



AGENCY FOR WORKFORCE INNOVATION  
 Unemployment Compensation Appeals  
 MSC 354W 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 vou plè pa pran àmpil tòn, paské tòn limité pou ou ranpli apèl la.

SSN: XXX-XX-7572  
 Docket No. 2011-72700U

Employer Account No.: 9950493  
 Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

**CLAIMANT/Appellant**

CHRISTOPHE A WILSON  
 8838 TROPICAL CT  
 FORT MYERS FL 33908

**EMPLOYER/Appellee**

BISHOP VEROT HIGH SCHOOL  
 ADP INC TALX UCM  
 PO BOX 66744  
 SAINT LOUIS MO 63166-6744

BRADLEY P ROTHMAN  
 7935 AIRPORT-PULLING RD N SUITE 205  
 NAPLES FL 34109

BISHOP VEROT HIGH SCHOOL  
 5598 SUNRISE DR  
 FORT MYERS FL 33919

ROBERT C SHEARMAN  
 HENDERSON FRANKLIN STARNES & HOLT P  
 A  
 P O BOX 280  
 FT MYERS FL 33902-0280

APPEARANCES: CLAIMANT & EMPLOYER

LOCAL OFFICE #: 3661-0

**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.

**Findings of Fact:** The claimant worked for the instant employer, a Catholic high school, as a full-time theology teacher from January 2004, through May 17, 2011. In September 2007, the claimant received a warning for physically removing a student from a dance. The claimant removed the student because of the manner in which the student was dancing. On February 26, 2011, the claimant issued a test which many of the students did not timely complete. The claimant allowed the students to report after school to complete the test. The students were not cooperating after school and questioned the claimant about the fairness of the test. The claimant got

upset, retrieved the test from the students, and told the students to go home. The employer subsequently spoke with the claimant regarding the test and informed the claimant that he would be required to have someone review subsequent tests prior to them being issued to the students. Prior to the job separation, the claimant reported a member of the employing unit to the department of children and families (DCF). The employer learned of the claimant's report to DCF and requested for him to meet with the principal at 2:30 on May 16, 2011. The claimant indicated that he could not report as scheduled because he had his daughter with him and was dealing with students. The claimant reported to the principal's office shortly after 3:00 on May 17, 2011, and informed the employer that he could not stay because his child was with him. The principal indicated that his secretary could watch the claimant's child while they spoke. The claimant informed the employer that his child would not stay with the secretary. The employer informed the claimant that he would not have the meeting with the claimant's child present and instructed the claimant to report to work at 7:00 on May 17, 2011, to hold the meeting. The claimant inquired if he needed to bring his lawyer to the meeting. The employer advised the claimant that the issue they would be discussing was not a legal matter. The claimant indicated that he was not comfortable attending the meeting without first speaking with his attorney. The claimant was advised that if he did not report to the meeting as scheduled on May 17, 2011, that his actions would be considered insubordination. The claimant reported to the meeting as scheduled on May 17, 2011, and was advised that he was being discharged for insubordination and unprofessional conduct.

~~—~~ **Conclusions of Law:** The law provides that a claimant who was discharged for misconduct connected with the work will be disqualified for 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 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of competent substantial evidence. De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 468 So.2d 413 (Fla. 1986). The record reflects that the claimant was discharged for insubordination and unprofessional conduct. The actions of the claimant as described by the claimant do not demonstrate that the claimant was insubordinate or that his conduct in the final incident leading to the job separation was unprofessional. With respect to the incidents/warnings occurring prior to the final incident leading to the job separation, the referee notes a time lapse of almost three months between the separation and the most recent incident occurring in February 2011, and an even bigger gap between the other warnings issued years prior to the separation. The commission has held that a time lapse of almost three months between an incident of possible misconduct and separation from the employment, with no intervening incidents, results in an insufficient nexus between the incident and the discharge. See U.A.C. Order No. 03-09955. Thus, the incident that occurred pertaining to the test issued on February 26, 2011, and the warnings that occurred years prior to the separation may not be used to support a conclusion of misconduct connected with the work. While the employer may have made a valid business decision in discharging the claimant, it has not been shown that the claimant was discharged for misconduct as defined by the law. Accordingly, the claimant is not disqualified from the receipt of unemployment benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. In Order Number 2003-10946 (December 9, 2003), the Unemployment Appeals Commission 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.

At the hearing, the claimant's representative requested a fee for services in the amount of \$500. In consideration of the time and effort expended by the representative and the agreement between the parties, the referee approves a fee of \$500 to be paid by the claimant.

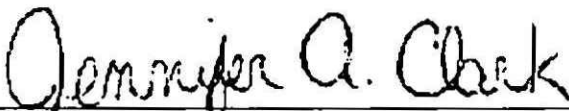
**Decision:** The determination dated June 10, 2011, is REVERSED. The claimant is not disqualified from the receipt of benefits.

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 July 29, 2011.

SHERENE THOMAS  
Appeals Referee

By:

  
JENNIFER A. CLARK, 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