

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2445796
BERNARD G NASH DMD MS PA
KATHERINE NASH
FIVE STAR DENTAL
7800 W SAND LAKE RD SUITE 220
ORLANDO FL 32819-5198

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-33769L**

ORDER

This matter comes before me for final Agency Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case, and in the absence of any exceptions to the Recommended Order, I hereby adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the Petitioner's protest of the determination dated December 22, 2009, is dismissed due to lack of jurisdiction.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **October, 2010**.



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 2445796
BERNARD G NASH DMD MS PA
KATHERINE NASH
FIVE STAR DENTAL
7800 W SAND LAKE RD SUITE 220
ORLANDO FL 32819-5198

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-33769L**

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest to a determination of the Respondent dated December 22, 2009, which held that the Joined Party that was performing services as a dental hygienist was an employee.

The record of the case, consisting of the Special Deputy's *Order to Show Cause*, with 1 exhibit attached, is herewith transmitted.

Issue: Whether the Petitioner filed a timely protest pursuant to §443.131(3)(h), 443.141(2)(c), or 443.1312, Florida Statutes, and Rule 60BB-2.035, Florida Administrative Code.

Findings of Fact: On December 22, 2009 a determination was mailed to the Petitioner at its last-known address of record. Among other things, the determination advised:

This letter is an official notice of the above determination and will become conclusive and binding unless you file a written application to protest this determination, within twenty (20) days from the date of this letter. If your protest is filed by mail, the postmark date will be considered the filing date of your protest.

The Petitioner subsequently protested this determination on January 14, 2010. On September 9, 2010, an *Order to Show Cause* was mailed to the Petitioner, instructing the Petitioner to set forth in writing the reasons why its protest should not be dismissed for lack of jurisdiction. A hearing was scheduled because the Petitioner's response to the *Order to Show Cause* indicated the appeal may have been filed timely.

Conclusions of Law: Section 443.141(2)(c), Florida Statutes, provides:

(c) *Appeals.*--The Agency for Workforce Innovation and the state agency providing unemployment tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.

Rule 60BB-2.035(5), Florida Administrative Code, provides:

(5) Timely Protest.

- (a)1. Determinations issued pursuant to Sections 443.1216, 443.131-.1312, F.S., will become final and binding unless application for review and protest is filed with the Department within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.
- 2. Determinations issued pursuant to Section 443.141, F.S., will become final and binding unless application for review and protest is filed within 15 days from the mailing date of the determination. If not mailed, the determination will become final 15 days from the date the determination is delivered.
- (b) If a protest appears to have been filed untimely, the Agency may issue an Order to Show Cause to the Petitioner, requesting written information as to why the protest should be considered timely. If the Petitioner does not, within 15 days after the mailing date of the Order to Show Cause, provide written evidence that the protest is timely, the protest will be dismissed.

Rule 60BB-2.023(1), Florida Administrative Code, provides, in pertinent part:

Filing date. ... The date of receipt will be the filing date of any report, protest, appeal, or other document faxed to the Agency or Department...

The evidence in this case reflects that the determination was mailed to the Petitioner at its last-known address on December 22, 2009. The Petitioner did not protest this determination until January 14, 2010. In accordance with the above cited sections of the statute and rules, the Petitioner had until March 31, 2010, to provide evidence that the protest was filed timely. Although a response was received, evidence presented at the hearing was not sufficient to establish that the protest was filed within the allowable time limit. The determination has thus become final.

Recommendation: It is recommended that the Petitioner’s protest to the December 22, 2009, determination be dismissed due to lack of jurisdiction.

Respectfully submitted on August 26, 2010.



KRIS LONKANI, Special Deputy
 AGENCY FOR WORKFORCE INNOVATION
 Unemployment Compensation Appeals