

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2934901
ANSELL C STOWE
PO BOX 34450
PENSACOLA FL 32507-4450

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2010-45737L**

O R D E R

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 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 determination dated January 11, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **November, 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. - 2934901
ANSELL C STOWE
KEN DAVIS CO-PERSONAL REPRESENTATI
PO BOX 34450
PENSACOLA FL 32507-4450

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2010-45737L**

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 of the Respondent's determination dated January 11, 2010.

After due notice to the parties, a telephone hearing was held on August 12, 2010. A representative appeared on behalf of the Petitioner. The Joined Party appeared and testified on her own behalf. A tax specialist II appeared on behalf of the Respondent.

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 constitute insured employment, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(21); 443.1216, Florida Statutes.

Findings of Fact:

1. The Joined Party provided service for the Petitioner as a caregiver from August 2008, through July 2009.
2. The Joined Party was known by the family of the Petitioner and recommended to the Petitioner as a care giver.

3. The Joined Party worked a twelve hour shift. The Petitioner had 24 hour per day caregiver support. The Joined Party worked out her schedule with the other caregivers. The Joined Party worked five days per week.
4. The Joined Party was responsible for preparing meals, transportation, help with dressing, and other general assistance for the Petitioner. The Joined Party was directed by the Petitioner.
5. The Petitioner provided all tools and equipment necessary for the work.
6. The Joined Party was given a list of telephone numbers to call in the event of an emergency or in the event that the Petitioner gave questionable instructions.
7. The Joined Party submitted a weekly record of activity. The Joined Party was required to record what activity the Joined Party took as well as what activity the Petitioner took.
8. The Joined Party was paid \$9 per hour. The Joined Party turned in a timesheet to the Petitioner. The Petitioner paid \$9,114 to the Joined Party in 2008.

Conclusions of Law:

9. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Unemployment Compensation Law, is governed by Chapter 443, Florida Statutes. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.
10. Florida Statutes Chapter 443.1216(6) provides:
 - (6) The employment subject to this chapter includes domestic service performed by maids, cooks, maintenance workers, chauffeurs, social secretaries, caretakers, private yacht crews, butlers, and houseparents, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of at least \$ 1,000 during a calendar quarter in the current calendar year or the preceding calendar year to individuals employed in the domestic service.
11. The evidence presented in this case reveals that the Joined Party performed services such as preparing meals, providing transportation, and general services. The services performed by the Joined Party are domestic in nature. The Joined Party earned \$9,114 for performing domestic services for the Petitioner. Therefore, the Joined Party is by statute an employee of the Petitioner.

Recommendation: It is recommended that the determination dated January 11, 2010, be AFFIRMED.

Respectfully submitted on September 2, 2010.



KRIS LONKANI, Special Deputy
Office of Appeals