

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2623604
PAWS 2 HELP INC
2061 INDIAN ROAD
WEST PALM BEACH FL 33409

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-83590L**

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 August 19, 2009, 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. - 2623604
P A WS 2 HELP INC
EVE VAN ENGEL
2061 INDIAN ROAD
WEST PALM BEACH FL 33409

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-83590L**

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 August 19, 2009.

After due notice to the parties, a telephone hearing was held on August 26, 2010. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Petitioner's founder appeared and testified as a witness. The Joined Party 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 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. The Petitioner is a Florida non-profit corporation which operates an animal clinic and shelter. The Petitioner's founder, Eva Van Engel, who is a corporate officer, is active in the operation of the

- business. Eva Van Engel lives in a residence owned by the Petitioner but does not pay any rent for the use of the home. The rental value of the home is approximately \$800 per month.
2. Sigrid Kumpe, who is also a corporate officer, is active in the business. The Petitioner pays a salary to Sigrid Kumpe in the amount of \$2000 per month.
 3. The Joined Party was hired by the Petitioner as an animal caretaker on or about April 1, 2008. The Joined Party was paid by the hour and taxes were withheld from the pay.
 4. An employee by the name of Pam assisted in the hiring of the Joined Party and provided training to the Joined Party. The Petitioner paid a salary to Pam. Pam left her employment in approximately September 2008.
 5. An individual by the name of Julie was hired shortly after the Joined Party in April 2008. Julie performed the same type of work as the Joined Party and worked for the Petitioner full time during every week until the middle of December 2008. The Petitioner paid Julie by the hour.
 6. Other individuals performed services for the Petitioner during the time that the Joined Party was employed. An individual by the name of John was performing services as a caretaker at the time the Joined Party was hired. John was frequently absent from work and the Petitioner did not consider John to be a dependable employee. The Petitioner gave money to John in return for the services which he performed. John worked for the Petitioner until approximately the end of June 2008. An individual named Danny worked for the Petitioner as part of a work release program. The Petitioner did not pay Danny. The Petitioner paid the Salvation Army for Danny's work and the Salvation Army in turn paid Danny. Danny worked part time and only worked for a brief period of time. An individual named Kenneth worked for the Petitioner for a brief period of time beginning in October 2008. Kenneth was a volunteer but the Petitioner bought lunch for Kenneth each day. An individual named Dawn began work in approximately December 2008 and worked for a period of approximately two months. An individual named Erin was hired in approximately May 2009. The Petitioner paid Erin by the hour. Shortly before the Joined Party left her employment on June 9, 2009, the Petitioner hired an employee by the name of Andrea.
 7. During the time that the Joined Party performed services for the Petitioner several veterinarians performed services for the Petitioner as self employed independent contractors.
 8. The Petitioner reported a portion of the Joined Party's earnings on Form W-2 as wages at the end of 2008. Sometimes the Petitioner did not deduct taxes from the Joined Party's pay and, even though the Petitioner paid the Joined Party by check, the Petitioner did not include those earnings from which taxes were not withheld on the W-2.
 9. The Joined Party filed a claim for unemployment compensation benefits effective June 28, 2009. Her filing on that date established a base period from January 1, 2008, through December 31, 2008. When the Joined Party did not receive credit for her wages 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 was liable for payment of unemployment compensation taxes.
 10. On August 19, 2009, the Department of Revenue issued a determination holding that the Petitioner has met the liability requirements for payment of unemployment tax per section 443.1215 A, Florida Statutes, effective April 1, 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."
 11. The determination dated August 19, 2009, was mailed to an obsolete address. The Petitioner had not been at that address for approximately six years. Eventually, the Petitioner's founder received

the determination and took the determination to the Petitioner's Certified Public Accountant. The Certified Public Accountant filed an appeal by letter dated December 9, 2009.

Conclusions of Law:

12. 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.
13. 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.
14. The evidence presented in this case reveals that the determination of August 19, 2009, was mailed to an incorrect address. Therefore, the appeal is accepted as timely filed.
15. The August 19, 2009, determination holds the Petitioner liable for unemployment tax per section 443.1215 A, Florida Statutes. The section of the law cited by the determination is an incorrect citation.
16. Section 443.1215, Florida States, provides:
 - (1) Each of the following employing units is an employer subject to this chapter:
 - (a) An employing unit that:
 1. In a calendar quarter during the current or preceding calendar year paid wages of at least \$1,500 for service in employment; or
 2. For any portion of a day in each of 20 different calendar weeks, regardless of whether the weeks were consecutive, during the current or the preceding calendar year, employed at least one individual in employment, irrespective of whether the same individual was in employment during each day.
17. Section 443.1215, Florida Statutes, (1)(c), Florida Statutes, provides that an employing unit for which services in employment, as defined in s. 443.1216(3), is performed, is an employer subject to this chapter.
18. Section 443.1216(3), Florida Statutes, provides:
 - (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.
19. The Petitioner testified that the Petitioner has received a tax exemption from the Internal Revenue Service under section 501(c)3 of the Internal Revenue Code. The Petitioner has not provided any documentary proof of that exemption.
20. The evidence reveals that even if the Petitioner is a 501(c)3 organization, the Petitioner has met the liability requirements of the Florida Unemployment Compensation Law.

21. The Petitioner's founder is a full time employee and is compensated by the Petitioner. Section 443.1217(1), Florida Statutes, provides that the wages subject to the Unemployment Compensation Law include all remuneration for employment including the cash value of remuneration paid in any medium other than cash. Rule 60 BB-2.200, Florida Administrative Code, provides that the cash value of lodging is the fair market rental value of the property, including the cost of utilities.
22. Sigrid Kumpe is a full time employee and is compensated by salary. Pam was employed from the time the Joined Party began employment until September, a period of time greater than twenty weeks. According to the Petitioner's testimony Julie was employed on a part time basis but worked every week. Julie worked from the latter part of April 2008 until December 2008, a period of greater than twenty weeks. These facts reveal that the Petitioner had more than four employees during twenty different weeks during 2008.
23. Rule 60BB-2.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error.
24. The Petitioner's evidence is not sufficient to establish that the determination of the Department of Revenue is in error.

Recommendation: It is recommended that the Petitioner's protest be accepted as timely filed. It is recommended that the determination dated August 19, 2009, be AFFIRMED.

Respectfully submitted on September 17, 2010.



R. O. SMITH, Special Deputy
Office of Appeals