

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

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

**PETITIONER:**

Employer Account No. - 2947578  
LEE'S PLACE INC  
BRENDA RABALAIS  
216 LAKE ELLA DRIVE  
TALLAHASSEE FL 32303-5545

**PROTEST OF LIABILITY  
DOCKET NO. 2010-56823L**

**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 March 4, 2010.

After due notice to the parties, a telephone hearing was held on November 22, 2010. The Petitioner, represented by its president, 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 constitute insured employment, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

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.

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rule 60BB-2.035(18).

**Findings of Fact:**

1. The Petitioner is a Florida nonprofit corporation which was formed in December 2000 to operate a grief and loss counseling service.
2. Beginning in 2007 the Petitioner had four full time employees. Three of those employees performed services as therapists and one performed services as a director of development. The Petitioner also had two part time employees performing bookkeeping and clerical duties.

3. The Joined Party filed a claim for unemployment compensation benefits effective January 10, 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 Petitioner had established liability for unemployment compensation.
4. On March 4, 2010, the Department of Revenue issued a determination holding that the Petitioner had established liability for payment of unemployment compensation effective January 1, 2007. The Petitioner filed a timely protest by mail postmarked March 18, 2010.
5. Pursuant to the Petitioner's appeal a telephone hearing was scheduled to be held on September 20, 2010. The Petitioner's president was driving to the Petitioner's office and had a flat tire. As a result the Petitioner's president was not at the Petitioner's location to receive the conference telephone call and a *Recommended Order of Dismissal* was mailed to the Petitioner. The Petitioner requested reopening of the protest in writing on September 20, 2010.

### Conclusions of Law:

6. Rule 60BB-2.035, Florida Administrative Code, provides:
  - (18) Request to Re-Open Proceedings. Upon written request of the Petitioner or upon the special deputy's own motion, the special deputy will for good cause rescind a Recommended Order to dismiss the case and reopen the proceedings. Upon written request of the Respondent or Joined Party, or upon the special deputy's own motion, the special deputy may for good cause rescind a Recommended Order and reopen the proceedings if the party did not appear at the most recently scheduled hearing and the special deputy entered a recommendation adverse to the party. The special deputy will have the authority to reopen an appeal under this rule provided that the request is filed or motion entered within the time limit permitted to file exceptions to the Recommended Order. A threshold issue to be decided at any hearing held to consider allowing the entry of evidence on the merits of a case will be whether good cause exists for a party's failure to attend the previous hearing. If good cause is found, the special deputy will proceed on the merits of the case. If good cause is not found, the Recommended Order will be reinstated.
7. Rule 60BB-2.035(19)(c), Florida Administrative Code, provides that any party aggrieved by the Recommended Order may file written exceptions to the Director or the Director's designee within 15 days of the mailing date of the Recommended Order.
8. The Petitioner promptly requested reopening of the appeal after the Petitioner failed to participate in the scheduled hearing. Since the Petitioner's reason for failing to participate in the hearing was unforeseen and unavoidable, good cause is established.
9. Section 443.1216, Florida Statutes, provides in pertinent part:
  - (1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
    1. An officer of a corporation.
    2. An individual who, under the usual common law rules applicable in determining the employer-employee relationship is an employee.
10. 443.1216, Florida Statutes, provides that Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:
  - (3) The employment subject to this chapter includes service performed by an individual in the employ of a religious, charitable, educational, or other organization, if:
    - (a) The service is excluded from the definition of "employment" in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(8) of that act; and
    - (b) The organization had at least four individuals in employment for some portion of a day in each of 20 different weeks during the current or preceding calendar year, regardless of

whether the weeks were consecutive and whether the individuals were employed at the same time.

11. The evidence presented in this case reveals that effective January 1, 2007, the Petitioner had four or more employees performing services for the Petitioner during at least twenty different weeks of the year. Therefore, the Petitioner has established liability under the Florida Unemployment Compensation Law.

**Recommendation:** It is recommended that the determination dated March 4, 2010, be AFFIRMED.

Respectfully submitted on November 22, 2010.



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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 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 March 4, 2010, is AFFIRMED.

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



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TOM CLENDENNING  
Assistatn Director  
AGENCY FOR WORKFORCE INNOVATION