



AGENCY FOR WORKFORCE INNOVATION  
 Unemployment Compensation Appeals  
 MSC 344 CALDWELL BUILDING  
 107 EAST MADISON STREET  
 TALLAHASSEE FL 32399-4143

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

SSN: XXX-XX-3959  
 Docket No. 2010-146645U

Employer Account No.: 9975114  
 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

**CLAIMANT/Appellant**

✓ HEATHER POST  
 [REDACTED]  
 [REDACTED]

**EMPLOYER/Appellee**

✓ VOLUSIA COUNTY  
 PAYROLL ADMINISTRATOR  
 123 W INDIANA AVE  
 DELAND FL 32720-4615

THOMAS J PILACEK  
 THOMAS J PILACEK & ASSOCIATES  
 5844 RED BUG LAKE ROAD  
 WINTER SPRINGS FL 32708



AGENCY FOR WORKFORCE INNOVATION  
 CENTRAL OFFICE BENEFITS

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3628-0

**DECISION OF APPEALS REFEREE**

**Important appeal rights are explained at the end of this decision.**  
**Derechos de apelación importantes son explicados al final de esta decisión.**  
**Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.**

**Issues Involved:**

**SEPARATION:** Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(29), Florida Statutes; Rule 60BB-3.020, Florida Administrative Code.

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

**Finding of Facts:** The claimant was employed as a deputy sheriff II for Volusia County from July of 2008 through September 28, 2010. The claimant worked on a full-time schedule at a rate of \$15.39 an hour. In June of 2010, the claimant was asked via telephone to bring in her return to full duty note signed by her physician, to her captain. On June 17, 2010, the claimant turned in her original return to full-duty note to county personnel office who informed her to also forward the documentation to County risk management department. On June 17, 2010, the claimant notified her captain regarding. The claimant reported to her Captain on June 18, 2010, for a scheduled meeting. Upon reporting, the claimant was asked if she had her return to work note. The claimant cited she had forgotten it, and had left it in her vehicle. The claimant asked

whether she could get the documentation from her vehicle. The claimant was told she did not need to get it; she had already turned it in to risk management. On June 22, 2010, the claimant was scheduled for deputy refresher training, and previously directed to call her captain upon completing her refresher training for further instruction. The claimant completed her training and informed the training supervisor she needed to contact her captain. The claimant was told by the supervisor of the training center not to worry about it. The claimant was accused of failure to follow direction and or order by failing to turn in the original return to work order rather than offering a copy to her captain. The claimant was also accused of failing to follow direction, by not contacting her captain upon conclusion of training, in accordance with a directive. On September 28, 2010, the claimant was discharged for failure to follow direction and orders.

The claimant subsequently received unemployment benefits in the amount of \$275.00.

**Conclusions of Law:** The law provides that a claimant who was discharged for misconduct connected with the work shall be disqualified from receiving benefits. "Misconduct connected with work" means conduct evincing such willful or wanton disregard of an employing unit's interests as is found in deliberate violation or disregard of standards of behavior which the employing unit has a right to expect of its worker; or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employing unit's interests or of the worker's duties and obligations to the employing unit.

The record reflects that the employer was the moving party in the separation. Therefore, the claimant is considered to have been discharged. The burden of proving misconduct is on the employer. Lewis v. Unemployment Appeals Commission, 498 So.2d 101 (Fla. 5th DCA 1986). The proof must be by a preponderance of competent substantial evidence. Johnson v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 468 So.2d 413 (Fla. 1986). It was shown that the claimant was discharged for failure to follow direction and orders. The claimant's actions as described were not an intentional disregard of the employer's interest. Careless and negligent acts which may justify termination but are neither, willful, wanton nor deliberate are not misconduct under the statute. Williams v. Unemployment Appeals Commission, 484 So.2d 89 (Fla. 5th DCA 1986). Consideration has been given to the employer's testimony the claimant was not advised by the training supervisor, "not to worry about it" as it relates to her request to notify her captain of her completion of training. The claimant offered conflicting testimony and the employer failed to provide competent substantial evidence to the contrary. The employer presented hearsay evidence to support these allegations. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. Section 120.57, Florida Statutes; Rule 60BB-5.024(3)(d), Florida Administrative Code. In addition, when asked who has authority at the on-site training center; the immediate supervisor or the training supervisor? The employer's witness cited, "it's a vague area". The claimant was freed from a directive by the acting supervisor. Therefore no evidence has been provided to show the claimant violated an established policy. While the employer may have made a valid business decision in discharging the claimant, it has not been shown that the claimant's actions constitute misconduct connected with work. Accordingly, the claimant should not be disqualified from the receipt of unemployment benefits.

The hearing officer was presented with conflicting testimony regarding whether the claimant cited HIPPA rights when responding to her captain and whether she was released from a directive by her training supervisor and is charged with resolving these conflicts. The Unemployment Appeals Commission has set forth factors to be considered in resolving credibility questions. These factors include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the claimant to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the claimant.

The law provides that a claimant who received benefits to which he or she was not entitled will be required to repay the overpaid benefits to the Agency. The law does not permit waiver of recovery of overpayments.

The record shows that the claimant received \$275.00 in unemployment benefits subsequent to her job separation from the instant employer. Since the appeals referee has reversed the determination of the adjudicator in this decision, there is no overpayment.

**Decision:** The determination dated October 27, 2010, is REVERSED. The claimant is qualified for receipt of benefits and has not been overpaid in connection with this claim. The claimant has obtained legal representation at no charge, which is APPROVED.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Agency 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 December 10, 2010.

ABDULLAH MUHAMMAD  
Appeals Referee

By:   
DOROTHY SHEFFIELD, 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. 60BB-6.004, 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 Agency 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 [www.fluidnow.com/appeals](http://www.fluidnow.com/appeals) 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 Unemployment Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://www.uac.fl.gov/Appeal.aspx>. 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. 60BB-6.004, 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 reembolsar 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.fluidnow.com/appeals](http://www.fluidnow.com/appeals) o escribiendo a la dirección en la parte superior de esta decisión. La fecha en que se genera el número de confirmación será la fecha de registro de una solicitud de reapertura realizada en el Sitio Web de la Oficina de Apelaciones.

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

**ENPÒTAN – DWA DAPÈL:** Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat nou poste sa a ba ou. Si 20<sup>yèm</sup> jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 60BB-6.004, 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.fluidnow.com/appeals](http://www.fluidnow.com/appeals) oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat yo pwodui nimewo konfimasyon an se va dat yo prezante demann nan pou reouvri kòz la sou Sitwèb Apèl la.

Yon pati ki te asiste seyans la epi ki pat satisfè desizyon yo te pran an gen dwa mande yon revizyon nan men Unemployment Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://www.uac.fl.gov/Appeal.aspx>. Si ou voye l pa lapòs, dat ki sou tenb la ap dat ou depoze apèl la. Si ou depoze apèl la sou yon sitwèb, ou fakse li, bay li men nan lamen, oswa voye li pa yon sèvis mesajri ki pa Sèvis Lapòs Lèzetazini (*United States Postal Service*), oswa voye li pa Entènèt, dat ki sou resi a se va dat depo a. Pou evite reta, mete nimewo rejis la (*docket number*) avèk nimewo sekirite sosyal moun k ap fè demann lan. Yon pati k ap mande revizyon dwe presize nenpòt ki alegasyon erè nan kad desizyon abit la, epi bay baz reyèl oubyen legal pou apiye alegasyon sa yo. Yo p ap pran an konsiderasyon alegasyon erè ki pa byen presize nan demann pou revizyon an.

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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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