November 20, 2013)**

Similar to the circumstances in 13-04020, *supra*, the claimant voluntarily resigned pursuant to a workers' compensation settlement agreement while continuing work was available within her medical restrictions. The agreement provided that it did not "affect any right Claimant may have to seek and/or receive Unemployment Compensation Benefits or Employer's

# RAAC Orders Regarding Separation Agreements in RA Law

Right to defend same." As in 13-04020, the agreement simply maintained the status quo by not restricting the claimant from seeking benefits and by not restricting the employer from defending against a claim for benefits, and it could not be construed as providing assurances that induced the claimant to quit. Thus, the quitting was not with good cause attributable to the employer.

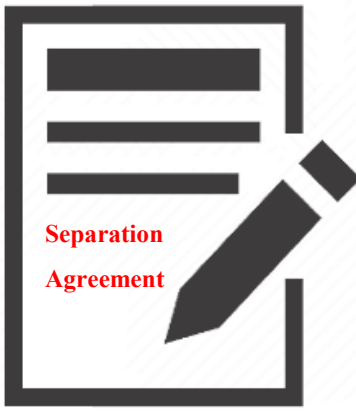
The Commission also addressed an evidentiary matter. The Commission concluded the referee properly gave no weight to the claimant's testimony that the employer's attorney told her during settlement negotiations that she would be able to receive reemployment assistance benefits. Pursuant to Section 44.405(1), Florida Statutes, which provides all mediation communications shall be confidential, prohibits disclosure of mediation communications, and provides remedies for violations, the claimant was statutorily prohibited from testifying regarding communications that were made during the course of mediation. Additionally, since the settlement agreement was valid, complete, and unambiguous, the parol evidence rule precluded the claimant from relying on extrinsic evidence in the reemployment assistance hearing to prove the employer made an assurance that she would receive benefits.

**R.A.A.C. Order No. 13-06990**
**(February 21, 2014)**

The claimant was employed as a staff attorney for a Clerk of Courts. After losing reelection, the Clerk of Courts informed the claimant that "jobs were at risk" once the new administration took over and offered him a voluntary layoff package. The documentary evidence included written assurance from the employer notifying employees that because the employer made representations regarding positions being at risk and offered separation packages designed to induce employees to accept the separation packages and quit, pursuant to Rodriguez they would be deemed to have separated with good cause attributable to the employer if they accepted the severance package. The employer's written assurance specified employees would be entitled to reemployment assistance benefits if they accepted the package, and that the employer would not challenge a claim for benefits if all other eligibility requirements were met. The claimant accepted the voluntary layoff package. The referee held that the claimant was not disqualified because the employer induced him to accept the separation package by assuring him that he would be entitled to reemployment assistance benefits.

On appeal to the Commission, the employer contended, inter alia, that Rodriguez and Sullivan did not apply because the claimant's job loss was merely speculative; that the agreement was illegal pursuant to Section 215.425(4)(b), Florida Statutes; and that permitting the agreement to control entitlement to reemployment assistance benefits is contrary to public policy.

The Commission affirmed. The fact that the claimant's termination by the newly elected office holder was merely speculative was not material to the outcome since the Rodriguez case also involved mere speculative loss of employment. The Commission concluded the employer's contention that the voluntary layoff agreement was illegal had been waived; the contention was not raised in either of the two appeal hearings, nor was it raised the first time the case was reviewed by the Commission. Additionally, Section 215.425(4)(b), Florida Statutes, contains exceptions that the Commission concluded it could not address without further development of the facts. Moreover, the Commission noted that even if it agreed that the layoff agreement was illegal, absent any evidence of unclean hands on the part of the claimant, it seemed unlikely that courts applying the rationale articulated in Rodriguez and Sullivan would disqualify a claimant from reemployment assistance benefits based on contract illegality.




Regarding the employer's contention that the agreement is repugnant to public policy because it allows the parties to manipulate or circumvent the system, the Commission pointed out there was no evidence or finding that the claimant helped draft the agreement. Moreover, even if the claimant did participate in creating the agreement, it would not negate the applicability of Rodriguez and Sullivan. Indeed, in the Sullivan case, the employer's assurance that it would not contest a claim for benefits was added to the agreement by Sullivan's own attorney at Sullivan's insistence, but did not prevent the court from concluding that the employer, through its assurances, gave Sullivan good cause to quit. The Commission noted that it made similar public policy arguments to the First District Court of Appeal in the Sullivan case, but the court apparently found the arguments unpersuasive. The Commission further noted that it was bound by Rodriguez and Sullivan to conclude the referee correctly applied the law in holding the claimant had good cause attributable to the employer. On appeal to the Fifth District Court of Appeal, the court affirmed without opinion. Brevard Co. Clerk of Courts v. Reemployment Assistance Appeals Commission, 162 So. 3d 1030 (Fla. 5th DCA 2015).

NEW

# Chairman's Evidence Corner

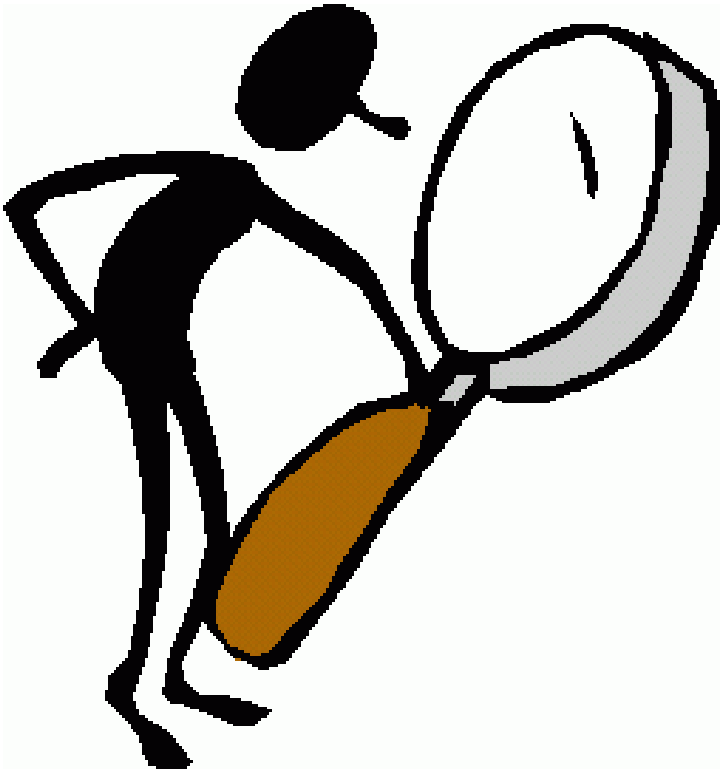
Chairman's Evidence Corner is a new recurring feature to address evidence issues common and often unique to RA law.

Cases involving settlement or separation agreements often raise evidence issues not routinely encountered in other reemployment assistance cases. Two of the issues – the parol evidence rule and the mediation privilege – can be challenging to apply, but are fundamental to an appropriate resolution of such cases.

Commission Order No. 14-00447 (June 24, 2014) addresses both of these issues. In that case, the claimant voluntarily quit employment pursuant to a workers' compensation settlement agreement. The full written agreement was not submitted for the hearing. The claimant and his witness (an attorney who represented the claimant at both the reemployment assistance hearing and in the course of settling his workers' compensation claim) presented testimony regarding the alleged terms of a mediated written agreement including assurances made by the employer during the mediation conference that led to the written agreement. The referee made no findings regarding the alleged assurance and held the claimant voluntarily quit without good cause and was disqualified from receipt of benefits. On appeal, the Commission noted that the matter of whether the settlement agreement contained an assurance by the employer regarding the claimant's entitlement to benefits could be critical to the outcome of the case under the Sullivan and Rodriguez cases. However, the Commission remanded the case for further development of the record including submission of the full agreement. The Commission also discussed whether testimony could be admitted, and when, regarding the terms of the agreement.

***Parol Evidence Rule***

The "parol evidence rule" is not actually a rule of evidence, but a substantive doctrine from the law of contracts. It provides that when two or more parties have entered into a written contract which is intended to contain the complete agreement between the parties, "extrinsic" or outside evidence of the terms of the contract is not permissible except in specific limited circumstances. Stated more simply, a contract says what it says, and a party cannot introduce evidence of oral promises allegedly made at or before the time the contract was formed that would alter the obligations of the written contract. Thus, if a claimant testified that the employer promised not to challenge his unemployment benefits, but the agreement contains no such promise, the testimony cannot be relied upon to establish such a promise.



# Chairman's Evidence Corner *Continued*

One important exception to the parol evidence rule is that testimony as to the meaning of the contractual provision may be offered when the relevant term is ambiguous. A contract must be interpreted in its entirety, but if a term in the agreement can reasonably be interpreted multiple ways, oral testimony may be offered as to the intent of the parties. However, neither a party's subjective intent nor its testimony as to the discussions between the parties controls over clear, unambiguous contrary language in the agreement.

The parol evidence rule is also not dispositive in terms of recitals, that is, the non-promissory portions of the agreement that characterize the status of the parties or basic understandings that led to entry into the agreement. For example, the fact that an agreement contains a statement that the claimant has resigned does not preclude the claimant from establishing that he was separated prior to entering into the agreement.

***The Mediation Privilege***

An even more restrictive doctrine is the mediation privilege. Section 44.405, Florida Statutes, provides that communications in a formal mediation may not be disclosed outside the mediation. This means that it is not appropriate during a reemployment assistance hearing for a party to testify about what he was told by the other party in a mediation. The mediation agreement is intended to be the expression of the parties' agreement, not the discussion that led up to its formation. Oral testimony may be offered if all parties affirmatively waive the privilege, but in reemployment assistance hearings only if the waiver is knowledgeable and intentional. Otherwise oral testimony may only be offered as to ambiguous terms.

***Analytical Approach***

In addressing cases involving settlement or separation agreements, where the terms of the agreement are potentially material, the following areas of inquiry will be helpful:

1. Was the agreement reached at a formal mediation?
2. Was the agreement between the parties embodied in one or more written documents?
3. Did the parties submit the written documents to the referee?
4. In a workers' compensation case, was the agreement approved by a Judge of Compensation Claims if required? (See Fla. Admin. Code R. 60Q-6.123).
5. If the written agreement(s) was submitted, does it indicate either explicitly or by its comprehensiveness that it was intended to be the full agreement of the parties?
6. If so, is the relevant provision clear on its face, or is it ambiguous as to the meaning of the provision and the intent of the parties?

These questions will help the referee evaluate the agreement to determine its application to the reemployment assistance case and whether oral testimony is permissible. If the parties did not submit the full copies of the written agreements, or at least the portion that is allegedly relevant, the referee should consider continuing the case to permit the parties to do so. While the best evidence rules are not strictly applied in reemployment assistance proceedings, because of the substantive limitations on oral testimony, and the fact that lay witnesses are rarely capable of providing sufficient competent oral testimony for the referee to obtain a reliable understanding of the legal effect of such agreements, having the text of the written agreements available is often essential for a proper decision in the case.

# Miscellaneous Orders

**R.A.A.C. Order No. 15-01033 (June 8, 2015)**

The claimant quit after being subjected to eight months of bullying and harassment by a co-worker who called the claimant disparaging names in front of other employees and the claimant's immediate supervisor. The referee disqualified the claimant, reasoning the clamant did not make sufficient efforts to preserve his employment prior to quitting. The employer's policy prohibited harassment or bullying, and the human resources director testified that a supervisor who receives a report of harassment is required to report it to human resources. Although the claimant's immediate supervisor was aware for months that the claimant was being harassed and bullied, the supervisor did nothing to address the situation and did not report it to human resources. The Commission reversed on the basis that the claimant's supervisor failed to comply with or enforce the employer's anti-harassment policy. The Commission commented, "[A] claimant cannot be disqualified for failing to make a sufficient effort to preserve his or her employment when the employer is aware of the harassing and bullying conduct that constitutes good cause for quitting and fails to comply with and enforce its own policy."

**R.A.A.C. No. 15-01579 (July 30, 2015)**

The claimant was discharged for one incident of sleeping on the job. The Commission affirmed the referee's conclusion that the claimant's actions did not constitute misconduct, and discussed the following factors to be considered when analyzing a sleeping case under § 443.036(29)(a), F.S.:

- the nature of the employee's job responsibilities;
- whether the employer had a rule prohibiting sleeping on the job;
- whether the employer previously warned the employee for sleeping on the job;
- the location where the employee was found sleeping;
- whether or not the employee made any "preparations" for sleeping, as opposed to dozing off while on duty; and

the existence of any mitigating factors, e.g. sleepiness caused by illness or medication.

Of particular importance is any evidence of "preparation," such as removing oneself to a non-duty or non-visible area, lying down, assuming a reclining position, or other actions which demonstrate a conscious decision either to sleep or place oneself in a position where it was likely. Even inadvertent sleeping may constitute misconduct if the claimant was sleeping at a time when heightened awareness was needed. The Commission agreed the claimant in this case did not show a "conscious disregard" because he dozed off while sitting at his desk after lunch, suffered from sleep apnea, and was not previously warned for sleeping on the job. The Commission noted that an employer can also establish a prima facie case of misconduct under § 443.036(29)(e), F.S., although the employer in this case did not provide documentary or testimonial evidence at the hearing regarding the terms of a policy.

**R.A.A.C. Order No. 15-01325 (July 27, 2015)**

The employer, a temporary help firm, asked the claimant if she wanted her resume forwarded to a client company who was taking applications for a part-time position. The claimant declined, citing the distance to the job. The referee held the clamant not disqualified, reasoning that no bona fide offer of suitable work was made. While the Commission agreed that no bona fide offer of suitable work was made, the case was remanded for the referee to consider whether the claimant had failed without good cause to apply for available suitable work under § 443.101(2), F.S. The Commission directed the referee to adduce evidence regarding both the prospective employment and the claimant's employment history to determine whether the prospective employment was suitable work. Such factors to be considered are job title(s), job duties, rate of pay for each assignment, whether she worked on a full-time or part-time basis, her hours and days of work, duration of assignments, the location of her prior job sites, and distances of these job sites from her home.

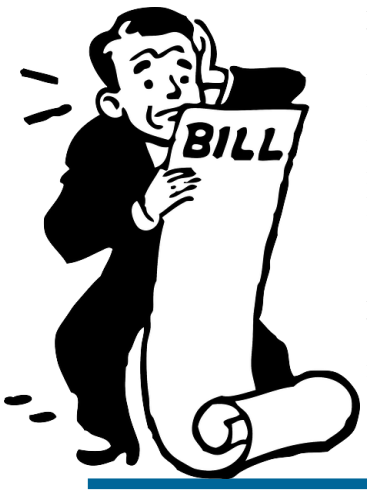

**R.A.A.C. Order No. 15-00755 (July 31, 2015)**

The claimant was separated from his job when the employer asked him to turn in his badge and keys following the claimant's refusal to submit to a drug test. Citing LeDew v. Unemployment Appeals Commission, 456 So. 2d 1219 (Fla. 1st DCA 1984), the Commission agreed with the referee's conclusion that the claimant was "constructively discharged." Nevertheless, the Commission reversed to disqualify the claimant, reasoning that although the employer maintained during the hearing that the claimant voluntarily quit by abandoning his job when he refused to take the drug test, the evidence showed a causal relationship between the claimant's actions and the job separation which was deemed to be a discharge. Accordingly, despite the employer's contention that the claimant quit, the evidence showed the claimant was discharged for misconduct by refusing to take a drug test based on reasonable suspicion and pursuant to the employer's established policy.

# Miscellaneous Orders *Continued*

**R.A.A.C. Order No. 15-00881 (May 11, 2015)**

The claimant was discharged for making non-business purchases on his employer-issued credit card in violation of the employer's policy. Remanding the case for the referee to further develop the record, the Commission discussed the issue of intent with respect to § 443.036(29)(a) and (e), F.S. Regarding subparagraph (e), the Commission directed the referee to analyze whether the employer's policy was fairly and consistently enforced. In so doing, the referee was instructed to address the claimant's testimony that he mistakenly used the credit card to make personal purchases because it looked similar to his own personal credit card, and to make specific findings as to whether the claimant's use of the credit card was intentionally deceptive or merely a mistake. The Commission noted it was not necessary for the employer to specifically rebut the claimant's contention of accidental use with direct evidence of the claimant's intent, as the number of instances of use alone (in this case, ten) could give rise to a reasonable inference of intentional use. The Commission directed the referee to evaluate the evidence offered by each party, direct or circumstantial, and determine, based on reasonable inferences that can be drawn from the evidence as well as logic and experience, whether it was more likely that the usage was accidental or intentional. If the referee determined the usage to be accidental, he must further determine whether there were any prior such instances which would have put the claimant on notice of the need to use heightened care such that the claimant was properly deemed culpable for negligence or lack of due care. In determining culpability, the referee must also evaluate the claimant's contention that his mental health condition at the time contributed to the mistake.




Regarding § 443.036(29)(a), F.S., the Commission stated that, while the record was sufficient to show that the claimant's conduct was in disregard of the reasonable standards of behavior established by the employer's rule, the employer must still prove that the disregard was deliberate, and that the claimant acted in conscious disregard of its interests. While this does not require intentional, purposeful conduct, it does require at least a degree of carelessness or indifference sufficient to show that the claimant's conduct reflected a lack of concern for the employer's interests.

**R.A.A.C. Order No. 15-00605 (July 20, 2015)**

The claimant worked as a lab technician until he went on a medical leave of absence due to knee replacement surgery. When the claimant was released to return to work with restrictions, he still was unable to perform in the position of lab technician. Additionally, while the claimant was on leave, the employer's business needs changed and the employer no longer had a need for a lab technician. The employer advised the claimant that once medically released, he would not be able to return to the lab technician position, but that it could accommodate him in a batch maker position at the same pay, hours, and benefits. The claimant refused the batch maker position. The referee disqualified the claimant, reasoning that the claimant voluntarily quit his job without good cause attributable to the employer when he declined to return to work in the batch maker position. The Commission reversed the claimant's disqualification, holding the claimant voluntarily quit due to an illness or disability requiring the job separation. Noting that the claimant could not perform the essential functions of the lab technician job upon his attempted return from the medical leave, the Commission concluded the claimant effectively quit because he was medically unable to perform all the duties of his pre-injury lab technician position. The issue of the claimant's refusal to accept the batch maker position was premature, since the claimant became separated prior to any medical release that would have allowed him to work.

Although the determination on appeal did not address the issue of chargeability, the Commission held the employer's account could not be charged under the facts of the case since the employer complied with its statutory duties to make reasonable accommodations under the Americans with Disabilities Act (ADA) in order to allow the claimant to return to work. First, the claimant was placed on a leave of absence as an accommodation when he could no longer physically perform all the essential functions of his job. Second, the employer did not violate the ADA when it did not reinstate the claimant to his prior position since the claimant's medical limitations precluded him from performing some of the essential functions of the lab technician job. The Commission emphasized that, under the ADA, great deference is given to the employer's judgment as to what functions of a job are deemed essential. Finally, the Commission distinguished between the ADA and the Family and Medical Leave Act (FMLA) in that, while the FMLA generally requires reinstatement to a prior or equivalent position, the ADA requires employers to hold open a position only if doing so does not cause undue hardship. If holding the position open causes undue hardship, the ADA allows an employer to reassign the employee to a vacant position for which he or she is qualified. In this case, the employer complied with the ADA requirements since holding open the lab technician position after the employer no longer had a business need for the position constitutes undue hardship, and the employer attempted to reassign the claimant to the batch maker position which was within his medical restrictions.

# INTERESTED IN KNOWING MORE ABOUT RA LAW?

The last few years have brought several changes to the unemployment benefits process in Florida. In particular, the law regarding misconduct was amended significantly in 2011 and 2013, and in late 2013 DEO launched a new benefits and appeals system, CONNECT. The Commission and DEO have launched outreach initiatives, including this newsletter, to educate stakeholders about these changes.

Earlier this year, RAAC's website, www.raac.myflorida.com, was expanded as part of this outreach initiative. Among the enhancements are a feature for searching precedential RAAC orders, an archive of prior *Appeals Quarterly* newsletters, and answers to frequently asked questions.

Also as part of these outreach initiatives, we are offering to give presentations regarding the reemployment assistance appeals process to interested groups at no cost. We have specific presentations that can be tailored to your group's interests, from a basic overview of the process, an intermediate presentation on best practices in handling an appeal, to an advanced discussion of current legal developments. Please contact our coordinator Lesley Blanton at lesley.blanton@raac.myflorida.com if you are interested in arranging a presentation, or would like additional information.

# *Appeals Quarterly*

Jointly published by the

Reemployment Assistance Appeals Commission

and

DEO Office of Appeals.



For editorial issues, email amanda.neff@raac.myflorida.com.

Contact the Commission at:

2740 Centerview Drive, Suite 101, Tallahassee, FL 32399-4151.

Phone: 850-487-2685, Fax: 850-488-2123

www.raac.myflorida.com