

AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals

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

PETITIONER:

Employer Account No. - 2965052
NWR PARTNERS LLC
DEANNA DECRAEPEO
330 N ANDREWS AVENUE STE 300
FT LAUDERDALE FL 33301

RESPONDENT:

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

PROTEST OF LIABILITY
DOCKET NO. 2010-140048L

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 June 8, 2010.

After due notice to the parties, a telephone hearing was held on December 8, 2010. The Petitioner, represented by its accountant, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified.

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 60BB-2.035, Florida Administrative Code.

Findings of Fact:

1. The Joined Party filed an initial claim for unemployment compensation benefits effective April 4, 2010. When the Joined Party did not receive credit for her earnings with the Petitioner an investigation was assigned to the Department of Revenue to determine if the Joined Party performed services as an independent contractor or as an employee. As proof of earnings the Joined Party submitted a Form 1099- MISC showing the Petitioner's address as "755 41 Street Miami Beach, Fl 33140."

2. The address listed on the Form 1099-MISC is the address of the Petitioner's attorney. The accountant used the attorney's address because it was the only address which the accountant had for the Petitioner.
3. On June 8, 2010, the Department of Revenue issued a determination holding that the Joined Party and other individuals working for the Petitioner as debt consultants are the Petitioner's employees retroactive to June 6, 2009. The determination was mailed to the Petitioner at "755 W 41st St Miami Beach Fl 33140."
4. 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. If your protest is filed by mail, the postmark date will be considered the filing date of your protest."
5. At some point in time the Petitioner's owner contacted the accountant and requested that the accountant file a written protest. The accountant wrote a protest letter dated July 26, 2010. The protest was filed by mail postmarked July 27, 2010.

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(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.
8. Rule 60BB-2.023(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.
9. The determination in this case was mailed to the Petitioner's only known address, the address of the Petitioner's attorney, on June 8, 2010. The determination was received by the Petitioner and subsequently provided to the accountant to file a protest. No evidence was presented to show the date of receipt of the determination by the attorney or the date of receipt by the Petitioner. No evidence was presented to show the date that it was provided to the accountant to file the protest.
10. The Petitioner had until June 28, 2010, to file a timely protest. The protest was not filed until July 27, 2010. Thus, the determination has become final and may not be disturbed.

Recommendation: It is recommended that the Petitioner's protest of the determination dated June 8, 2010, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on December 9, 2010.



R. O. SMITH, Special Deputy
Office of Appeals

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

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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 June 8, 2010, is dismissed due to lack of jurisdiction.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **March, 2011**.



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION