

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Reemployment Assistance Appeals  
PO BOX 5250  
TALLAHASSEE FL 32399-5250**

**THE SPANISH TRANSLATION IS PROVIDED FOR REASONS OF CONVENIENCE ONLY. THE ENGLISH VERSION IS THE OFFICIAL DECISION.**

LA TRADUCCIÓN AL ESPAÑOL SE FACILITA SOLAMENTE CON PROPÓSITOS DE ASISTENCIA. LA VERSIÓN EN INGLÉS ES LA DECISIÓN OFICIAL.

**PETITIONER:**

Employer Account No. - 3189163  
FIOLUEL 1 INC  
ATTN: DOMINGO DIAZ  
136 HIDDEN COURT RD  
HOLLYWOOD FL 33023-7468

**RESPONDENT:**

DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
c/o Department of Revenue  
Compliance Enforcement

**PROTEST OF LIABILITY  
DOCKET NO. 0021 4774 49-02**

**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 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 December 4, 2013, is dismissed due to a lack of jurisdiction.

Este asunto viene delante de mí por Departamento última Orden.

Habiendo considerado plenamente del Diputado Especial Recomendado Orden y el expediente del caso y, en ausencia de cualquier excepción a la Orden Recomendada, adopto las conclusiones de hecho y conclusiones de derecho según lo dispuesto en la misma. Una copia de la Orden Recomendada se adjunta e incorporada en la presente Orden Final.

Teniendo en cuenta todo lo anterior, se DICTAMINA que la protesta contra la determinación fechada el día 4 de diciembre del 2013 por parte del demandante queda desestimada por falta de jurisdicción.

**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 2nd day of February, 2015.



*Magnus Hines*

Magnus Hines,  
RA Appeals Manager,  
Reemployment Assistance Program  
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

2-3-15

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 3rd day of February, 2015.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
PO BOX 5250  
TALLAHASSEE FL 32399-5250

By U.S. Mail:

FIOLUEL 1 INC  
ATTN: DOMINGO DIAZ  
136 HIDDEN COURT RD  
HOLLYWOOD FL 33023-7468

ANA QUIROS  
3237 NW 7th St Apt 10  
MIAMI FL 33125-4161

DEPARTMENT OF REVENUE  
WILLA DENNARD  
CCOC BLDG #1 SUITE 1400  
2450 SHUMARD OAK BLVD  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: MYRA TAYLOR  
PO BOX 6417  
TALLAHASSEE FL 32314-6417

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

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**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Magnus Hines  
RA Appeals Manager,  
Reemployment Assistance Program  
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated December 4, 2013.

After due notice to the parties, a telephone hearing was held on February 18, 2014. The company Vice-President appeared for the Petitioner; the Joined Party did not appear; a Senior Tax Specialist appeared for the Respondent. No proposed findings of fact or conclusions of law were received. The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted.

**Issues:**

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

Whether services performed for the Petitioner by the Joined Party and other individuals constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

**Findings of Fact:**

1. A claim for benefits was filed by the Joined Party effective September 15, 2013. The Florida Department of Revenue conducted an investigation to determine whether the Joined Party was an employee or an independent contractor. The Petitioner participated in the investigation. Inquiries written in English were sent to the Petitioner, which responded in writing, in English.

2. On December 4, 2013 a determination was mailed to the Petitioner at its last-known address of record and was timely received by the Petitioner at that address. Among other things, the determination advised:

This letter is an official notice of the above determination and will become conclusive and binding unless you file a 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.

3. In mid-December 2013 the Petitioner's vice-president attempted to communicate with a local office of the Florida Department of Revenue (DOR), but she was insufficiently fluent in English to make herself understood by them, and the DOR representatives in that office were insufficiently fluent in Spanish to make themselves understood by her, other than a suggestion that the vice-president contact a DOR office in Miami. The vice-president did contact a DOR office in Miami, in early January 2014. The representative suggested that the Petitioner file an appeal.
4. The Petitioner subsequently protested this determination on January 9, 2014, by fax.

**Conclusions of Law:**

5. Section 443.141(2)(c), Florida Statutes, provides:  
*Appeals.*—The department and the state agency providing reemployment assistance 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.
6. Rule 73B-10.035(5), Florida Administrative Code, provides:  
Timely Protest.
  - a. (a)1. Determinations issued pursuant to Sections 443.1216, 443.131 and 443.1312, F.S., will become final and binding unless application for review and protest is filed with DOR 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.
  - b. 2. Determinations issued pursuant to Section 443.141, F.S., will become final and binding unless application for review and protest is filed within 15 days from the mailing date of the determination. If not mailed, the determination will become final 15 days from the date the determination is delivered.
  - c. (b) If a protest appears to have been filed untimely, DEO may issue an Order to Show Cause to the Petitioner, requesting written information as to why the protest should be considered timely. If the Petitioner does not, within 15 days after the mailing date of the Order to Show Cause, provide written evidence that the protest is timely, the protest will be dismissed.
7. Rule 73B-10.023(1), Florida Administrative Code, provides, in pertinent part:  
Filing date. ... The date of receipt will be the filing date of any report, protest, appeal, or other document faxed to DEO or DOR...

8. The evidence in this case reflects that the determination was mailed to the Petitioner at its last-known address on December 4, 2013. The Petitioner did not protest this determination until January 9, 2014. In accordance with the above cited sections of the statute and rules, the Petitioner had until December 26, 2013 to file a timely protest, since state offices were closed on both December 24, 2013 and December 25, 2013. Evidence presented at the hearing was not sufficient to establish that the protest was filed within the allowable time limit. The evidence shows that the Petitioner attempted to communicate with DOR within the time limits, but due to a language barrier the Petitioner was unable to express its concerns and DOR was unable to give any instructions. Although the Petitioner was not given immediate additional help or information, the Petitioner was not prevented by a state agency from filing an appeal at that time, nor was any misrepresentation given that persuaded the Petitioner to refrain from filing an appeal. No written protest was filed at that time. The determination has thus become final.
9. The fact that the determination was in English and the Petitioner's vice-president was not fluent in that language does not extend the time in which to file an appeal, or show that the Petitioner was not on notice of the contents of the determination. See, Alonso v. Arabel, 622 So.2d 187 (Fla. 3d DCA 1993) (No constitutional due process violation for determinations to be printed only in English). The language barrier does not establish that the appeal was timely.
10. It is noted that section 443.151(8), Florida Statutes (2013) provides:
  - (8) BILINGUAL REQUIREMENTS.—
    - (a) The Department of Economic Opportunity shall provide printed bilingual instructional and educational materials in the appropriate language in those counties in which 5 percent or more of the households in the county are classified as a single-language minority.
    - (b) The department shall ensure that one-stop career centers and appeals offices located in counties subject to the requirements of paragraph (c) prominently post notices in the appropriate languages and that translators are available in those centers and offices.
    - (c) As used in this subsection, the term "single-language minority" means households that speak the same non-English language and that do not contain an adult fluent in English. The department shall develop estimates of the percentages of single-language minority households for each county by using data from the United States Bureau of the Census.
11. A translator was provided for the hearing, but the statutory provision does not require that notices relating to a business's tax liability be in any language other than English. The determination in this case was issued by the Florida Department of Revenue (DOR), rather than by the Florida Department of Economic Opportunity (DEO); but the DOR is the tax collection agent for DEO. On the other hand, DOR offices are not one-stop career centers or appeals offices. It is assumed for purposes of this order that Broward County, where the Petitioner is located, meets the requirement of having 5% or more of its households in which Spanish is spoken and there is no adult fluent in English. But the statutory requirements are to provide "bilingual instructional and educational materials," rather than that all written materials be in some language in addition to English. The determination in this case is a specific notice of liability to a particular business, rather than a leaflet, poster, pamphlet, book, or web page giving general information to the public at large, including those members of the public who may become involved in reemployment assistance appeals. If the statutory provision had required that the determination in this case be in Spanish, or in Spanish as well as English, then the determination document would have been defective and the Petitioner's appeal would not be considered untimely; but that is not what the statutory provision requires.



12. The cases of Gonzalez v. Florida Unemployment Appeals Commission, \_\_\_ So.3d \_\_\_ (Fla. 3d DCA 2010;3D09-2259, 2/17/2010); and Garcia v. Unemployment Appeals Commission, 979 So.2d 1174 (Fla. 3d DCA 2008) do not require a different result. They both reference the statutory section. Gonzalez involved a series of notices of hearing to the claimant which would have been confusing in any language, but were especially so to one not fluent in English. Gonzalez, slip op. at p. 9. The matter was remanded because the Department (then known as the Agency for Workforce Innovation) created the misleading confusion. In Garcia, a decision adverse to the claimant was reversed and the case remanded so that certain instructional material in Spanish about the conduct of an unemployment compensation appeals hearing could be provided to the claimant. In both cases, the Department, or its predecessor, caused confusion to a claimant who could not speak English, and therefore could not adequately participate in a hearing. The Petitioner in this appeal has shown that it can communicate in English, as demonstrated by its participation in the investigation leading to DOR's determination, and the issue is whether the appeal to the determination was filed within the allowable time limits, rather than whether the employer was able to participate in the hearing process.

**Recommendation:** It is recommended that the Petitioner's protest to the December 4, 2013 determination be dismissed due to lack of jurisdiction.

Respectfully submitted on April 2, 2014.




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J. Jackson Houser, 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 ken z 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.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**

**April 2, 2014**

Copies mailed to:

Petitioner

Respondent

Joined Party

**Joined Party:**

ANA R. QUIROS

3237 NW 7<sup>TH</sup> STREET APT 5

MIAMI FL 33125-4161

**Other Addresses:**

WILLA DENNARD

DEPARTMENT OF REVENUE

CCOC BLDG #1 SUITE 1400

2450 SHUMARD OAK BLVD

TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE

ATTN: MYRA TAYLOR

PO BOX 6417

TALLAHASSEE FL 32314-6417