

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 16-03787

vs.

Referee Decision No. 0029721904-02U

Employer/-None

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for disposition of the claimant's appeal pursuant to Section 443.151(4)(c), Florida Statutes, of a referee's decision wherein the claimant was held ineligible for benefits.

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

The issue before the Commission is whether the claimant is able and available for work as provided in Section 443.091(1)(d), Florida Statutes.

The referee made the following findings of fact:

The claimant was last employed as a full-time worker through October 7, 2016. The claimant applied for reemployment assistance benefits effective October 9, 2016. All of the claimant's earnings in the base period were earned in full-time employment. The claimant was searching for only part-time work from October 7, 2016, through November 18, 2016. The claimant was only searching for part[-]time work because she was in the late stages of her pregnancy and due to health issues could not work full[-] time employment. The claimant stopped searching for work altogether on November 18, 2016, when [she] gave birth to a child. As of the date of hearing, the claimant has not searched for employment.

Based on these findings, the referee held the claimant ineligible for receipt of benefits from October 9, 2016, and indefinitely. Upon review of the record and the arguments on appeal, the Commission concludes the referee's analysis is defective and the record was not developed sufficiently; consequently, the case must be remanded.

The record reflects the claimant separated from full-time employment with "[C. C.]" on or about October 7 and established a claim for benefits effective October 9, 2016. The claimant's wage transcript and determination reflects base period earnings from "[C. O. P.]," but the record is silent regarding whether this is the same employer the claimant referred to as "[C. C.]," and whether the wages reflected in her wage transcript and determination are from full-time employment. Therefore, the record as currently developed is insufficient to determine whether the claimant's claim for benefits is based upon full-time employment.

The record further reflects the claimant gave birth on November 18 and, at the time of the hearing on December 14, 2016, was not looking for work since she had recently delivered, but that she had been looking for part-time work prior to giving birth. The claimant testified she searched for part-time work because she was thirty-seven weeks pregnant, her blood pressure was high, and she was not gaining any weight. In her closing statement, she clarified that she limited her search to part-time employment because she was concerned about the safety of her unborn child and did not want to get any sicker than she already was. The claimant further testified that she anticipated resuming her work search after completing a six-week post-partum recovery period, but was not questioned regarding whether she would search for part-time or full-time work once she had recovered from childbirth.

The referee affirmed a determination holding the claimant ineligible from October 9, 2016, and indefinitely on the basis that she limited her work search to part-time employment. The Commission, however, has previously held that a claimant who temporarily restricts his or her availability to part-time work due to a serious medical condition rather than a personal discretionary reason has not simply made a volitional decision to reduce work hours and, under such circumstances, is not ineligible to receive benefits. *See* U.A.C. Order No. 07-01956 (April 12, 2007); U.A.C. Order No. 04-11185 (January 27, 2005). Eligibility is determined on a week-by-week basis, and since the record was not sufficiently developed to identify the specific weeks in which the claimant looked for part-time work due to her medical condition, the case must be remanded. On remand, the referee is directed to clarify whether the claimant's claim for benefits is based on full-time employment and to

develop the record regarding the weeks in which the claimant searched for part-time work and the date she ceased her work search. Additionally, if the claimant has resumed her work search, the referee must develop the record regarding the date she did so and whether she is searching for full-time or part-time employment.

Once the record has been sufficiently developed to determine the claimant's eligibility week by week, the referee must issue a decision that is in accord with the above-cited Commission precedent and specifies the precise week or weeks the claimant is ineligible for receipt of benefits based on her work search. Department records reflect the claimant did not claim any benefits for the week ending November 26, 2016, through the week ending January 7, 2017, so the question of whether she was able and available for work during that seven-week period is not at issue. The referee's decision must, therefore, address the claimant's eligibility during her pre-delivery period of searching for part-time work, and any post-delivery period of searching for work, whether full or part time. Further, as a general rule, referees should only assume jurisdiction through the date of the hearing of a determination that imposes an open-ended period of ineligibility. *See, e.g.*, R.A.A.C. Order No. 13-09473 (February 19, 2014). On remand, the referee's new decision should only address the period from October 9, 2016, through the date of the hearing.

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

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

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

This is to certify that on

3/2/2017,

the above Order was filed in the office of the Clerk of the Reemployment Assistance Appeals Commission, and a copy mailed to the last known address of each interested party.

By: Kimberley Pena

Deputy Clerk



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



*57556310 *

Docket No.0029 7219 04-02

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

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES:

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: ABLE AND AVAILABLE FOR WORK: Whether the claimant has been able and available for work, pursuant to Sections 443.036(1); 443.036(6); 443.091(1)(d), Florida Statutes; Rule73B-11.021, Florida Administrative Code.

Finding of Facts: The claimant was last employed as a full time worker through October 7, 2016. The claimant applied for reemployment assistance benefits effective October 9, 2016. All of the claimant's earnings in the base period were earned in full time employment. The claimant was searching for only part time work from October 7, 2016, through November 18, 2016. The claimant was only searching for part time work because she was in the late stages of her pregnancy and due to

health issues could not work full time employment. The claimant stopped searching for work altogether on November 18, 2016, when gave birth to a child. As of the date of hearing, the claimant has not searched for employment.

Conclusions of Law:To be considered available for work, a claimant must actively seek types of work that are reasonably obtainable considering the claimant's prior training and experience.

Department regulations further provide that to be considered available for work, a claimant must actively seek work in a manner customary to the occupation in which work is being sought. The claimant must be without undue restrictions that lessen the chance of becoming re employed at the earliest possible time. Factors considered in determining whether a claimant has conducted an active work search are:

- (a) The number of job contacts made by the claimant and the dates the contacts were made; and
- (b) Whether the type of work being sought is reasonable considering the claimant's background, training, abilities, and duration of unemployment; and
- (c) Whether the claimant possesses the necessary license, certification and tools to perform the type of work being sought; and
- (d) Whether the claimant is on a temporary layoff; and
- (e) Whether the claimant is on a seasonal layoff and resides in a geographical area in which no suitable off season work prospects are available.

The record and evidence in this case show that the claimant is restricting her availability for work. The claimant was searching for only part time work, even though all of the claimant's wage credits were earned in full time employment. Since the claimant is not seeking to become fully employed at the earliest opportunity, it is concluded that the claimant is not available for work within the meaning of the law.

Decision:The determination of the claims adjudicator dated November 1, 2016, is AFFIRMED. The claimant is not available for work within the meaning of the law. The claims adjudicator will determine subsequent eligibility.

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 December 15, 2016.

S. DOUGHER
Appeals Referee

Paulette A. Allison

By:

PAULETTE ALLISON, 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 envío 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 diskalfiye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesaje lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

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

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

ENGLISH :

This document contains important information, dates, or eligibility status regarding your Reemployment Assistance claim. It is important for you to understand this document. This document is available in Spanish and Creole. If you do not read or understand Spanish, English, or Creole, call 1-800-681-8102 for free translation assistance regarding your Reemployment Assistance claim.

FRENCH / FRANCAIS :

Le présent document contient des informations importantes, dont des dates ou le statut d'éligibilité relatif à votre demande d'aide au réemploi. Vous devez absolument en comprendre les tenants et les aboutissants. Si vous ne lisez ni ne comprenez l'anglais, veuillez composer le numéro de téléphone 1-800-681-8102 pour obtenir une traduction gratuite par rapport votre demande d'aide au réemploi.

SPANISH / ESPAÑOL :

Este documento contiene importante información, fechas, o estado de elegibilidad con respecto a su solicitud de Asistencia de Reempleo. Es importante que usted comprenda este documento. Este documento está disponible en Español http://floridajobs.org/Unemployment/bri/BRI_Spanish.pdf. Si no lee o entiende Inglés, llame al 1-800-204-2418 para asistencia de traducción gratuita en relación con su solicitud de Asistencia de Reempleo.

ITALIAN / ITALIANO :

Questo documento contiene informazioni importanti, date o stato di idoneità relativi alla richiesta di reimpiego. È importante comprendere questo documento. Se non legge o comprende l'inglese, chiamare il numero 1-800-681-8102 per assistenza gratuita alla traduzione a proposito della richiesta di reimpiego.

GERMAN / DEUTSCHE :

Dieses Dokument enthält wichtige Informationen, Daten oder Berechtigungsstatus hinsichtlich Ihrer Wiedereinstellungshilfsanspruchs. Es ist wichtig für Sie, dieses Dokument zu verstehen. Falls Sie Deutsch nicht verstehen oder nicht lesen können, wenden Sie sich für eine kostenlose Übersetzungshilfe hinsichtlich Ihres Wiedereinstellungshilfsanspruchs an 1-800-681-8102.

SERBIAN / SRPSKI :

Ovaj dokument sadrži važne informacije, datume ili dostupnost vezano za Vaš zahtjev za pomoć kod ponovnog zapošljavanja. Važno je da razumijete ovaj dokument. Ako ne možete pročitati ili razumjeti engleski jezik, pozovite 1-800-681-8102 za besplatnu pomoć s prijevodom vezano za vaš zahtjev za pomoć pri ponovnom zapošljavanju.

BOSNIAN-CROATIAN / BOSANSKI-HRVATSKI :

Ovaj dokument sadrži važne informacije, datume ili status kvalificiranosti po pitanju vašeg traženja podrške pri ponovnom zapošljavanju. Za vas je važno da razumijete ovaj dokument. Ako ne možete čitati ili razumjeti engleski, pozovite 1-800-681-8102 da dobijete besplatnu pomoć pri prijvodu u vezi vašeg traženja podrške pri ponovnom zapošljavanju.

HAITIAN CREOLE / KREYÒL AYISYEN :

Dokiman sa a gen enfòmasyon enpòtan, dat, oubyen estati kalifikasyon konsènan reklamasyon Asistans Reyanbochaj ou. Li enpòtan pou ou konprann dokiman sa a. Dokiman sa disponib an kreyòl nan http://floridajobs.org/Unemployment/bri/BRI_Creole.pdf. Si ou pa li oswa konprann anglè rele 1-800-204-2418 pou sèvis tradiksyon gratis konsènan reklamasyon Asistans Reyanbochaj ou.

CHINESE TRADITIONAL / 中國 :

本檔包含與您的再就業援助申請相關的重要資訊、日期或資格有效狀態。請您務必理解本檔之內容。如果您閱讀或理解英語的能力有限，請撥電話 1-800-681-8102，取得與您的再就業援助申請相關的免費翻譯協助。

CHINESE SIMPLIFIED / 中文 :

本文件包含与您的再就业援助申请相关的重要信息、日期或资格有效状态。请您务必理解本文件的内容。如果您阅读或理解英语的能力有限，请拨电话 1-800-681-8102，获得与您的再就业援助申请相关的免费翻译协助。

JAPANESE / 日本語 :

この文書には、あなたの再雇用支援の申し立てに関する重要な情報、日付、または資格が示されています。必ずこの文書をよく読んで内容を理解してください。英語を読むことも理解することもできない場合は、お電話 (1-800-681-8102) にてお問い合わせになり、再雇用支援の申し立てに関する無料の翻訳支援を受けてください。

VIETNAMESE / TIẾNG VIỆT :

Hồ sơ này có các thông tin quan trọng, ngày tháng, hoặc tình trạng điều kiện hội đủ về đơn đề nghị Hỗ Trợ Tìm Việc Làm của quý vị. Điều quan trọng là quý vị phải hiểu rõ hồ sơ này. Nếu quý vị không đọc hoặc hiểu được tiếng Anh, hãy gọi đến số 1-800-681-8102 để được hỗ trợ biên dịch miễn phí về đơn đề nghị Hỗ Trợ Tìm Việc Làm của quý vị.

ARABIC / العربية اللغة :

يحتوي هذا المستند على معلومات مهمة أو تواريخ أو وضع الأهلية فيما يتعلق بدعوى المساعدة في إعادة التوظيف. ومن الأهمية لك أن تفهم هذا المستند. وإذا لم تقرا النص الإنجليزي أو تفهمه، يرجى الاتصال على للحصول هاتف رقم: 1-800-681-8102 على الترجمة المتعلقة بدعوى المساعدة في إعادة التوظيف.

FARSI / فارسی :

این سند حاوی اطلاعات، تاریخها یا تقاضای ایجاد شرایط بودن شما در مورد درخواست کمک هزینه استخدام مجدد شما می باشد. درک این سند برای شما مهم است. اگر نمی توانید به انگلیسی بخوانید یا انگلیسی نمی فهمید با شماره 1-800-681-8102 برای ترجمه رایگان در مورد تقاضای کمک هزینه استخدام مجدد خود تماس بگیرید.

RUSSIAN / РУССКИЙ :

В этом документе содержится важная информация, даты или сведения о статусе соответствия требованиям в отношении Вашего заявления о помощи в получении новой работы при увольнении. Важно, чтобы Вы поняли этот документ. Если Вы не можете прочесть текст на английском языке или не понимаете английский язык, позвоните по номеру 1-800-681-8102, чтобы получить бесплатные услуги перевода в отношении Вашего заявления о помощи в получении новой работы при увольнении.