

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Unemployment Compensation Appeals  
THE CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143**

**PETITIONER:**

Employer Account No. - 2952472  
MYRENE FURNO  
ATTEN LAURA PETERSEN, TTEE  
7650 SOUTHEAST 64TH STREET  
NEWBERRY FL 32669-7188

**RESPONDENT:**

State of Florida  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2011-154581L**

**ORDER**

This matter comes before me for final Department 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 determinations dated April 14, 2010, and April 15, 2010, is dismissed due to lack of jurisdiction. The Department of Revenue has agreed to reconsider the October 11, 2011, determinations.

**JUDICIAL REVIEW**

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this *Order* and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **May, 2012**.



\_\_\_\_\_  
Altemese Smith,  
Assistant Director,  
Unemployment Compensation Services  
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

*Shanendra Barnes*

\_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
DATE

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the \_\_\_\_\_ day of May, 2012.

*Shanendra Barnes*

\_\_\_\_\_  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Unemployment Compensation Appeals  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

By U.S. Mail:

MYRENE FURNO  
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CATHY HILLIARD  
7702 NW 35TH PLACE  
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TALLAHASSEE FL 32399-01000

State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
c/o Department of Revenue

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Unemployment Compensation Appeals**

MSC 344 CALDWELL BUILDING  
107 EAST MADISON STREET  
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**PETITIONER:**

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**RESPONDENT:**

State of Florida  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2011-154581L**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director,  
Interim Executive Director,  
Unemployment Compensation Services  
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated October 11, 2011.

After due notice to the parties, a telephone hearing was held on March 29, 2012. The Petitioner, represented by the Petitioner's trustee, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party appeared.

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.

Whether the Petitioner filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner is an individual who requires daily care. The Petitioner lives with her daughter who is the Petitioner's trustee.

2. The Joined Party is an individual who provided care for the Petitioner. The Joined Party filed a claim for unemployment compensation benefits effective February 28, 2010. When the Joined Party did not receive credit for her earnings with the Petitioner a *Request for Reconsideration of Monetary Determination* was filed and an investigation was assigned to the Department of Revenue to determine if the Joined Party performed services for the Petitioner as an employee or as an independent contractor.
3. By determination mailed on or before April 14, 2010, the Department of Revenue advised the Petitioner that the Petitioner met the liability requirements for unemployment tax effective September 8, 2008. 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."
4. On April 15, 2010, the Department of Revenue issued a determination holding that "the person(s) performing services as caregivers are employees. This determination is retroactive to 09/08/2008." Among other things the determination advises "This letter is an official notice of the above determination and will become conclusive and binding unless you file written application to protest this determination within twenty (20) days from the date of this letter."
5. The April 14, 2010, and April 15, 2010, determinations were mailed to the Petitioner's correct mailing address and were received. On May 1, 2010, the Alachua Service Center notified the Petitioner in writing that the Department of Revenue had assessed the estimated amount of taxes that were due. On May 6, 2010, the Petitioner's trustee spoke to an individual in the Alachua Service Center and stated that the Joined Party was not an employee but performed services as an independent contractor. The trustee subsequently submitted a letter to the Alachua Service Center on April 7, 2011, asserting that the Joined Party was an independent contractor and not an employee.
6. On July 14, 2011, the trustee wrote a letter to the Office of Unemployment Compensation Appeals requesting a formal review and appeal of the determination that the Joined Party was an employee. On August 8, 2011, the Petitioner filed the tax reports showing that no wages were paid. The Department of Revenue notified the Petitioner that penalties and interest were due. On September 20, 2011, the Petitioner requested that the penalties and interest be waived.
7. By determinations dated October 11, 2011, the Department of Revenue denied the request for waiver of penalties and interest. On October 29, 2011, the Petitioner sent a letter to the Office of Unemployment Compensation Appeals protesting the determinations dated October 11, 2011, denying the Petitioner's request for waiver of penalties and interest. In the Petitioner's October 29, 2011, protest the Petitioner requested a formal review and appeal of the determination of liability.
8. Initially, the Petitioner's protest was docketed as a protest of the penalty waiver denial determinations. A hearing was scheduled to be held on January 30, 2012. No testimony was offered at the hearing and it was requested that the hearing be rescheduled so that the Petitioner's liability, including the workers' status, and the timeliness of the Petitioner's protest to the liability determination could be included. The request was granted. The worker was joined as a party because the outcome of the hearing could adversely affect the worker.
9. At the hearing held on March 29, 2012, the Petitioner agreed to withdraw the protest of the penalty waiver denial so that the Petitioner could file corrected tax reports. In return the Department of Revenue agreed to reduce the amount of the penalties. The Department of Revenue has agreed to issue a determination regarding the amount of the reduced penalties. The Petitioner will have twenty days from the date of that determination to request a hearing if the amount of the reduced penalties is not agreeable to the Petitioner.

**Conclusions of Law:**

10. 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.

11. Rule 73B-10.035(1), Florida Administrative Code, provides that protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to the Department of Revenue in the time and manner prescribed on the determination document.

12. Rule 73B-10.035(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.

13. Rule 73B-10.023(1), Florida Administrative Code, provides, in pertinent part:

Filing date. The postmark date will be the filing date of any report, protest, appeal or other document mailed to the Agency or Department. The "postmark date" includes the postmark date affixed by the United States Postal Service or the date on which the document was delivered to an express service or delivery service for delivery to the Department. The date of receipt will be the filing date of any report, protest, appeal, or other document faxed to DEO or DOR.

14. The determination of liability was mailed to the Petitioner's correct mailing address on or before April 14, 2010. The determination regarding the Joined Party's status as an employee was mailed to the Petitioner's correct mailing address on April 15, 2010. Twenty calendar days from April 15, 2010, is Wednesday May 5, 2010.

15. The Petitioner's testimony reveals that the Petitioner spoke to an individual in the Alachua Service Center on May 6, 2010, one day after the appeal rights expired. That conversation did not constitute an appeal because it was not a written protest. Based on the evidence submitted at the hearing the first written protest was by letter dated April 7, 2011.

16. The determinations of April 14, 2010, and April 15, 2010, became final on May 5, 2010, and may not be disturbed.

**Recommendation:** It is recommended that the Petitioner's protest of the determinations dated April 14, 2010, and April 15, 2010, be DISMISSED due to lack of jurisdiction. The Department of Revenue has agreed to reconsider the October 11, 2011, determinations.

Respectfully submitted on March 30, 2012.



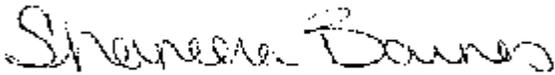
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R. O. SMITH, Special Deputy  
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke *Lòd Rekòmande* a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd kenz jou apati de dat ke *Lòd Rekòmande* a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.



SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**March 30, 2012**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

CATHY HILLIARD  
7702 NW 35TH PLACE  
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DEPARTMENT OF REVENUE  
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DEPARTMENT OF REVENUE  
DOR BLOCKED CLAIMS UNIT  
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PO BOX 6417  
TALLAHASSEE FL 32314-6417