

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2902459
MANHATTAN CLEANING SERVICES INC
CESAR BONILLA
1750 GROVE DRIVE
CLEARWATER FL 33759-1911

**PROTEST OF LIABILITY
DOCKET NO. 2009-117467L**

RESPONDENT:

State of Florida
AGENCY FOR WORKFORCE INNOVATION
c/o Department of Revenue

ORDER

This matter comes before me for final Agency Order.

Having fully considered the record of the case and, in the absence of any exceptions to the Special Deputy's Recommended Order, I hereby adopt the Recommended Order, a copy of which is attached and incorporated herein.

In consideration thereof, it is ORDERED that the Petitioner's protest of the determination dated May 21, 2009, is dismissed.

DONE and ORDERED at Tallahassee, Florida, this ____ day of **April, 2010**.



TOM CLENDENNING
Director, Unemployment Compensation Services
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

MSC 346 Caldwell Building
107 East Madison Street
Tallahassee FL 32399-4143

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RESPONDENT:

State of Florida
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RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Director, Unemployment Compensation Services
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated May 21, 2009.

After due notice to the parties, a telephone hearing was held on January 14, 2010. The Petitioner, represented by the Petitioner's vice president, appeared and testified. The Respondent was represented by a Department of Revenue Tax Specialist II.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

Issue: Whether services performed for the Petitioner by the Joined Party and other individuals working as maintenance supervisors constitute insured employment pursuant to Sections 443.036(19), 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of the liability.

Whether the Petitioner filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 60BB-2.035, Florida Administrative Code.

TIMELINESS: Whether a request for rehearing was filed by a party entitled to notice of an adverse determination within fifteen days after mailing of the recommended order to the address of record or, in the absence of mailing, within fifteen days after delivery of the order, pursuant to Florida Administrative Code Rule 60BB-2.035(18).

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rule 60BB-2.035(18).

Findings of Fact:

1. Pursuant to the Petitioner's protest of the determination dated May 21, 2009, a telephone hearing was scheduled to be held on November 9, 2009.
2. The Petitioner failed to participate in the November 9, 2009, hearing. On November 9, 2009, a *Recommended Order of Dismissal* was mailed to the Petitioner's correct mailing address and was received by the Petitioner.
3. The *Recommended Order of Dismissal* advised "A motion to set aside the attached *Recommended Order of Dismissal* may be filed by mail with the Deputy Clerk at the letterhead address within fifteen (15) days from the date of this notice."
4. The Petitioner responded to the *Recommended Order of Dismissal* by mail postmarked December 2, 2009.

Conclusions of Law:

5. Rule 60BB-2.035, Florida Administrative Code, provides:
 - (18) Request to Re-Open Proceedings. Upon written request of the Petitioner or upon the special deputy's own motion, the special deputy will for good cause rescind a Recommended Order to dismiss the case and reopen the proceedings. Upon written request of the Respondent or Joined Party, or upon the special deputy's own motion, the special deputy may for good cause rescind a Recommended Order and reopen the proceedings if the party did not appear at the most recently scheduled hearing and the special deputy entered a recommendation adverse to the party. The special deputy will have the authority to reopen an appeal under this rule provided that the request is filed or motion entered within the time limit permitted to file exceptions to the Recommended Order. A threshold issue to be decided at any hearing held to consider allowing the entry of evidence on the merits of a case will be whether good cause exists for a party's failure to attend the previous hearing. If good cause is found, the special deputy will proceed on the merits of the case. If good cause is not found, the Recommended Order will be reinstated.
6. Rule 60BB-2.035(19)(c), Florida Administrative Code, provides that any party aggrieved by the Recommended Order may file written exceptions to the Director or the Director's designee within 15 days of the mailing date of the Recommended Order.
7. The Petitioner did not respond to the *Recommended Order of Dismissal* within 15 days of the mailing date of the Order. Therefore, as set forth above, The *Recommended Order of Dismissal* dated November 9, 2009, is reinstated.

Recommendation: It is recommended that the Petitioner's appeal of the determination dated May 21, 2009, be DISMISSED.

Respectfully submitted on January 14, 2010.



R. O. SMITH, Special Deputy
Office of Appeals