

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

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

**PETITIONER:**

Employer Account No. - 9960739  
ST JOHN'S ACADEMY  
WALLIS W BROOKS  
1533 WILDWOOD DRIVE  
ST AUGUSTINE FL 32086-9005

**PROTEST OF LIABILITY  
DOCKET NO. 2010-59945L**

**RESPONDENT:**

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

**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 December 1, 2009.

After due notice to the parties, a telephone hearing was held on September 13, 2010. The Petitioner was represented by its attorney. The Petitioner's Principal and the Petitioner's accountant testified as witnesses. The Respondent was represented by a Department of Revenue Senior Tax Specialist. A Tax Auditor II testified as a witness.

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 received from the Petitioner.

**Issue:**

Whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.

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.

**Findings of Fact:**

1. On or before December 1, 2009, the Department of Revenue mailed a determination to the Petitioner's correct mailing address, notifying the Petitioner that the Petitioner has met the liability requirements for payment of unemployment compensation tax effective July 1, 2008.
2. Among other things the determination advises "This letter is your official notice and becomes conclusive and binding within 20 calendar days of the 'Mailed on or Before' date shown above. If

you disagree and wish to protest, you must do so in writing explaining your reason for disagreement." The determination was received by the Petitioner.

3. On or about December 4 2009 the Agency for Workforce Innovation issued a determination holding that a former employee of the Petitioner, Nicholas Marziani, was disqualified from receiving unemployment compensation benefits based on the reason for separation from employment. As a result, the Petitioner decided that it was not worth the time and expense to appeal the determination issued by the Department of Revenue holding that the Petitioner was liable for payment of unemployment compensation tax.
4. The former employee appealed the determination issued by the Agency for Workforce Innovation holding him disqualified from receiving unemployment compensation benefits and a hearing was held. On January 11, 2010, an appeals referee issued a decision reversing the disqualification.
5. On January 11, 2010, the Petitioner appealed the December 1, 2009, liability determination to the Department of Revenue.

### Conclusions of Law:

6. 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.
7. Rule 60BB-2.035(1), Florida Administrative Code, provides in pertinent part that protests of determinations of liability are filed by writing to the Department of Revenue in the time and manner prescribed on the determination document.
8. Rule 60BB-2.035(5)(a)1., Florida Administrative Code, provides: 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.
9. The evidence reveals that the Petitioner received the determination from the Department of Revenue on or about December 1, 2009. That determination held that the Petitioner was liable for payment of unemployment tax on all of the Petitioner's employees. The Petitioner chose not to file a protest at that time because the Petitioner received a determination from the Agency for Workforce Innovation holding that one former employee who had filed a claim for unemployment compensation benefits was disqualified because of that former employee's reason for separation from employment.
10. The Petitioner argues that the Petitioner had "just cause" for late filing of the protest and that the protest should be accepted as timely filed. However, the Florida Unemployment Compensation Law does not contain any "just cause" exception. Pelletier v. State Unemployment Appeals Commission, 761 So. 2d 413 (Fla. 2d DCA 2000).
11. Although the Petitioner may have been confused by the determination issued by the Department of Revenue on or before December 1, 2009, and the determination issued by the Agency for Workforce Innovation on December 4, 2009, no misinformation or misleading information was provided by either the Department of Revenue or the Agency for Workforce Innovation. The evidence does not show that the Petitioner was prevented in some extraordinary way from filing a timely protest. Rather, the testimony reveals that the Petitioner made a decision not to appeal the tax liability determination because the Petitioner felt that it was not worth the time and expense.

**Recommendation:** It is recommended that the Petitioner's appeal of the determination dated December 1, 2009, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on October 7, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

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**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2010-59945L**

**ORDER**

This matter comes before me for final Agency Order.

The issues before me are whether the Petitioner filed a timely protest pursuant to §443.131(3)(i); 443.1312(2); 443.141(2); Florida Statutes; Rule 60BB-2.035, Florida Administrative Code, whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.

The Department of Revenue conducted an investigation to determine whether the Petitioner met liability requirements for Florida unemployment compensation contributions. The Department of Revenue then issued a determination holding that the Petitioner met the liability requirements for unemployment tax effective July 1, 2008. As a result, the Petitioner was required to pay unemployment taxes. The Petitioner filed a protest of the determination more than twenty days after the mailing date of the determination.

A telephone hearing was held on September 13, 2010. The Petitioner was represented by its attorney. The Petitioner's Principal and the Petitioner's accountant testified as witnesses. The Respondent was represented by a Department of Revenue Senior Tax Specialist. A Tax Auditor II testified as a witness. The Special Deputy issued a Recommended Order on October 7, 2010.

The Special Deputy's Findings of Fact recite as follows:

1. On or before December 1, 2009, the Department of Revenue mailed a determination to the Petitioner's correct mailing address, notifying the Petitioner that the Petitioner has met the liability requirements for payment of unemployment compensation tax effective July 1, 2008.
2. Among other things the determination advises "This letter is your official notice and becomes conclusive and binding within 20 calendar days of the 'Mailed on or Before' date shown above. If you disagree and wish to protest, you must do so in writing explaining your reason for disagreement." The determination was received by the Petitioner.
3. On or about December 4 2009 the Agency for Workforce Innovation issued a determination holding that a former employee of the Petitioner, Nicholas Marziani, was disqualified from receiving unemployment compensation benefits based on the reason for separation from employment. As a result, the Petitioner decided that it was not worth the time and expense to appeal the determination issued by the Department of Revenue holding that the Petitioner was liable for payment of unemployment compensation tax.
4. The former employee appealed the determination issued by the Agency for Workforce Innovation holding him disqualified from receiving unemployment compensation benefits and a hearing was held. On January 11, 2010, an appeals referee issued a decision reversing the disqualification.
5. On January 11, 2010, the Petitioner appealed the December 1, 2009, liability determination to the Department of Revenue.

Based on these Findings of Fact, the Special Deputy recommended that the Petitioner's appeal of the determination dated December 1, 2009, be dismissed due to a lack of jurisdiction. The Petitioner's exceptions to the Recommended Order were received by mail postmarked October 22, 2010. No other submissions were received from any party.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Petitioner's exceptions are addressed below. Additionally, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

In its exceptions, the Petitioner proposes alternative findings of fact and conclusions of law. The Petitioner also takes exception to Finding of Fact #3 and Conclusion of Law #11. Pursuant to section 120.57(1)(l), Florida Statutes, the Special Deputy is the finder of fact in an administrative hearing, and the Agency may not reject or modify the Special Deputy's Findings of Fact unless the Agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. Also pursuant to section 120.57(1)(l), Florida Statutes, the Agency may not reject or modify the Special Deputy's Conclusions of Law unless the Agency first determines that the conclusions of law do not reflect a reasonable application of the law to the facts. A review of the record reveals that the Special Deputy's Findings of Fact, including Finding of Fact #3, are supported by competent substantial evidence in the record. A review of the record also reveals that the Special Deputy's Conclusions of Law, including Conclusion of Law #11, reflect a reasonable application of the law to the facts. As a result, the Agency may not modify the Special Deputy's Findings of Fact and Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes, and accepts the findings of fact and conclusions of law as written by the Special Deputy. The portions of the Petitioner's exceptions that propose alternative finding of fact and conclusions of law or take exception to Finding of Fact #3 and Conclusion of Law #11 are respectfully rejected.

The Petitioner takes exception to Conclusion of Law #10 as well because the Special Deputy concluded that the Florida Unemployment Compensation law does not contain a "just cause" exception for untimely appeals. The Petitioner argues that rule 60BB-2.035(5)(b), Florida Administrative Code, allows the Petitioner the opportunity to show cause as to why its late appeal should be accepted timely. The rule cited by the Petitioner applies to the issuance of an order to show cause and the requirement that a written

response be submitted in response to the order to show cause. It does not specifically provide for a “just cause” exception for untimely appeals. While the Petitioner is correct in stating that the Petitioner had the opportunity to establish why its appeal should be accepted as timely, a review of the record demonstrates that the Special Deputy ultimately concluded the Petitioner failed to establish that it filed a timely appeal based on evidence in the hearing record. The Special Deputy’s Findings of Fact are supported by competent substantial evidence in the record. The Special Deputy’s Conclusions of Law also reflect a reasonable application of the law to the facts. The Petitioner has not established a basis for the modification or rejection of the Special Deputy’s Findings of Fact and Conclusions of Law permitted under section 120.57(1)(l), Florida Statutes. The Petitioner’s exception to Conclusion of Law #10 is respectfully rejected.

A review of the record reveals that the Findings of Fact contained in the Recommended Order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The Special Deputy’s Findings of Fact are thus adopted in this order. The Special Deputy’s Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the record of this case, the Recommended Order of the Special Deputy, and the exceptions filed by the Petitioner, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as set forth in the Recommended Order.

In consideration thereof, it is ORDERED that the Petitioner’s appeal of the determination dated December 1, 2009, is DISMISSED due to lack of jurisdiction.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_ day of **January, 2011.**



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TOM CLENDENNING,  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION