

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

PETITIONER:

Employer Account No. - 9950215

COMMUNITY HEALTH CENTERS INC
PO BOX 1249
APOPKA FL 32704-1249

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-75915R**

ORDER

This matter comes before me for final Department Order.

The issue before me is whether the Petitioner is required to reimburse the Unemployment Compensation Trust Fund for benefit payments made to the claimant, pursuant to Sections 443.1312 and 443.1313, Florida Statutes.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Special Deputy issued the Recommended Order on September 24, 2012. The Petitioner's exceptions to the Recommended Order were received by mail postmarked October 10, 2012. Rule 73B-10.035(19)(c), Florida Administrative Code, requires that written exceptions be filed within 15 days of the mailing date of the Recommended Order. As a result, the Department may not consider the Petitioner's exceptions in this order because the exceptions were filed more than 15 days after the mailing date of the Recommended Order. No other submissions were received from any party.

A review of the record reveals that the Findings of Fact contained in the Recommended Order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The Special Deputy's findings are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the record of this case and the Recommended Order of the Special Deputy, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as set forth in the Recommended Order. A copy of the Recommended Order is attached and incorporated in this order.

Therefore, it is ORDERED that the determination dated June 14, 2012, is AFFIRMED.

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 **November, 2012.**



Altemese Smith,
Assistant Director,
Reemployment Assistance 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 Y. 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 November, 2012.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:

COMMUNITY HEALTH CENTERS INC
PO BOX 1249
APOPKA FL 32704-1249

COMMUNITY HEALTH CENTERS INC
ATTN:CYNTHIA BAIRD-YAGER
130 S MAIN STREET
WINTER GARDEN FL 34787

DEPARTMENT OF REVENUE
ATTN: VANDA RAGANS - CCOC #1-4857
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DEPARTMENT OF REVENUE
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TALLAHASSEE FL 32312-6417

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

DEPARTMENT OF ECONOMIC OPPORTUNITY

Reemployment Assistance Appeals

MSC 347 CALDWELL BUILDING

107 EAST MADISON STREET

TALLAHASSEE FL 32399-4143

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**PROTEST OF LIABILITY
DOCKET NO. 2012-75915R**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Interim Executive Director,
Reemployment Assistance 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 June 14, 2012.

After due notice to the parties, a telephone hearing was held on September 20, 2012. The Petitioner, represented by the Center Manager, 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 the Petitioner is required to reimburse the Reemployment Assistance Trust Fund for benefit payments made to the claimant, pursuant to Sections 443.1312 and 443.1313, Florida Statutes.

Findings of Fact:

1. The Petitioner is a nonprofit medical facility which has elected to reimburse the Unemployment Compensation Trust Fund for payment of reemployment assistance benefits rather than pay a tax based on the payroll of its employees.
2. A former employee filed a claim for reemployment assistance benefits effective May 29, 2011.
3. On June 22, 2011, a determination was mailed to the Petitioner advising the Petitioner that benefits were payable because the former employee had quit for health reasons. The determination also advised "The UC Fund must be reimbursed by the employer should any benefits be paid."
4. The Petitioner did not appeal the June 22, 2011, determination.

5. The former employee filed a new claim for reemployment assistance benefits effective May 29, 2012. A *Determination Notice of Unemployment Compensation Claim Filed* was mailed to the Petitioner and the Petitioner responded.
6. As a result of the Petitioner's written response, a determination letter was mailed to the Petitioner on June 14, 2012, advising the Petitioner that a determination regarding the former employee's job separation was issued on the previous claim holding the former employee not disqualified from receiving benefits, and advising that the Petitioner was subject to charges for the Petitioner's pro rata share of benefits paid as a result of the new claim. The determination further advised "If you disagree with your requirement to reimburse the UC Fund, you have the right to file an appeal and present your case before a Special Deputy. The appeal must be filed within 20 calendar days from the mailing date of this letter."
7. The Petitioner filed a timely protest by mail postmarked June 21, 2012.

Conclusions of Law:

8. Section 443.036, Florida Statutes, provides in pertinent part: Definitions.—As used in this chapter, the term:
 - (8) “Benefits” means the money payable to an individual, as provided in this chapter, for his or her unemployment.
 - 14) “Contribution” means a payment of payroll tax to the Unemployment Compensation Trust Fund which is required under this chapter to finance reemployment assistance benefits.
 - (38) “Reemployment assistance” means cash benefits payable to individuals with respect to their unemployment pursuant to the provisions of this chapter. Where the context requires, reemployment assistance also means cash benefits payable to individuals with respect to their unemployment pursuant to 5 U.S.C. ss. 8501-8525, 26 U.S.C. ss. 3301-3311, 42 U.S.C. ss. 501-504, 1101-1110, and 1321-1324, or pursuant to state laws which have been certified pursuant to 26 U.S.C. s. 3304 and 42 U.S.C. s. 503. Any reference to reemployment assistance shall mean compensation payable from an unemployment fund as defined in 26 U.S.C. s. 3306(f).
 - (39) “Reimbursement” means a payment of money to the Unemployment Compensation Trust Fund in lieu of a contribution which is required under this chapter to finance reemployment assistance benefits.
 - (40) “Reimbursing employer” means an employer who is liable for reimbursements in lieu of contributions under this chapter.
9. Section 443.1312, Florida Statutes, provides: Reimbursements; nonprofit organizations.-Benefits paid to employees of nonprofit organizations shall be financed in accordance with this section.
 - (1) DEFINITION.—As used in this section, the term “nonprofit organization” means an organization or group of organizations exempt from the federal income tax under s. 501(c)(3) of the United States Internal Revenue Code.
 - (2) LIABILITY FOR CONTRIBUTIONS AND ELECTION OF REIMBURSEMENT.—A nonprofit organization that is, or becomes, subject to this chapter under s. 443.1215(1)(c) or s. 443.121(3)(a) must pay contributions under s. 443.131 unless it elects, in accordance with this subsection, to reimburse the Unemployment Compensation Trust Fund for all of the regular benefits, short-time compensation benefits, and one-half of the extended benefits paid, which are attributable to service in the employ of the nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of the election.
10. Section 443.1312(3), Florida Statutes, provides:
 - (3) PAYMENT OF REIMBURSEMENTS.—Reimbursements in lieu of contributions must be paid in accordance with this subsection.
 - (a) At the end of each calendar quarter, or at the end of any other period prescribed by rule, the tax collection service provider shall bill each nonprofit organization or group of

- organizations that has elected to make reimbursements in lieu of contributions for an amount equal to the full amount of regular benefits, short-time compensation benefits, and one-half of the extended benefits paid during the quarter, or other prescribed period, which is attributable to service in the employ of the organization.
- (b) A nonprofit organization must pay each bill rendered under paragraph (a) within 30 days after the bill is mailed to the last known address of the organization or is otherwise delivered to the organization, unless the organization files an application for review and redetermination under paragraph (d).
 - (c) A nonprofit organization may not deduct reimbursements, interest, penalties, fines, or fees required under this chapter from any part of the remuneration of individuals in the employ of the organization.
 - (d) The amount due, as specified in any bill from the tax collection service provider, is conclusive, and the nonprofit organization is liable for payment of that amount unless, within 20 days after the bill is mailed to the organization's last known address or otherwise delivered to the organization, the organization files an application for redetermination by the Department of Economic Opportunity, setting forth the grounds for the application. The department shall promptly review and reconsider the amount due, as specified in the bill, and shall issue a redetermination in each case in which an application for redetermination is filed. The redetermination is conclusive and the nonprofit organization is liable for payment of the amount due, as specified in the redetermination, unless, within 20 days after the redetermination is mailed to the organization's last known address or otherwise delivered to the organization, the organization files a protest, setting forth the grounds for the appeal. Proceedings on the protest shall be conducted in accordance with s. 443.141(2).
 - (e) Past due amounts of reimbursements in lieu of contributions are subject to the same interest and penalties that apply to past due contributions under s. 443.141(1).
 - (f) Each reimbursing employer shall be billed his or her proportionate share of benefits, and the Unemployment Compensation Trust Fund must (emphasis supplied) be reimbursed in full.
11. The evidence presented in this case reveals that the Petitioner is a nonprofit organization which has elected to reimburse the Unemployment Compensation Trust Fund in full, in lieu of paying a tax, for the proportionate share of benefits which is attributable to service in the employ of the Petitioner.
12. The law requires that a reimbursable employer must reimburse the Unemployment Compensation Trust Fund. There is no provision in the law that would relieve the Petitioner, a reimbursable employer, of that responsibility.

Recommendation: It is recommended that the determination dated June 14, 2012, be AFFIRMED.

Respectfully submitted on September 24, 2012.

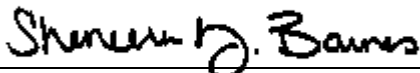


R. O. SMITH, Special Deputy
Office of Appeals

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 resumen 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:
September 24, 2012

Copies mailed to:

Petitioner
Respondent

FLORIDA DEPT. OF REVENUE
ATTN: MYRA TAYLOR
P O BOX 6417
TALLAHASSEE FL 32314-6417

COMMUNITY HEALTH CENTERS INC
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130 S MAIN STREET
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DEPARTMENT OF REVENUE
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