

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

**PETITIONER:**

Employer Account No. - 2418122  
MARKHAM EXPRESS INC  
ATTN: TERESA GIFFORD  
8475 GARDEN STREET  
JACKSONVILLE FL 32219-2959

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-128362L**

**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 hereby 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 August 30, 2011, is dismissed due to lack of jurisdiction.

### 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 **June, 2012**.



\_\_\_\_\_  
Altemese Smith,  
Assistant Director,  
Unemployment Compensation 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 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 June, 2012.

*Shanendra Barnes*

\_\_\_\_\_  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Unemployment Compensation Appeals  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

By U.S. Mail:

MARKHAM EXPRESS INC  
ATTN: TERESA GIFFORD  
8475 GARDEN STREET  
JACKSONVILLE FL 32219-2959

LARRY PHILLIP  
2834 SPOTTED EAGLE DRIVE  
JACKSONVILLE FL 32226

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1 4624  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DOR BLOCKED CLAIMS UNIT  
ATTENTION MYRA TAYLOR  
P O BOX 6417  
TALLAHASSEE FL 32314-6417

MARKHAM EXPRESS INC  
MARKHAM EXPRESS  
ATTN: TERESA GIFFORD  
6570 STUART AVENUE  
JACKSONVILLE FL 32254

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Unemployment Compensation Appeals**

MSC 344 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 2418122  
MARKHAM EXPRESS INC  
ATTN: TERESA GIFFORD  
8475 GARDEN STREET  
JACKSONVILLE FL 32219-2959



**PROTEST OF LIABILITY  
DOCKET NO. 2011-128362L**

**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director,  
Interim Executive Director,  
Unemployment Compensation Services  
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner’s protest to a determination of the Respondent dated August 30, 2011, which held that services performed for the Petitioner by the Joined Party and other individuals as truck drivers constitute insured work pursuant to Florida Statutes.

The record of the case, including recordings of the hearing and any exhibits submitted in evidence, is herewith transmitted. Neither of the parties submitted Proposed Findings of Fact and Conclusions of Law.

**Issue:** Whether the Petitioner filed a timely protest pursuant to §443.131(3)(h), 443.141(2)(c), or 443.1312, Florida Statutes, and Rule 73B-10.035, Florida Administrative Code.

**Findings of Fact:** On August 30, 2011 a determination was mailed to the Petitioner at its last-known address of record. 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.

The Petitioner subsequently protested this determination on September 22, 2011. A hearing was scheduled for April 6, 2012.

**Conclusions of Law:** Section 443.141(2)(c), Florida Statutes, provides:

- (c) *Appeals.*-- DEPARTMENT OF ECONOMIC OPPORTUNITY and the state Department 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.

Rule 73B-10.035(5), Florida Administrative Code, provides:

(5) Timely Protest.

- (a)1. 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.
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.
- (b) If a protest appears to have been filed untimely, the Department 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.

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 the Department or Department...

The evidence in this case reflects that the determination was mailed to the Petitioner at its last-known address on August 30, 2011. The Petitioner did not protest this determination until on or about September 22, 2011. Evidence presented at the hearing was not sufficient to establish that the protest was filed within the allowable time limit. The determination has thus become final.

**Recommendation:** It is recommended that the Petitioner's protest to the August 30, 2011, determination be dismissed due to lack of jurisdiction.

Respectfully submitted on April 27, 2012.



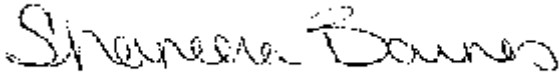
---

KRIS LONKANI, Special Deputy  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
Unemployment Compensation 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.



SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**April 27, 2012**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

LARRY PHILLIP  
2834 SPOTTED EAGLE DRIVE  
JACKSONVILLE FL 32226

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1 4624  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DOR BLOCKED CLAIMS UNIT  
ATTENTION MYRA TAYLOR  
P O BOX 6417  
TALLAHASSEE FL 32314-6417

MARKHAM EXPRESS INC  
MARKHAM EXPRESS  
ATTN: TERESA GIFFORD  
6570 STUART AVENUE  
JACKSONVILLE FL 32254