

**STATE OF FLORIDA**  
**REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

R.A.A.C. Order Nos. 14-03153  
14-03154  
Referee Decision Nos. 0008777825-04U  
0008777827-04E

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**ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION NOS. 14-03153 & 14-03154**

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This cause 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. By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record.

The issue before the Commission is whether the claimant was paid sufficient wages for insured work during the base period to establish monetary eligibility within the meaning of Section 443.091(1)(g), Florida Statutes.

The referee's pertinent findings of fact recite as follows:

The employing unit is a tropical fish farm with customers throughout the U.S. The employing unit imports some of its tropical fish, and it buys some of its fish from local fish farmers. The fish are grown in ponds on the farm. The claimant did not engage in any of the care for the fish. The employing unit sells to wholesalers and to retailers for resale. The employing unit does not sell tropical fish directly to end users. When tropical fish are transported, they are placed in plastic bags filled with water. The bags are packed in boxes which are carried on trucks to their destination. When the employing unit fills an order, the fish to be sold are taken from the ponds and brought to indoor tanks, and from there the fish are inspected, counted, bagged, boxed, and loaded onto the truck for the claimant to deliver. The claimant's main duty was to carry boxes filled

with bags of fish from the fish farm to the airport for delivery to a commercial airline. From the farm to the buyer, the fish would typically be in transit for 24 hours or less. Approximately once a week, the claimant would meet local fish farmers and receive small deliveries of fish. He would place the bags containing fish in foam containers and transport the containers back to the fish farm. Sometimes the claimant would pick up deliveries of fish from the airport. Occasionally, a buyer would arrange to pick up a large delivery of fish at the fish farm. Boxes containing the fish would be loaded on to semi-truck trailers. The claimant would not be involved in that kind of transaction. However, most of the employing unit's sales require delivery of the fish by its truck drivers to the airport in Orlando or sometimes in Tampa.

The fish farm employs dozens of workers to care for and distribute the tropical fish. There were four or five other drivers in addition to the claimant when he worked for the employing unit. The employing unit has a payroll of well over \$10,000 per quarter.

Based upon the above findings, the referee held the claimant monetarily ineligible for receipt of benefits because he was not employed in covered employment during his base period. Upon review of the record and the arguments on appeal, the Commission concludes the referee's decision is supported by competent and substantial evidence, and is in accord with the law; accordingly, it is affirmed.

To be eligible to receive benefits, the claimant must have sufficient wage credits in his base period from employment covered under the reemployment assistance law as defined under Section 443.1216, Florida Statutes. See §443.091(1)(g), Fla. Stat. The statute identifies certain forms of employment that are exempt from coverage under the reemployment assistance law. Section 443.1216(13)(c), Florida Statutes, exempts:

Service performed by an individual engaged in, or as an officer or member of the crew of a vessel engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by an individual as an ordinary incident to engaging in those activities, except:

1. Service performed in connection with the catching or taking of salmon or halibut for commercial purposes.
2. Service performed on, or in connection with, a vessel of more than 10 net tons, determined in the

manner provided for determining the registered tonnage of merchant vessels under the laws of the United States.

This provision of Florida law was adopted in conformity with the Federal Unemployment Tax Act ("FUTA"), which, among other things, defines employment subject to FUTA taxes. The Florida provision at issue in this case is substantively identical to its mother provision in FUTA, 26 U.S.C. §3306(c)(17).

The record reflects the employing unit is a tropical fish farm. The claimant's job duties for the employer consist of the loading and transportation of tropical fish to and from the employer. The referee found the claimant in this case performed service as an ordinary incident to engaging in those activities. The referee, therefore, concluded the claimant's employment with this employer was not covered under the reemployment assistance law and, consequently, the wages he earned with the employer could not be included in his base period. The result is that the claimant is not eligible for reemployment assistance benefits.

On appeal, the claimant contends that (1) the reemployment assistance law requires that the statute be liberally construed to award benefits; and (2) the provision at issue should not be construed to apply to tropical fish farming that is not undertaken for the purpose of human consumption. Finally, although not directly raised by the claimant, we consider whether the claimant's duties as a loader and driver include "service performed by an individual as an ordinary incident to engaging in [aquacultural] activities."

#### Statutory Construction

The claimant argues on appeal that the referee's interpretation of the statute is contrary to the rule of liberal construction which he alleges requires the reemployment assistance statute to be broadly construed "in favor of the public and awarding benefits." [RFR at p. 3.]

During the 2011 legislative session, the Florida Legislature adopted significant changes to Chapter 443. Prior to the amendments, Section 443.031, Florida Statutes, stated that "[t]his chapter shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own." Following the amendments, the "rule of liberal construction" now provides, in pertinent part, that "[t]his chapter shall be liberally construed to accomplish its purpose to promote employment security by increasing opportunities for reemployment and to provide, through the accumulation of reserves, for the payment of compensation to individuals with respect to their unemployment." Thus, the "rule of liberal construction" no longer requires Chapter 443 to be liberally construed in favor of a claimant. Only one court case has addressed the impact of this change. In Reese v. Reemployment Assistance Appeals Commission, 103 So. 3d 195, 197-98 (Fla. 3d DCA 2013), the court concluded that the statutory language "supports an expansive reading of section 443.1216." However, it is not necessary to rely on principles of statutory construction when the plain language of the provision indicates its meaning. State v. Burris, 875 So. 2d 408, 410 (Fla. 2004). Moreover, as the court in Reese held, where a Florida

statutory provision is adopted to mirror and conform to the federal law, to the extent additional guidance is needed to interpret the provision, we look first and foremost to federal law. 103 So. 3d at 198.

Does Section 443.1216(13)(c) Apply to Fish Not  
Raised for Consumption?

The claimant contends that the Legislature did not intend for Section 443.1216(13)(c), Florida Statutes, to exempt an employer engaged in selling tropical fish not for human consumption. The statutory language contains no such limitation, however. By its plain language, it specifically excludes individuals engaged in the farming of any kind of fish. If the Legislature intended the provision to be limited to fish for consumption only, it could have limited the types of fish at issue, or the purposes for which they were farmed. It did neither. We have no authority to write into the statute a restriction that the Legislature did not include.

Our review of federal law gives us no reason to interpret the statute differently. We have found no decisions of either the federal courts or federal administrative tribunals interpreting or applying 26 U.S.C. §3306(c)(17) to determine whether fishing not for consumptive purposes is encompassed within the statutory language. Nor are the IRS regulations enlightening - they merely recite the statutory language, and provide a few examples of incidental activities for commercial fishing. 26 C.F.R. §31.3306(c)(17)-1. However, similar exemptions contained in other areas of federal labor law provide some guidance, and we find those interpretations persuasive.

In Fromm Bros. v. United States, 35 F. Supp. 145 (W.D. Wisc. 1940), the court concluded that raising foxes for fur rather than consumption was within the scope of the agricultural exemption in the Social Security Act, even prior to an amendment specifically including the raising of fur-bearing animals. The court quoted with approval the analysis of an English court interpreting a similar provision of English unemployment law, holding that:

I think it is impossible to say that no animal can be the subject of agriculture when it is being raised upon the land by the produce of the land, unless its flesh is used for human consumption, and that seems to me to be the only real way in which one could distinguish foxes, or mink, from other things, such as pigs or cattle, which are undoubtedly livestock in the ordinary sense of the word, and the raising of which, feeding of which, and the tending of which would obviously be regarded by everybody, so long as it is done in the ordinary way upon a farm, as an agricultural pursuit.

The agricultural exemption of the Fair Labor Standards Act ("FLSA") for overtime [42 U.S.C. §213(b)(12)] has also been interpreted to include farming for non-consumptive purposes, including decorative plants such as Christmas trees. U.S. Dept. of Labor v. N.C. Growers Ass'n, 377 F.3d 345 (4th Cir.

2004). We note that Oregon has interpreted a similar agricultural exemption in its unemployment law to include decorative plants. Convention Foliage Svc., Inc. v. Employ. Dep't, 153 P.3d 163 (Ore. Ct. App. 2007).

While the agricultural exemption is more restrictive as to the raising of animals, applying only to "livestock, bees, fur-bearing animals, or poultry," [29 U.S.C. §203(f)], so long as the animals are of the specified types and are "raised" within the meaning of the FLSA, "it makes no difference for what purpose the animals are raised." See 29 C.F.R. §780.119. For that reason, DOL regulations specifically include horse racing farms. 29 C.F.R. §780.122. We have held that the agricultural exemption applies to work at boarding stables for recreational horses. R.A.A.C. Order No. 14-01650 (November 26, 2014).

Authorities in similar contexts have consistently held that non-consumptive products and commodities are within the scope of such exemptions where no specific limitation is included. Accordingly, both the plain language of the statute, and available persuasive precedent, state and federal, lead us to reject the claimant's argument.

Is the Claimant's Work as a Loader and Driver  
Within the Scope of the Exemption?

We consider sua sponte the issue of whether the claimant's work, which consisted of loading and transporting the employer's tropical fish, typically to the Orlando and Tampa airports for air shipment, is covered within the Section 443.1216(c)(3) exemption. Since the claimant was not directly involved in the feeding, breeding and care of the fish, his work was only exempt if it "include[d] service performed by an individual as an ordinary incident to engaging in [fish farming] activities." In this instance, federal precedent is on point. In Coast Oyster Co. v. U.S., 167 F. Supp 460 (W.D. Wash. 1958), the court interpreted the FUTA exemption at issue here to include "truck drivers" as employees performing "ordinary incident" services. As this is the only precedent we have located applying the parallel FUTA provision to the facts at issue here, we find it persuasive with respect to the Florida provision.

We further note that similar language in the "secondary agriculture" definition of the FLSA has been held to include "hauling products to or from a farm." Bayside Enterprises, Inc. v. NLRB, 429 U.S. 298, 300-01 (1977). Under the FLSA, agriculture "includes farming in all its branches . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." 29 U.S.C. §203(f). Under the FLSA exemption, the work must be performed by a farmer or on a farm, but this limitation is not contained in FUTA or Section 443.1216(c)(3).

Given the clear language of the exemption and the consensus of authorities interpreting similar provisions, we conclude that the referee correctly held that the claimant's job duties fell within the "ordinary incident" clause of this exemption.

We recognize that the application of this provision leaves the claimant, who performed valuable work for his employer, ineligible for an important benefit. We also recognize some persuasiveness in the claimant's arguments questioning the continuing need for such an exemption in the modern economy. However, the policy reasons for the maintenance of this exemption in FUTA, and in the corresponding Florida insured work provisions, are not for the Commission to evaluate. Nor can we ignore the plain language of the exemption under the mantra of "liberal construction." Accordingly, we conclude that the referee properly interpreted and applied the statute.

The Reemployment Assistance Appeals Commission has 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 Florida Statutes Section 443.041(2)(a). In examining the reasonableness of the fee, the Commission is cognizant that: (1) in the event a claimant prevails at the Commission level, the law contains no provision for the award of a representative's fees to the claimant's representative, by either the opposing party or the State (i.e., a claimant must pay his or her own representative's fee); and (2) the amount of reemployment assistance secured by a claimant may be very small. The legislature specifically gave referees (with respect to the initial appeal) and the Commission (with respect to the higher level review) the power to review and approve a representative's fees due to a concern that claimants could end up spending more on fees than they could reasonably expect to receive in reemployment assistance.

Upon consideration of the complexity of the issues involved, the services actually rendered to the claimant, and the factors noted above, the Commission approves the requested fee of \$200.

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  
12/30/2014

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 Appeals  
PO BOX 5250  
TALLAHASSEE FL 32314-5250

**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 gen dwa rélé 1-800-204-2418. Sil you plè pa pran àmpil tòn, paské tòn limité pou ou ranpli apèl la.

Docket No. **0008 7778 25-04 & 0008 7778 27-04**

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

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APPEARANCES: Claimant and Employer

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**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:**

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

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

**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.

**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.)

**Findings of Fact:** The claimant filed a claim for benefits effective July 28, 2013, establishing a base period running from April 1, 2012 through March 30, 2013. The claimant worked as a truck driver for 5-D Tropical Inc. (the employing unit) from 2001 to January 22, 2013. The claimant worked part-time at first, and became a full time employee on October 2, 2006. The claimant was paid \$5019.95 per quarter for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarters of 2012 by the employing unit in this appeal. The claimant was also paid \$192.81 by a different employer in the 1<sup>st</sup> quarter 2013. The claimant did not work for any other employer/employing unit in the base period.

The employing unit is a tropical fish farm with customers throughout the U.S. The employing unit imports some of its tropical fish, and it buys some of its fish from local fish farmers. The fish are grown in ponds on the farm. The claimant did not engage in any of the care for the fish. The employing unit sells to wholesalers and to retailers for resale. The employing unit does not sell tropical fish directly to end users. When tropical fish are transported they are placed in plastic bags filled with water. The bags are packed in boxes which are carried on trucks to their destination. When the employing unit fills an order, the fish to be sold are taken from the ponds and brought to indoor tanks, and from there the fish are inspected, counted, bagged, boxed, and loaded onto the truck for the claimant to deliver. The claimant's main duty was to carry boxes filled with bags of fish from the fish farm to the airport for delivery to a commercial airline. From the farm to the buyer the fish would typically be in transit for 24 hours or less. Approximately once a week, the claimant would meet local fish farmers and receive small deliveries of fish. He would place the bags containing fish in foam containers and transport the containers back to the fish farm. Sometimes the claimant would pick up deliveries of fish from the airport. Occasionally, a buyer would arrange to pick up a large delivery of fish at the fish farm. Boxes containing the fish would be loaded on to semi-truck trailers. The claimant would not be involved in that kind of transaction. However, most of the employing unit's sales require delivery of the fish by its truck drivers to the airport in Orlando or sometimes in Tampa.

The fish farm employs dozens of workers to care for and distribute the tropical fish. There were four or five other drivers in addition to the claimant when he worked for the employing unit. The employing unit has a payroll of well over \$10,000 per quarter.

**Conclusions of Law:** To qualify for Reemployment Assistance benefits, the claimant must have:

- (a) Base period wages for insured work in two or more calendar quarters of the base period; and
- (b) Total base period wages equaling at least 1.5 times the wages paid during the high quarter of the base period, but not less than \$3400.

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

For claims submitted during a calendar year, the duration of benefits is limited to:

1. Twelve weeks if this state's average unemployment rate is at or below 5 percent.
2. An additional week in addition to the 12 weeks for each 0.5 percent increment in this state's average unemployment rate above 5 percent.
3. Up to a maximum of 23 weeks if this state's average unemployment rate equals or exceeds 10.5 percent.

The maximum amount of benefits for any claims filed in the calendar year 2013 is \$5225, based on an unemployment rate of 8.5%.

Section 443.1216(5), Florida Statutes provides in relevant part:



- (5) The employment subject to this chapter includes service performed by an individual in agricultural labor if:
- (a) The service is performed for a person who:
    - 1. Paid remuneration in cash of at least \$10,000 to individuals employed in agricultural labor in a calendar quarter during the current or preceding calendar year.
    - 2. Employed in agricultural labor at least five individuals for some portion of a day in each of 20 different calendar weeks during the current or preceding calendar year, regardless of whether the weeks were consecutive or whether the individuals were employed at the same time.

Section 443.1216 (13), Florida Statutes provides in relevant part:

- (13) The following are exempt from coverage under this chapter:
- (c) Service performed by an individual engaged in, or as an officer or member of the crew of a vessel engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by an individual as an ordinary incident to engaging in those activities, except:
    - 1. Service performed in connection with the catching or taking of salmon or halibut for commercial purposes.
    - 2. Service performed on, or in connection with, a vessel of more than 10 net tons, determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States.

The Department found that the claimant was a covered employee. The employing unit has consistently disputed that finding. The Reemployment Assistance Commission remanded this case so that a decision could be made about whether the claimant's work was in covered employment or not. The claimant's work falls within a statutory exemption, so it was not insured work.

The record reflects that the employing unit is an agricultural enterprise. Such enterprises have a higher threshold of employment before they become subject to the reemployment assistance law than do other businesses. However, as the claimant points out, the evidence is sufficient to show that the employing unit in this case meets the threshold to be a covered agricultural employer—unless, as the employing unit contends, an exemption applies. The employing unit contends that the exemption is in sec. 443.1216 (13)(c), Fla. Stat., quoted above. The employing unit contends that the statutory exemption should be read, essentially, as saying, *"The following are exempt from coverage under this chapter:*

*...Service performed by an individual engaged in...farming of any kind of fish..., including service performed by an individual as an ordinary incident to engaging in those activities"*.

The language in the statute is a little dense and legalistic, just as it is in the Federal statute and rules that the Florida statute follows—the "person" referred to means the employer or employing unit, which is a person for legal purposes whether it is a real human being or a partnership or a corporation. The "individual" is the worker.

The claimant didn't tend, gather, sort, or pack the fish, with the minor exception of collecting fish from vendors once a week, so it doesn't appear that the claimant was engaged in the farming of fish. The question is whether the claimant's activity as a delivery truck driver was "an ordinary incident to engaging in" fish farming. In deciding the meaning of statutory provisions in the Reemployment Assistance law, reference can be made to parallel Federal statutes and rules. Reese v. Reemployment Assistance Commission, 103 So.3d 195, 198 (Fla. 3<sup>rd</sup> DCA 2012) (construing sec. 443.1216(13)(i)2, Fla. Stat. by reference to 26 CFR sec.31.3306(c)(10)—2(d)).

The parallel section of Federal law for the exemption in this case is 26 USC 3306 (c)17, and the regulations are at 26 CFR sec. 31.3306 (c)17-1, "Fishing Services" which includes the following:

....The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person, as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

The Federal regulation is focused on the activity of marine commercial fishing, so it can be used only by analogy when it is applied to a fish farm. As noted above, the claimant was not normally engaged in "cleaning...and packing of fish" so the regulation might seem to lend support to the claimant's contention that he should be considered an ordinary employee and not subject to the exemption. But note that cleaning, icing, and packing fish for preservation is not the only way to engage in activity incidental to the main enterprise. Officers and crew of a vessel can be within the exemption even if they never caught any fish and even when they are on shore. What would on-shore activities of a crew member of a vessel consist of that would be incident to the enterprise of catching fish? They would include the loading and unloading of cargo and supplies, including the transfer of the catch to truck, train car, or another vessel; maybe even using some heavy machinery. That starts to look somewhat similar to the activity of transferring boxes full of bags of fish from the fish farm by truck to the airport and vice versa. The distance between fish farm and airport might well be greater than the distance from wharf to waiting truck or processing plant, but there is no geographical limit in the statute or rules about what can be considered incident to the process of catching fish. Basically, it appears that "ordinary incident to engaging in those activities" means "activities that the employing unit usually uses to complete its business operations, even if they aren't activities specific to that kind of business." Loading and unloading goods and supplies, and checking manifests and bills of lading are activities carried on in many types of business, but the statutory exemption applies to certain businesses, not just to certain jobs or tasks. The delivery aspect of the employing unit's operation is such an incidental activity to the business of farming tropical fish. It is part of the typical way that the fish farm carries on its business of growing and selling tropical fish. Accordingly, the claimant's work would normally be covered agricultural employment save for the exception for fish farming, and his activity is sufficiently part of the ordinary operation of the fish farm for the claimant to be within the exception that precludes fish farms from coverage under the reemployment assistance law. The remuneration paid to the claimant is not "wages for insured work."

Because the money that the employing unit paid is not covered by the reemployment assistance law, that money cannot be used in establishing monetary eligibility for reemployment assistance benefits. The claimant only worked briefly and in one quarter of the base period in any covered employment. That was the work for the other employer in the 1<sup>st</sup> quarter of 2013. The claimant does not meet the requirements necessary to establish monetary eligibility on this claim. He does not have wages in at least two quarters and the total base period wages are less than \$3400. This likely means that if any reemployment assistance benefits have been paid to the claimant he will have to repay them to the Department, but the issue of overpayment is beyond the scope of the current decision.

Because the employing unit did not pay any wages for reemployment assistance purposes to the claimant, the employing unit's account is not charged for any benefits that the claimant might receive. The issue of whether there is any disqualifying separation from employment is moot—for reemployment assistance purposes it doesn't matter anymore whether the claimant was discharged for misconduct or not.

The Reemployment Assistance Appeals Commission gave instructions in its remand order about the consequences of the decision in this case. It directed, in case the employing unit was found to be exempt, that the employing unit's appeal of the separation issue be dismissed since the employing unit would have had no standing to appeal it. The determination would not have been adverse to the employing unit. The wage credits from the employing unit are to be removed from the claimant's monetary determination. There were several monetary determinations issued. The most recent one is dated January 16, 2014. The Commission ordered that if the claimant is found to be monetarily ineligible the August 23 and 29, 2013 determinations should be quashed. To quash a determination is to render it null and void from the beginning. But referees "may only affirm, modify, or reverse the determination." Sec. 443.151(4)(b)2, Florida Statutes. Referees may dismiss certain appeals pursuant to a withdrawal or a failure of the appellant to appear for a hearing, or if the referee has no jurisdiction. The Commission expressly ordered that the appeal of the determination relating to separation be dismissed, given the decision in this case, so that is what will be done<sup>1</sup>; and the effect of eliminating the chargeability determination will be achieved by reversing it.

**Decision:** The monetary determination dated January 16, 2014, showing wages from 5-D Tropical Inc. (#1151724) and from Professional Transportation Inc (2309312) is MODIFIED. There are no wages from 5-D Tropical Inc in the base period. The claimant has wages of \$192.81 in the 1<sup>st</sup> quarter 2013 from Professional Transportation Inc. The claimant is not monetarily eligible on the July 28, 2013 claim. The employer's appeal of the determination dated August 23, 2013 is DISMISSED. There is no disqualifying separation; the employing unit's account is not charged for any benefits that might be paid to the claimant. The determination dated August 29, 2013, finding the employing unit's account to be chargeable, 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 mailed to the last known address of each interested party on May 19, 2014.

J. Jackson Houser  
Appeals Referee

By: Shanetra J. Barnes  
Shanetra Barnes, 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 20<sup>th</sup> 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.

<sup>1</sup> Technically, this may leave the chargeability portion of the August 23, 2013 determination in place, but since there is no monetary eligibility for the claimant, that aspect of the determination should be moot. And if the appeal of the determination is dismissed, there is no longer any jurisdiction in the referee to quash the determination, even if he has that power.

**A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at [www.connect.myflorida.com](http://www.connect.myflorida.com) 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://raaclap.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 [www.connect.myflorida.com](http://www.connect.myflorida.com) 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 Servicios de Reempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaclap.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 definitif sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20<sup>yèm</sup> 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, [www.connect.myflorida.com](http://www.connect.myflorida.com) 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 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 mesajè 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 nimewo 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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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.

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