

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

PETITIONER:

CLAIMANT ID: 3584993
MONIQUE JONES-SAGER
1072 FRAZIER ST
JACKSONVILLE FL 32209-5761

RESPONDENT:

Employer Account No. - 2841342
CATHEDRAL ARTS PROJECT INC
4063 SALISBURY RD STE 107
JACKSONVILLE FL 32216-8056

PROTEST OF LIABILITY
DOCKET NO. 0021 7287 18-02

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.

This order also resolves the remaining issues of the wage credit case 0021 7287 18-02. Since the Petitioner did not perform services in insured work for Cathedral Arts Project, Inc., wage credits cannot be added to the Petitioner's base period.

In consideration thereof, it is ORDERED that the determination dated May 13, 2014, 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 5th day of **November, 2014**.



Magnus Mines

Magnus Mines,
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

11-6-14
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 6th day of November, 2014.

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:

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OPPORTUNITY
OFFICE OF THE DIRECTOR
TALLAHASSEE FL 32209-4143

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DOR: BLOCKED CLAIMS UNIT
ATTN: MELISSA WATSON
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WAGE DETERMINATION UNIT
ATTN: TONY MCGUIRE
PO DRAWER 5550
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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

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Reemployment Assistance Appeals
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PETITIONER:

CLAIMANT ID: 3584993
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**PROTEST OF LIABILITY
DOCKET NO. 0021 7287 18-02**

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 May 13, 2014.

After due notice to the parties, a telephone hearing was held on July 28, 2014. The Petitioner, Monique Jones-Sager, appeared and testified. The Joined Party, Cathedral Arts Project, Inc. appeared through counsel, and two witnesses testified, the Director of Finance and the Director of Programs. For the Respondent a Florida Department of Revenue Tax Auditor 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 Cathedral Arts Project, Inc.

Issue: Whether services performed by the Petitioner constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

Findings of Fact:

1. The Petitioner in this case is a claimant for reemployment assistance benefits. She filed a claim for benefits effective January 12, 2014, establishing a base period running from October 1, 2012 through September 30, 2013. The Petitioner worked for Cathedral Arts Project, Inc. (Cathedral Arts) beginning in 2007 as an independent contractor and then worked in April 2010 as an employee. She worked for Cathedral Arts until May 2013.
2. The claimant was paid \$2772 in wages in the 4th quarter 2012. The claimant was paid \$5828 in 2013 by Cathedral Arts, which pro-rates to \$1165.60 per month, or \$3496.80 for the 1st quarter 2013 and \$2331.20 for the 2nd quarter 2013.

3. A monetary determination was issued on January 14, 2014 finding the claimant ineligible due to insufficient wage credits. The wages for the 4th quarter 2012 were shown, but no other wages from Cathedral Arts. The claimant received the monetary determination in the mail on or about January 17, 2014. The claimant submitted documents on February 4, 2014, by mail, showing that she had been paid a greater amount of wages during the base period. The claimant later contacted a Department of Economic Opportunity (DEO) representative, who advised the claimant that she had until February 13, 2014 to file an appeal. The claimant submitted a formal appeal document on February 11, 2014.
4. The Florida Department of Revenue (DOR) issued a determination dated May 13, 2014 formally finding that Cathedral Arts was an exempt employer and that the Petitioner's work for Cathedral Arts was exempt from the reemployment assistance law. The Petitioner's appeal to the monetary determination was accepted as an appeal to the Department of Revenue determination.
5. Cathedral Arts was created by St. John's Episcopal Cathedral in Jacksonville, Florida to allow underprivileged public school students to have opportunities to create visual arts and perform music, dance, and drama.
6. St. John's Episcopal Cathedral controls the governing board of the employer through its ministers and other officials who are required to be on the board and who elect the members of the Cathedral Arts governing board. Cathedral Arts is considered an outreach ministry of the church.
7. The Petitioner worked as a part-time dance instructor and dance coordinator for Cathedral Arts beginning in 2007. The Petitioner taught dance to public school students, and she directed student performances presented to the public from time to time.
8. The Petitioner's supervisor discouraged her from mentioning any religious subject in dance activities because she was dealing with public school students and some students followed faiths other than Christianity. On one occasion early in the Petitioner's work, she created an activity that had a religious theme, but some students dropped out of the program. The Petitioner avoided religious subjects in her dance instruction thereafter.
9. The Florida 1st District Court of Appeals issued a decision on August 20, 2012, Cathedral Arts Project, Inc. v Department of Economic Opportunity, 95 So.3d 970 (Fla. 1st DCA 2012) (referred to hereafter as Cathedral Arts v. DEO) which found that Cathedral Arts was not exempt from unemployment taxes under the religious organization exemption, sec. 443.1216(4) (a) 2, Florida Statutes (2009). Cathedral Arts appealed to the Florida Supreme Court, and while that appeal was pending the case was settled by the parties. In the meantime, the term, "unemployment compensation" was changed to "reemployment assistance" by the Florida Legislature. On November 5, 2012 a settlement agreement was executed between the employer and DEO. Among other things, the employer agreed to amend its Articles of Incorporation to include language that would show its religious mission more expressly, which would have the effect of bringing the employer within a reemployment assistance law exemption. DEO agreed that employees who had established reemployment assistance eligibility prior to execution of the agreement could keep it, but employees of the employer would not be able to establish reemployment assistance eligibility based on wages paid after the execution of the agreement.

10. Cathedral Arts amended its articles of incorporation on December 12, 2012 in conformity with the settlement agreement. Specifically, the amendment was:

ARTICLE III—GENERAL PURPOSES OF THE CORPORATION

- (o) To create faith-based spiritual enrichment and personal growth through the promotion and support of the arts in Jacksonville, Florida and its surrounding communities. Programs to accomplish this purpose shall include, but not be limited to, instruction, provision of materials, and support and production of performances and exhibitions.

The phrase “faith-based” was new additional wording.

11. The claimant was not notified of the agreement while she worked for the employer. She was not notified of any change in the employer’s articles of incorporation. She was not notified of any change in her potential eligibility for reemployment assistance benefits.

Conclusions of Law:

12. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.
13. Section 443.1216, Florida Statutes (2013) further provides in relevant part:
- (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.
- (4) For purposes of subsections (2) and (3), the employment subject to this chapter does not apply to service performed:
- (a) In the employ of:
1. A church or a convention or association of churches.
 2. An organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.
- (b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order.
14. Cathedral Arts contended that the Petitioner’s appeal should be dismissed as untimely. There is a companion wage credit case, docket number 0021 7287 18-02 (i.e., the same docket number, but no letter suffix), in which the claimant (Petitioner in this matter) filed an appeal to a monetary determination. The claimant’s protest in that matter is sufficient to constitute a timely protest to the Department of Revenue determination of May 13, 2014. See, sec. 443.151 (3) (e) 3, Florida Statutes.

15. There is no dispute that the parent organization, St. John's Episcopal Cathedral, is a religious organization, and specifically is a church. This church set up Cathedral Arts, and the church controls Cathedral Arts through control of its board of directors. The Petitioner was employed by Cathedral Arts, so the Petitioner's monetary eligibility for reemployment assistance benefits depends on whether Cathedral Arts met all of the criteria to be considered an exempt organization under sec. 443.1216 (4) (a) 2, Fla. Stat.
16. Since Cathedral Arts is "supervised" or "controlled" by St. John's Episcopal Cathedral, the remaining question is whether it is "operated primarily for religious purposes," for reemployment assistance purposes. In Cathedral Arts v. DEO, cited above, the 1st DCA found that the special deputy's conclusion that the organization was not operated primarily for religious purposes was supported by the evidence, and Cathedral Arts therefore did not fall within the exemption.
17. There was a change of conditions from those that applied at the time of the 1st DCA's decision. Cathedral Arts amended its articles of incorporation. The settlement agreement between Cathedral Arts and DEO does not directly bind the Petitioner since she was not a party to that agreement. But the change in the articles of incorporation could establish a change in the organization, potentially bringing the organization and the Petitioner's employment within the exemption for 2013 and thereafter. The amendment to Cathedral Arts' articles of incorporation was not lengthy, but significance is not determined merely by the number of words.
18. The Petitioner testified that she was prohibited from using religious references in her work. The Petitioner's supervisor, the director of programs, testified that she told the claimant that the work was in a public school; religious references were not prohibited, but not emphasized. Given the name of the organization, and that it made no secret of its origins, the supervisor's version of what the Petitioner was told is more credible and is accepted.
19. It is undisputed that the organization considered itself an "outreach ministry" of the church. No nonreligious motivation has been established.
20. In Cathedral Arts v. DEO, the 1st DCA stated that the burden of establishing the tax exemption was on the organization, 95 So.3d at 975. The organization did not carry its burden in that case. This case comes with the contrary burden. The Department has ruled that the organization, and the Petitioner's employment within it, are within the statutory exemption. That ruling is not precluded by Cathedral Arts v. DEO, because of the changed circumstances represented by the amended articles of incorporation. The burden of proof in this case is now on the former employee, the Petitioner, to establish that the exemption does not apply. His Kids Daycare v. Fla. Unemployment Appeals Commission, 904 So.2d 477, 479 (Fla. 1st DCA 2005). This is the case whether the burden of proof is considered to derive from the burden of a claimant to establish eligibility, see, for example, Florida Industrial Commission v. Ciarlante, 84 So. 2d 1 (Fla. 1955) (distinguishing eligibility/ineligibility from disqualification) or whether the burden derives from Section 73B-10.035 (7), Florida Administrative Code, which provides:

Burden of Proof. The burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error.
21. In summary, the evidence in this case is consistent with the determination that the organization is within the statutory exemption of sec. 443.1216 (4) (a) 2 Florida Statutes. The Petitioner has not proven that the determination is incorrect. Proposed findings of fact and conclusions of law submitted on behalf of Cathedral Arts that were supported by the evidence and the law have been incorporated into the findings and conclusions above. Those not supported by the evidence or the law have been respectfully rejected.

Recommendation: It is recommended that the determination dated May 13, 2014, be AFFIRMED.

Respectfully submitted on August 26, 2014.



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 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:

August 26, 2014

Copies mailed to:

Petitioner

Respondent

Joined Party

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