

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2157456
FLORIDA CARDIOLOGY PA
483 N SEMORAN BLVD STE 205
WINTER PARK FL 32792-3800

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-82776L**

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 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 May 20, 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. - 2157456
FLORIDA CARDIOLOGY PA
483 N SEMORAN BLVD STE 205
WINTER PARK FL 32792-3800

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-82776L**

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 May 20, 2010.

After due notice to the parties, a telephone hearing was held on August 12, 2010. A chief financial officer and a payroll director of the Petitioner appeared and provided testimony on behalf of the Petitioner. The Joined Party appeared and testified on her own behalf. A tax specialist II appeared and provided testimony 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 and other individuals 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.

Findings of Fact:

1. The Petitioner is a subchapter S corporation, incorporated in 1983 for the purpose of running a cardiology business.
2. The Joined Party was hired to be an on-call chauffeur for a doctor by the doctor’s wife. The doctor was an employee of the Petitioner. The Joined Party provided services as a chauffeur from January 2009, through March 1, 2010.

3. The Joined Party was expected to be available at anytime to respond to the doctor's call. The Joined Party used the doctor's vehicle and had no expenses in conjunction with the work. The doctor covered fuel at all times. The doctor covered meals on longer trips.
4. The Joined Party was paid \$325 per week. The rate of pay was set by the doctor. The doctor made an agreement with the Petitioner. The agreement stipulated that the Petitioner would pay the Joined Party for the chauffeur services. The funds paid to the Joined Party by the Petitioner were to be repaid from the doctor's yearly bonus. The Petitioner paid the Joined Party using company checks. The Petitioner did not use payroll checks to pay the Joined Party, nor was the Joined Party listed in the Petitioner's payroll records. The agreement required that the Petitioner act as a paying agent. The Petitioner issued a 1099 form for the Joined Party.
5. The Joined Party was paid \$14,300 in 2009 by the Petitioner.

Conclusions of Law:

6. 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.
7. Florida Statute 443.1216(6) holds:

(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.
8. The evidence presented in this case reveals that the Joined Party acted as a chauffeur for the doctor. The Joined Party was paid \$14,300 by the Petitioner in 2009. The Joined Party's work is covered by statute. Therefore, the Joined Party was an employee while performing services as a chauffeur.
9. The Petitioner agreed to act as a paying agent to pay the Joined Party on behalf of the doctor. Florida Law does not recognize paying agents or payroll companies. The Petitioner is properly named as the entity responsible for paying the Joined Party for services performed as a chauffeur.

Recommendation: It is recommended that the determination dated May 20, 2010, be AFFIRMED.

Respectfully submitted on September 2, 2010.



KRIS LONKANI, Special Deputy
Office of Appeals