

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Order No. 17-01710

vs.

Referee Decision No. 0027650554-02U

Employer/Appellee

FINAL ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

I.
Jurisdiction

This case is before the Commission upon its exercise of original jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes, for disposition of the claimant's appeal¹ of a January 26, 2016 determination denying the claimant's request to reconsider the claimant's December 3, 2015 Notice of Monetary Determination holding her not monetarily qualified for receipt of benefits because her wages from the employer were excluded from coverage under the reemployment assistance law.

¹ Although the employer originally appealed Referee Decision No. 0027650554-02U (March 30, 2016) to the Commission, the Commission's taking original jurisdiction of the case vacated the referee's decision and returned the case to its status after the issuance of the determination. Thus, for purposes of this proceeding, the claimant is effectively appealing the original determination and is, therefore, considered the appellant.

II. **Procedural History**

The claimant filed a claim for reemployment assistance benefits effective November 29, 2015. The Department of Economic Opportunity (DEO) subsequently issued a Notice of Monetary Determination on December 3, 2015, holding the claimant not monetarily qualified for benefits because she did not earn sufficient covered wages in the base period of her claim. Because her earnings from the employer were not reported as covered wages, DEO forwarded the claim to the Department of Revenue (DOR), which is responsible for the assessment and enforcement of reemployment taxes, to investigate the employer's tax liability and issue a determination.²

Upon conclusion of its investigation, DOR issued a determination on January 15, 2016, holding the claimant was in exempt employment and that the employing unit was not liable for Florida reemployment assistance taxes for the claimant because Florida law excludes from coverage services by employees of a church or convention or association of churches or of an organization operated for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.

² Whereas determinations regarding a claimant's eligibility for benefits originate from DEO (such as the determination from which this case arose), determinations regarding an employing unit's liability for reemployment assistance taxes are issued only by DOR. *See* §443.121(2), Fla. Stat. (providing the tax collection service provider must determine whether an employing unit is an "employer" subject to the chapter); §443.1316(1), Fla. Stat. (providing DOR is the tax collection service provider); Fla. Admin. Code R. 73B-10.024(2) (providing DOR will issue determinations regarding employing unit tax liability).

Upon the claimant's request for reconsideration of the December 3, 2015 Notice of Monetary Determination, DEO issued a determination on January 26, 2016, that specifically addressed the claimant's service to the employing unit and held that service was excluded from coverage under the reemployment assistance law because the employing unit is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church or convention or association of churches. The claimant timely appealed that determination and a hearing was held before an appeals referee on March 21, 2016. Following the hearing, the referee issued Referee Decision No. 0027650554-02 (March 30, 2016), holding the services the claimant performed for the employer were covered employment for purposes of Section 443.1216(4), Florida Statutes, and that the claimant was, therefore, monetarily qualified to establish a claim for benefits. The employer timely appealed the referee's decision to the Commission.

The Commission, by R.A.A.C. Order No. 16-01289 (September 29, 2016), notified the parties that it was vacating the referee's decision and assuming original jurisdiction of the case pursuant to Section 443.151(4)(c), Florida Statutes, for the purpose of supplemental proceedings. Pursuant to the Commission's order, the Clerk of the Commission opened and docketed a new hearing level proceeding under R.A.A.C. Docket No. 16-03005.

Due to ongoing issues in scheduling the supplemental proceedings caused by party unavailability, and after giving the parties an opportunity to show cause why the appeal should not be dismissed without prejudice, the Commission issued R.A.A.C. Order No. 16-03005 (February 24, 2017), dismissing the claimant's appeal without prejudice and giving the claimant until May 31, 2017, to request reopening of the appeal before the Commission. The claimant timely requested reopening of the appeal and the appeal was reopened and docketed under R.A.A.C. Docket No. 17-01710. After proper notice, a supplemental hearing was conducted by the Commission on October 25, 2017, at 9:30 a.m., at which both parties participated.

III. **Issues on Appeal**

The principal issue before the Commission is whether the claimant was paid sufficient wages for insured work during the base period to establish monetary qualification within the meaning of Section 443.091(1)(g), Florida Statutes. Resolution of that issue requires determination of whether the claimant's wages earned from the employer were exempt from coverage under the reemployment assistance law by virtue of being earned in excluded employment; specifically, whether her work with the employing unit was excluded employment by virtue of

Section 443.1216(4)(a), Florida Statutes, excluding employment by a church or a convention or association of churches, or 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.³

IV. Findings of Fact

1. The claimant filed a claim for reemployment assistance benefits effective November 29, 2015, establishing a base period from July 1, 2014, through June 30, 2015. (R.12-18).
2. The claimant worked full time as an assistant to the director with the employing unit during the base period of this claim. (R.15, R.545-546).
3. On January 15, 2016, DOR determined that the employing unit was not liable for Florida Unemployment Compensation/Reemployment Assistance tax for the claimant pursuant to Section 443.1216(4), Florida Statutes. (R.31).

The Employing Unit

4. The employer is a non-profit organization incorporated under the laws of Florida and exempt from federal income tax under Section 501(3)(c) of the Internal Revenue Code. (R.382, 583, T.51: 21).⁴

³ The Commission does not have jurisdiction over the issue of the employing unit's taxation by DOR.

⁴ References to "T" refer to the transcript of the October 25, 2017 hearing before the Commission. Any citations to the hearing before the appeals referee will refer to the record pages for that transcript.

5. The employer established itself as a public non-profit organization, rather than specific certification as a church under the Internal Revenue Code, to maintain transparency to its donors with regard to its finances. (T.52: 4-13).

6. The organization voluntarily complies with the standards set by the Evangelical Council for Financial Accountability (ECFA), a council that has established standards for churches and religious organizations with regard to financial accountability and transparency. (T.52: 20-23, T.53: 1-8).

7. The organization has a distinct legal existence and owns the property and facilities from which it operates. (R.440, T.53: 11).

8. The organization employs five ordained ministers, including the organization's president/CEO. (T.56: 21, T.57: 17, T.115: 6-21, T. 116: 1-20, T. 117: 1-13).

9. The organization is supervised by a Board of Directors that consists of citizens from various church denominations. (T.85: 15-16, T.93: 12-22, T.94: 1-12).

10. Most of the organization's board members are active in their own churches and report the employer's activities to their respective churches. (T.93: 12-22, T.94: 1-17).

The Employing Unit's Operations and Purpose

11. The employer operates a number of programs ministering to the homeless and other less fortunate persons in the city in which it is located and the surrounding areas. Its largest ministry is a men's rescue mission providing food, housing, and clothing to the homeless on an overnight basis. (T.80: 8-22, T.81: 1-21).

12. It operates a men's "residential" program, which is a court-approved substance abuse recovery program. A licensed mental health counselor is on staff. (T.83: 10-16). It also operates a women's and children's residential program. (T.77: 5-9).

13. The organization has two residential facilities, one for men and one for women with children. (T.77: 7-9).

14. In addition, the employer operates a food ministry outreach program through which it collaborates with local churches to feed the poor and at-risk individuals in the community. (R.383, 604, T.73: 16, T.32-33).

15. The organization also operates a school and thrift stores. (T.64, T. 104: 15-20, T.108: 14-15).

16. Under subparagraph (a) of Article II of the organization's articles of incorporation, the general nature of the corporation is "[t]o conduct a rescue mission for the purposes of providing housing and meals for the destitute and the 'down-and-out,' and in connection therewith to spread the Gospel of the Lord Jesus Christ in every way prescribed or approved by the Holy Scriptures" Under subparagraph (c), the general nature of the corporation also includes carrying on "religious services in any and all facilities owned by the corporation." (R.640).

17. The employer's mission statement provides that the organization is "set apart by the Spirit of God to communicate the Gospel of Jesus Christ to meet the physical, emotional, and other needs of the poor and at-risk population." (R.652, T.54: 16-19).

18. The organization holds religious services every evening at the men's facility for individuals participating in its programs as well as the general public. (T.55: 8-11, T.64: 3-7, T.77: 14).

19. The nightly services are primarily attended by the homeless in the community and the men in the employer's programs and are posted on its website. (T.76: 17-21, T.77: 3-4).

20. The organization holds another service on Thursday evenings at the facility for women and children. (T.77: 12-13).

21. Individuals participating in the employer's overnight and residential programs are required to attend the services. (T.77: 21, T.78: 1-2, T.82: 7-8).

22. The organization also holds a religious service on Thursday mornings for its staff members, which all staff members are expected to attend at least twice per month. (T.78: 7-8).

23. All religious services held at the employing unit's premises are overseen, if not conducted, by one of its five ordained ministers. (T.56: 17-18, T.57: 12-17, T.59: 19-20, T.60: 1-2).

24. Services include music, prayer, Scripture reading, a Gospel message, and a time for response to the message. (T.55: 9-10, T.60: 6-10, 14-15, T.61: 7-9). These services are evangelical in nature; that is, as part of the response to the message, attendees are given the opportunity to become Christians. (T.55: 6-11).

25. In addition to the religious services, Biblical life skills are taught throughout the week. (T.64: 20-22, T.65: 1-4). The substance abuse recovery program uses a holistic approach including Scriptural training as an aid to overcoming addiction. (T.128 :11-15).

26. The organization requires that all staff members adhere to the highest possible standards of Christian conduct as listed in its handbook. Staff members are required to "regularly attend and participate in a locally recognized Christian, evangelical, Bible-believing church." (R.653).

Support for the Employing Unit

27. The employer collaborates with individual churches and church associations of various denominations, which donate monetary funds as well as in-kind services, including providing volunteers and donating to the organization's food bank inventory. (T.7-19, T.67: 8-22, T.68).

28. Without the financial and in-kind support from local churches and their members, the employer would not be able to operate its programs. (T. 71: 4, T.74: 13, R.605, R. 606: 15-16, R.607: 3).

29. Churches and church associations of various denominations collaborate with the employer including Baptist, Presbyterian, Assembly of God, Methodist, Episcopal, Pentecostal, and Holiness churches. (T.85: 6-12).

30. In particular, the employer collaborates with the South Florida Baptist Association⁵ and the Peninsular Florida District of the Assemblies of God.⁶ (T.46: 10-22, T.66: 7-19). This collaboration provides the employer the opportunity to come in contact with pastors of the local member churches of the associations. (T.46: 20-22, T.67: 4-10).

31. The employing unit also has relationships with a local association of Presbyterian churches and the Methodist Foundation. (T.85: 5-10).

⁵ <http://www.sfba.info/>.

⁶ <https://www.penflorida.org/>.

32. The churches supporting the employer have the common purpose to spread the Gospel while helping the poor and at-risk in the community. (T.84: 30-21, T.88: 18-19).

33. This same community of churches comes together to coordinate community activities within their geographical area. (T.40: 20-22).

34. Approximately six percent of the employer's cash donations come from churches directly; that is, donations made from supporting churches from their own funds. (T.90: 12-13).

35. The vast majority of cash donations comes from individuals who attend those churches that collaborate with the organization. (T.88: 11-13, T.89: 1-5, T.91: 3, T. 92: 3, T.93: 5-6). In 2016, the organization received between 1.4 and 1.5 million dollars in cash donations from such individuals. (T.110: 11-13).

36. The employer's president/CEO and other staff members visit local churches on a weekly basis to discuss the organization's programs and to request financial and in-kind support from the churches and their members. (T.89: 15-21, T.90: 1-3).

37. The vast majority of individual donations originate from outreach done in the churches that collaborate with the employing unit. (T.88: 12).

38. Cash donations from individual congregants of the supporting churches are obtained in multiple ways. However, as much as half or more of the annual cash donations are obtained from donations made through contribution or “offering” envelopes exclusively for the employer, which the organization places in the churches themselves for Thanksgiving and Christmas. (T.38:18-39: 4, 67: 10-21; 90: 18-91: 11). Additionally, individuals who contribute through this method are added to the employer’s mailing list for additional solicitation as needed. (T.67: 22-68: 3).

39. More than half of the employer’s volunteers are from the churches that support it. (T.103: 21).

40. On a typical night, 4 - 15 volunteers assist with the men’s overnight program (T.97: 18-22), 2 – 6 volunteers assist with the women’s program (T.98: 6), and approximately 12 volunteer with the men’s residential program. (T.98: 15).

41. In addition to the donations it receives, the employer generates approximately \$1.8 million per year in revenue from operating its thrift stores, which sell items donated by individuals from supporting churches and the community at large. (T.108: 14-22, T.109: 1-10).

42. The churches that support the employer exert no direct control over its operations; however, the employer provides those churches with monthly reports, and the parties have an informal expectation that the organization will maintain its religious focus. (T.95: 9-22). The employing unit’s board members are also drawn from these churches. (¶ 9, *supra.*)

43. The organization also hosts fundraising activities in the community, most of which are church-related. (T.92: 10-11).

44. In addition, the organization utilizes the services of a professional fundraising company to keep donors informed of the organization's current needs. (T.122: 15, T.123: 3, T. 124: 10-15).

45. The employer also receives a small amount of its total revenues from corporate sponsorship through foundations. (T.110: 1-5).

46. The organization does not receive support from broad-based secular organizations such as the United Way nor does the organization receive government funding. (T.89: 9).

V.

Analysis, Ultimate Findings, and Conclusions of Law

Only claimants who establish earnings from employment covered by the reemployment assistance law, referred to administratively as "insured work," are eligible to receive benefits. *See* §443.1217(1), Fla. Stat. (defining "wages" under the statute as earned from "employment" as defined in §443.1216, Fla. Stat.). Excluded from the definition of "employment," and necessarily from "insured work," are services performed in the employ of certain religious organizations, as discussed below. Under the facts of this case, the claimant's monetary qualification ultimately depends on whether the statutory exclusion from "employment" contained in Section 443.1216(4)(a), Florida Statutes, applies to her employment with the employing unit.

FUTA and Florida law

Understanding this exemption requires a brief explanation of the relationship between Florida's statute and the Federal Unemployment Tax Act (FUTA), which, among other things, defines employment subject to FUTA taxes. Both the federal government and state governments tax wages for purposes of providing unemployment insurance benefits. FUTA tax revenue primarily funds the administration of both the U.S. Department of Labor (DOL) unemployment programs *and* state unemployment and certain reemployment-related programs. State unemployment insurance (UI) taxes, by contrast, pay for the benefits themselves. FUTA imposes a tax on wages paid by employers who are engaged in covered "employment" as defined by the Act. 26 U.S.C. §3306. Employers, however, obtain a substantial credit against base FUTA liability if they pay contributions to a state unemployment compensation fund approved by the federal government. 26 U.S.C. §3302. Each state's plan must be reviewed and approved annually by the U.S. Secretary of Labor. 26 U.S.C. §§3304, 3309. Thus, federal approval of state programs, including the governing state law, is crucial for lowering the FUTA tax burden on employers. To qualify for approval, a state program must cover certain categories of employment. *Id.*

FUTA exempts from federal unemployment taxation wages paid by charitable organizations exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. However, in 1970, Congress amended FUTA to require *states* to provide coverage to employees of most nonprofit organizations, state hospitals, and state institutions of higher education that had previously been exempt. *See* 26 U.S.C. §3309(a)(1)(A). Thus, charitable organizations are generally exempt from FUTA taxes, but not state UI taxes. Congress, however, exempted from this mandatory state coverage a narrow class of persons who are serving:

(1) in the employ of (A) a church or convention or association of churches, (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches

26 U.S.C. §3309(b)(1).

In 1971, Florida's unemployment compensation statute was amended to conform with these amendments to FUTA. Chapter 71-225 of the Laws of Florida states that it was the "intent of this Legislature that the Florida unemployment compensation law shall conform in all respects to the requirements for approval by the Secretary of Labor, and that it shall secure for Florida employers the maximum advantages available to them under the federal unemployment tax act." Similar

language regarding statutory construction is found in the current version of the legislative intent for the reemployment assistance law. *See* §443.031, Fla. Stat. That is, Florida’s reemployment law is to be interpreted so as to be in conformity with federal law in order to obtain the tax credits and administrative funding provided by federal law.

Ordinarily, due to the direction to interpret the statute in a manner consistent with federal law, we rely on guidance from DOL. However, such guidance is extremely limited on these issues.

In 1976, DOL, in its “Orange Book,”⁷ which provided model state legislation facilitating conforming enactments to the 1970 amendments, opined that the word “church” in those amendments should be narrowly construed to refer to a “house of worship’ maintained by a particular congregation.” This position was explicitly rejected by the U.S. Supreme Court in *St. Martin Evangelical Lutheran Church v. S.D.*, 451 U.S. 772, 784 n.13 (1981). The Orange Book commentary also recognized, more usefully, that “‘convention’ and ‘association’ refer to formal and informal groups of churches, clergy or laymen, whether of a continuing nature or meeting periodically, whose purpose is primarily concerned with religious and denominational matters of the group or groups represented.”

⁷ Unemployment Ins. Serv., U.S. Dept. of Labor, 1976 Draft Language, §2(K)(1)(D)(i), at pp. 27-28.

The DOL's June 10, 1987 Unemployment Insurance Program Letter (UIPL) No. 28-87, "Coverage of Nonaffiliated Religiously-Oriented Entities under Section 3309(b)(1), FUTA," merely restates the statutory tests, and indicates that religiously-oriented organizations not meeting the requirements of 3309(b)(1) are not exempt. We do not read the UIPL to suggest that only organizations affiliated with a particular denomination can be covered by the definition, but to the extent that it does, DOL reads into the statute language that is not present therein, and arguably conflicts with the Orange Book commentary. Moreover, as discussed below, we believe that adding any such limitations raises significant Constitutional concerns.

Given the limited reliable DOL guidance, we look to the other major source of federal guidance: the Internal Revenue Service's (IRS) guidance interpreting the same terms in other portions of the Internal Revenue Code. This guidance will be discussed in appropriate sections below.

The Florida Exemption

The current version of the Florida law at issue in this case, which is substantively identical to its mother language in FUTA, provides:

- (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.

§443.1216(4)(a), Fla. Stat.⁸

Although DOR has determined that the employer has met the criteria for exemption from tax liability based on the above provision, the issue in this case is not the employing unit's tax exemption status; rather, it is whether the claimant has met the eligibility condition of having insured work with the employer within the meaning of the reemployment assistance statute. In fact, the Commission does not have subject-matter jurisdiction over tax matters. Thus, while the Commission's decision in this case will ultimately turn on the same facts and statutory language as that which would govern the employing unit's tax-exempt status, our decision has no legal effect as to the issue of tax-exempt status.⁹

⁸ Subsections (2) and (3) are the Florida equivalents to 26 U.S.C. §3309(a)(1)(A)&(B), albeit in reverse order.

⁹ We will provide DOR a copy of our decision for any consideration the agency wishes to give to it.

Burden of Proof

The burden of proof to establish eligibility for benefits rests with the person claiming benefits. *Florida Industrial Commission v. Ciarlante*, 84 So. 2d 1, 4-5 (Fla. 1955) (distinguishing eligibility/ineligibility [§443.091, Fla. Stat.] from disqualification [§443.101, Fla. Stat.]). In *His Kids Daycare v. Florida Unemployment Appeals Commission*, 904 So. 2d 477, 479 (Fla. 1st DCA 2005), the court held that the claimant's burden of proving eligibility for benefits includes proving that the services she performed were not excluded from the definition of insured work.

The effect of *His Kids Daycare* is that the claimant has the burden to prove that her employing unit is *not* a church *and* that the organization is *not* operated primarily for religious purposes or is *not* operated, supervised, controlled, or principally supported by a church or association of churches. The court in *His Kids Daycare* held that whether the criteria of each prong is met is a question of fact. *Id.* at 480.

With this background, we turn to the specific statutory issues in this case.

Is the Employing Unit a Church under Section 443.1216(4)(a)1., Florida Statutes?

In analyzing this case under Section 443.1216(4)(a), Florida Statutes, the first issue to be addressed is whether the employing unit is itself a “church or convention or association of churches” under subparagraph 1.

In determining whether an organization qualifies as a “church” under the unemployment compensation law, the majority of courts have taken one of three different approaches: 1) application of the criteria established by the Internal Revenue Service, which provides an exemption from federal income taxation for a church; 2) application of the general or traditional understanding of the term church; or 3) a combination of both. As the IRS has presciently noted in Part 7, Chapter 26, Section 2 of the Internal Revenue Manual (03-30-1999) regarding the definition of “church,” “[f]ew terms in the Code have proven as difficult to define, and as fraught with controversy, given the First Amendment’s prohibition against establishment of a religion or interference with the free exercise of religion.”¹⁰

The IRS considers whether an organization should be accorded status as a “church” for federal income tax purposes under the following criteria (recognizing that few, if any, religious organizations will satisfy all):

- (1) a distinct legal existence,
- (2) a recognized creed and form of worship,
- (3) a definite and distinct ecclesiastical government,
- (4) a formal code of doctrine and discipline,
- (5) a distinct religious history,
- (6) a membership not associated with any other church or denomination,
- (7) a complete organization of ordained ministers ministering to their congregations,
- (8) ordained ministers selected after completed prescribed courses of study,
- (9) a literature of its own,

¹⁰ Available at https://www.irs.gov/irm/part7/irm_07-026-002.

- (10) established places of worship,
- (11) regular congregations,
- (12) regular religious services,
- (13) Sunday schools for the religious instructions of the young,
- (14) schools for the preparation of its ministers.

Applying the IRS criteria, the Idaho Supreme Court determined that a non-denominational religious school that was not associated with any specific church or group of churches did not satisfy numbers 3, 4, 7, or 8 of the above-listed factors and was not a church. *Nampa Christian Schools Foundation, Inc. v. Department of Employment*, 719 P.2d 1178 (Idaho 1986).¹¹ Likewise, a California Appellate Court called the IRS criteria a “useful approach” when determining that Young Life, an evangelical organization focused on adolescents, and Mount Hermon Associates, a religious conference and retreat center for nondenominational groups, were both churches within the statutory meaning due to their “use of the Bible, promulgation of a creed or doctrine and the conduct of worship.” *Young Life Campaign v. Patino*, 122 Cal. App. 3d 559, 575 (Cal. Ct. App. 1981).

Although the IRS criteria have been widely adopted across jurisdictions, some courts have criticized the approach and have turned instead toward the common understanding and usage of what is meant by the term “church.” In some instances, the courts have rendered a narrower definition of church than that contained in the IRS criteria. *See Alton Newton Evangelistic Association, Inc. v. South Carolina*

¹¹ The court ultimately found the school was exempt from unemployment benefits coverage on other grounds. *See* 719 P.2d at 1184.

Employment Security Commission, 326 S.E.2d 165 (S.C. Ct. App. 1985). See also *Sunday Breakfast Mission, Inc. v. Unemployment Insurance Appeal Board*, 2009 Del. Super. LEXIS 222 (Del Super. Ct. 2009). Another took a broader approach, concerned that the IRS factors, as strictly construed and applied by the state, discriminated against non-denominational and non-traditional organizations in violation of the First Amendment “Free Exercise” and “Establishment” clauses. *The Christian Jew Foundation v. Texas*, 653 S.W.2d 607 (Tex. 3d App. 1983).

In another case, the court has taken somewhat of a hybrid approach in determining whether an organization is a church within the unemployment compensation context by giving consideration to both the IRS criteria as well as the common understanding of the word “church.” In *Campus Crusade for Christ v. Unemployment Appeals Commission*, 702 So. 2d 572, 577 (Fla. 5th DCA 1997), the Fifth District Court of Appeal recognized that “the definitional status of a ‘church,’ at least for purposes of an exemption from liability for payment of unemployment compensation benefits, is somewhat amorphous.” The case involved Campus Crusade for Christ, a Christian missionary organization that holds weekly worship meetings for students. *Id.* at 574. The court determined that the organization did not satisfy several IRS factors, including numbers 3, 6, 7, or 8. *Id.* at 577. After reviewing various courts’ versions of the definition of “church,” as well as the IRS factors, the court observed: “[w]hile regular worship services are essential, church services contemplate the presence of an ordained ministry and the existence of an

established liturgy, both factors being absent here.” *Id.* The court’s decision, however, indicates the deciding factor was that the employer did not “publicly promote itself as a church.” *Id.* Thus, the court concluded that Campus Crusade for Christ was not a church for purposes of an unemployment compensation benefits exemption.

The employing unit in this case operates a rescue mission providing food, housing and clothing to the homeless both on an overnight and long-term basis. The organization provides these services in connection with its mission to spread the Gospel and, therefore, holds religious services on a regular basis, most of which are conducted, and all of which are overseen, by an ordained minister.

In considering whether this employing unit is a church under 443.1216(4)(a)1., Florida Statutes, the Commission has given primary consideration to the IRS criteria, while considering the ordinary meaning of the term “church” as well. In applying the IRS factors, we find persuasive and pertinent the Constitutional concerns recognized in *Christian Jew Foundation*, but believe that the factors can be applied in recognition that some of them will be of limited applicability to non-denominational churches, and by broadly interpreting others in such a way as not to discriminate against a non-denominational organization.¹² The evidence reflects

¹² Although Florida law holds that exemptions from coverage under Chapter 443 are to be narrowly construed, *see Campus Crusade for Christ*, 702 So. 2d at 575, a proposition which we follow generally herein, that doctrine must also be squared with the Constitutional mandate not to apply the law in a fashion that discriminates against religious entities merely because they are non-denominational.

that the employer satisfies several of the IRS factors, including 1, 8, 10, and 12, and arguably satisfies others under a broad interpretation, including 2, 4, 7, and 11. The employer does not satisfy the other IRS criteria, perhaps the most significant of which is No. 6: “a membership not associated with any other church or denomination.”

Pursuant to its handbook, the organization requires its staff members to “regularly attend and participate in a locally recognized Christian, evangelical, Bible-believing church.” The record reflects the employer’s board of directors are also members of, and actively involved in, their own local churches. Although the employer holds nightly services open to the public, the record reflects those services are primarily attended by individuals in its overnight and residential programs, who are required to attend. Thus, the record does not indicate that program attendees have chosen the employer as their “church”; rather, the record reflects they are required to attend the organization’s religious services in order to participate in its programs. The senior pastor of the Assembly of God church in Auburndale, Florida, testified that he refers members of his own church to the employer’s programs. (T.42: 17-21). It is likely that many other individuals who attend its programs are associated with or are or become members of other churches, particularly those which collaborate with the employing unit. Considering these factors, the employer cannot be considered to have a membership “not associated with any other church or denomination.”

At the hearing before the appeals referee, the appeals referee asked the employer's president/CEO if the organization was a church and he replied that it was a "religious organization" that was connected to a "community of churches." He explained that the "churches," on the other hand, disciple and equip their congregants to participate in ministries such as the employer's. At the hearing before the Commission, however, the president/CEO testified that the employer holds itself out as a "church." Although there was no explanation for the difference in testimony, we surmise that it is based on the same ambiguity regarding the meaning of the word "church" that challenges us in this case, and the recognition that what is commonly called a church, and what might be a church under the law, are two different things. Nonetheless, what the organization holds itself out to be is relevant in determining its status under *Campus Crusade for Christ*.

While a slight majority of the IRS factors arguably favor a determination that the employer is a church, and recognizing that this is an even closer case than *Campus Crusade for Christ*, we conclude that the record establishes that the employer is not a church or a convention or association of churches within the meaning of Section 443.1216(4)(a)1., Florida Statutes. There is no doubt that in many ways the employer resembles a church, and it certainly has regular services that could not be distinguished from those in recognized churches. However, a goal of the organization is to transition individuals into established churches to further

their spiritual growth, rather than establishing their permanent membership at the mission situs. Because the employer and likely most of its supporting church organizations would recognize this as a material distinction, we conclude that applying this distinction does not run afoul of Constitutional prohibitions.

Is the Employing Unit an Organization that is Operated Primarily for Religious Purposes and Operated, Supervised, Controlled, or Principally Supported by a Church or a Convention or Association of Churches Under Section 443.1216(4)(a)2., Florida Statutes?

1. *Is the employment unit operated primarily for religious purposes?*

In determining an employing unit's primary purpose, many courts have focused upon an employing unit's secular operations rather than religious motivations in determining its primary purpose. *Cathedral Arts Project, Inc. v. Department of Economic Opportunity*, 95 So.3d 970 (Fla 1st DCA 2012), involved a non-profit corporation founded by an Episcopal Church to provide performing and visual arts instruction in public schools and after-school programs as an outreach ministry. The First District Court of Appeal determined that the employing unit was controlled by the church; however, the court held that the employing unit's primary purpose – to give art instruction to underprivileged children – was not religious. *See also Harbert v. Evergreen Christian Outreach*, 272 P.3d 1190 (Colo. App. 2012) (holding a charitable organization founded by a group of churches to provide food,

clothing, and shelter to the impoverished was religiously motivated but was not operated primarily for religious purposes); *Sunday Breakfast Mission, Inc., supra* (holding a rescue mission that provided food, shelter, employment, substance abuse rehabilitation, and religious services for the impoverished was not operated primarily for religious purposes).

Some courts, however, have not made such a distinction between an employing unit's religious motives and its actual operations. In *Kendall v. Director of the Division of Employment Security*, 473 N.E.2d 196 (Mass. 1985), the Massachusetts Supreme Court determined that a special education facility for developmentally disabled persons was operated primarily for religious purposes. The court stated it did not identify a distinction between the school's religious motivations and its purpose to educate the developmentally disabled:

[t]he fact that the religious motives of the Sisters of St. Francis of Assisi also serve the public good by providing for the education and training of the mentally retarded is hardly reason to deny the Center a religious exemption.

473 N.E.2d at 199. The Massachusetts court found that the school being operated primarily for religious purposes was exempt for unemployment tax purposes.

Likewise in *Czigler v. Ohio Bureau of Employment Services et al*, 501 N.E.2d 56, 57 (Ohio 2d Ct. App. 1985), the court found that the exemption applied to a school operated by a group of Jewish congregations "without regard to the proportion of time devoted to religious instruction." The *Czigler* court added that the appropriate test is not the nature or extent of the activities by which the

organization carries out its primary religious purpose, but rather “the purpose for which they are operated and conducted.” *Id.* See also *Nampa Christian Schools Foundation, supra* (finding that the school’s religious purposes are interwoven with educational goals such that the religious purposes could be considered primary); *St. Vincent DePaul Shop v. Garnes*, 1974 Ohio App. LEXIS 3050, 8-9 (Ohio 9th Ct. App. 1974) (“The charitable activities of a church or a religious organization are still religious in character. The determination must be as to whether the charitable activities are religiously motivated or secularly motivated”).

The more persuasive line of cases are those that define primary purpose not just by looking at an organization’s operations, but the motivation behind those operations. In particular, the Commission finds substantial merit in the dissent expressed by Judge Swanson in *Cathedral Arts*, particularly his contention that the decision of the special deputy below, as well as the majority opinion, strayed from the plain language of the statute when it relied on facts concerning the employer’s *operations* instead of focusing on its *purpose*. 95 So. 3d at 975-77. In Judge Swanson’s view, which found clear support in *Peace Lutheran Church v. Unemployment Appeals Commission*, 906 So. 2d 1197 (Fla. 4th DCA 2005), the subjective motives of the organization in conducting the operations should be the focus of the statutory inquiry, and not the services provided. 95 So. 3d at 976. We further consider to be unpersuasive the rationale expressed in other cases that

relying on motive “would allow an organization to determine its own status without regard to its actual function.” *See Sunday Breakfast Mission, supra* at 11. Rejection of consideration of motive simply because it is subjective and therefore difficult to discern is little more than unwarranted judicial reconstruction of the statutory test, simply because the statutory test is hard to apply.

However, under the facts of this case, even a focus solely on the activities and operation of the employing unit would lead to a finding and conclusion that the employing unit’s activities are primarily religious in purpose. Although the employer provides services that are commonly thought of as secular, including providing food, shelter, and clothing to the homeless,¹³ these services are provided in connection with the organization’s mission to spread the Gospel, as reflected in its mission statement, vision statement, and Articles of Incorporation, as well as its day to day operation, which includes daily religious services. Unlike *Cathedral Arts, Harbert*, and *Sunday Breakfast Mission*, the organization requires program participants to participate in its religious services, all of which are overseen, if not conducted, by an ordained minister. Moreover, the religious services are evangelistic

¹³ The proposition that these activities are inherently secular, however, is itself debatable, given the substantial history of such services being provided in the American colonies and the United States by religious organizations well before extensive involvement by secular charities and governmental entities. *See* Amanda Porterfield, “Protestant Missionaries: Pioneers of American Philanthropy,” in *Charity, Philanthropy and Civility in American History*, ed. by Lawrence Friedman & Mark D. McGarvie, Cambridge University Press 2003.

in nature; that is, a major purpose of the services is to bring the attendees into the Christian faith in order to promote their spiritual growth. Perhaps most compelling is the fact that the employer draws the vast majority of support from churches and their congregations specifically because of its evangelical nature.

Since the organization's religious motives control its existence and operations, and are interwoven into the services it provides, we find the employing unit is operated primarily for religious purposes.

2. Is the employing unit operated, supervised, controlled, or principally supported by a church or a convention or association of churches?

Although the employer maintains an ongoing relationship with and reports its activities to the various churches and church associations that support it, it is not operated, supervised, or controlled by any of those churches or church associations. The evidence shows the employing unit is its own separate legal entity that owns its own property and is supervised by its own board of directors. Thus, the question becomes whether the evidence establishes the organization is principally supported by a church or convention or association of churches.

a. Principally supported

In determining whether an employing unit is “principally supported” by a church or a convention or association of churches, several courts have concluded that evidence of financial support was needed in order to be granted an exemption. *See A Child’s Touch v. State of Colorado*, 2015 COA 182 (Colo. App. 2015); *Unity Christian School of Fulton v. Rowell*, 6 N.E.3d 845 (Ill 3d App. Ct. 2014). Still other courts have determined that “support” may include contributed goods, services, and organizational backing. *See, e.g., Schwartz v. Unemployment Insurance Commission*, 895 A.2d 965 (2006).

Our findings reflect that the employer relies on financial and in-kind support from a local community of churches of various denominations, whose members donate funds, inventory for its thrift stores and foodbank, as well as volunteer to assist its programs. Approximately six percent of the employer’s donations come directly from the churches that support it, while approximately 94 percent of donations comes from individuals who attend those churches. Our findings reflect that the vast majority of individual donations originate from outreach done in the community of churches that collaborate with the employer. Whether the individual donations are made directly through the churches, such as through offering envelopes provided by the employing unit which are collected and forwarded to it, or directly through mail, the vast majority of the cash donations it receives originate

from contacts with its supporting churches. More than half of the employer's volunteers are from that community of churches as well. Although a little more than half of the organization's revenue comes from operating its thrift stores, the stores sell items donated by individual church members as well as the community at large.

The undisputed evidence reflects that the employer could not operate its programs without the monetary and in-kind support from the community of churches with which it collaborates and the individual members of those churches. The Commission, therefore, finds the employer is "principally supported" by that community of churches.

b. Convention or Association of Churches

Having found the employer is an organization operated primarily for religious purposes, which is principally supported by a community of local churches, we must now address whether that community of churches constitutes an "association of churches" within the meaning of the reemployment assistance law.

There is no definition for the term "association of churches" in Section 443.1216(4), nor in 26 U.S.C. §3309(b)(1) upon which the Florida law is based, nor in the Internal Revenue Code, which provides an exemption from federal income taxation for churches including conventions or associations of churches that meet the requirements of Section 501(c)(3). However, as noted above, the DOL guidance

states “‘convention’ and ‘association’ refer to formal and informal groups of churches, clergy or laymen, whether of a continuing nature or meeting periodically, whose purpose is primarily concerned with religious and denominational matters of the group or groups represented.” We give substantial deference to this definition, as directed by our statutory mandate.

The DOL definition does not specifically address whether the terms could include ecumenical or inter-denominational associations. The phrase “convention or association of churches” has been characterized as having a historical meaning generally referring to a cooperative undertaking by a church of the same denomination. See Bruce Hopkins, *The Law of Tax Exempt Organizations* 319-320 (11th ed. 2015). The phrase was originally used by Congress to refer to the organizational structures of congregational churches in order to accord them the comparable tax treatment granted to hierarchical churches. See S. Rep. No. 2375, 81st Cong., 2d Sess. 27-28 (1950); *De La Salle Inst. v. United States*, 195 F. Supp. 891 (N.D. Cal. 1961). The IRS, however, subsequently opined, “[a]lthough the term ‘convention or association of churches’ has a historical meaning generally referring to a cooperative undertaking by churches of the same denomination, nothing in the legislative or religious history of the term prevents its application to a cooperative undertaking by churches of differing denominations.” Rev. Rul. 74-224 (I.R.S. 1974).

No court in Florida has yet addressed the definition of “association of churches” within the reemployment assistance/unemployment compensation context. In fact, few court cases in other states have addressed the meaning of the phrase. In *Grace Brethren Church v. State of California*, No. CV 79-93 MRP (C.D.Cal. 1981), a California court held that the phrase refers only to the “established, institutionalized religious denominations and their constituent congregations.” (The opinion was later vacated by the Supreme Court on other grounds in 457 U.S. 393 (1982).) In *Department of Employment v. Idaho Allied Christian Forces*, 669 P.2d 201 (Idaho 1983), the Idaho Supreme Court looked at both the definition articulated in *Grace Brethren* as well as a broader plain-meaning definition, finding that Idaho Allied Christian Forces met neither. The Idaho Supreme Court found that even though various churches are represented on the board of directors and that 85 percent of IACF’s funds come from Christian churches, such did not constitute evidence that the churches “combined to achieve a common purpose” or “of a cooperate undertaking by those churches.” *Id.* at 204.

Sunday Breakfast Mission, supra, involved a rescue mission that provides very similar services to the employing unit and holds nondenominational religious services led by an ordained minister in a chapel twice daily. The court stated:

. . . the word “association” implies a grouping or individuals working together for a common purpose. A number of individuals who might share common beliefs or goals helping a separate organization is not an association for purposes of the present statute.

Id. at 14. The court concluded that Sunday Breakfast Mission's primary purpose was not religious and that it was not operated, supervised, controlled, or principally supported by a church or convention or association of churches and, therefore, denied the organization an exemption from unemployment insurance taxation. *Id.*

While the issue in *Sunday Breakfast Mission* was whether the employing unit was entitled to tax exempt status under the unemployment compensation law, the issue in this case is whether the claimant performed services in insured work and is, therefore, eligible for benefits. As stated, in Florida, the claimant bears the burden of proof that she is eligible for reemployment assistance benefits. *See His Kids Daycare, supra.* Thus, the ultimate question in this case is whether the claimant has established that the community of churches which collaborate with and principally support the employer is *not* an "association of churches."

In defining the term "association of churches," the Idaho Supreme Court in *Nampa Christian School Foundation, supra*, adopted the definition proposed by the defendants in *Idaho Allied Christian Forces, supra*, which was articulated by the court as follows:

[Allied], on the other hand, has argued that "association," as used in I.C. § 72-1316A(g)(1), should be given a broader definition, that being: [citation omitted] "*The act of associating, or the state of being associated; fellowship; combination for a common purpose,*" quoting Britannica World Language Edition of Funk & Wagnalls New Practical Standard Dictionary. *Thus, [Allied] argues that the term applies to "a cooperative undertaking by churches of differing denominations,"* quoting Rev.Rul. 74-224, 1974-1, C.B. 61. *Id.* at 314, 669 P.2d at 203 (emphasis added).

719 P.2d at 923. The Idaho Supreme Court held that, under the above definition, it was clear that the several different churches which were united by their relationship to Nampa Christian constituted an "association of churches" for purposes of the unemployment compensation law. *Id.* at 924.

The Commission is persuaded by the definition adopted by the Idaho Supreme Court, which is consistent with both the DOL and IRS guidance. We view *Sunday Breakfast Mission* as an overly restrictive application of the statutory definition, one that may not be consistent with the relevant DOL guidance defining the phrase as “formal *and informal* groups of churches, clergy or laymen, whether of a continuing nature or meeting periodically, whose purpose is primarily concerned with religious and denominational matters of the group or groups represented” (emphasis added). For the reasons discussed earlier, we also give significant deference to the IRS position.

Our findings reflect the community of churches that support the employing unit in this case include evangelical churches from various denominations, all of which are engaged in a cooperative undertaking with the employer to help the homeless and at-risk in the Lakeland, Auburndale, and surrounding areas while maintaining an emphasis on spreading the Gospel. The record reflects this community of churches is united not only by their relationship to the employing unit, but they also come together to coordinate community activities within their geographical area.

Even without accepting this definition, however, the employer meets the statutory standard. It receives major support through formal associations of churches of the same denomination. In particular, as noted in the findings, the employer has existing support relationships with the Peninsular Florida District of the Assemblies of God and the South Florida Baptist Association, as well as their member churches. Even under the restrictive view in *Sunday Breakfast Mission*, those organizations would meet the test of an “association of churches.”

Thus, our findings show that the employer is principally supported by a community of churches that works together for a common purpose to further the employer’s programs. In light of these findings, the Commission concludes the claimant has not met her burden to establish that the employing unit is not principally supported by an “association of churches” within the meaning of the reemployment assistance law.

VI.
Decision

The determination issued January 26, 2016, denying the claimant's request to reconsider the December 3, 2015 Notice of Monetary Determination holding her not monetarily qualified for receipt of benefits because her wages from the employer were excluded from coverage under the reemployment assistance law, is affirmed.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Thomas D. Epsky, Member
Joseph D. Finnegan, Member

This is to certify that on

12/29/2017 ,

the above Order was filed in the office of the Clerk of the Reemployment Assistance Appeals Commission, and a copy mailed to the last known address of each interested party.

By: Benjamin Bonnell

Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
REEMPLOYMENT ASSISTANCE PROGRAM
PO BOX 5250
TALLAHASSEE, FL 32314 5250



*51039782 *

Docket No.0027 6505 54-02

Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

Employer

DOR Wage

DECISION OF APPEALS REFEREE

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved:

WAGE CREDITS: Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

ADDITIONAL WAGE CREDITS: Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

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ADDITIONAL WAGE CREDITS: Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

INSURED WORK: Whether services performed by the claimant during the base period constitute "employment," pursuant to Sections 443.036(21), 443.036(27); 443.1216, Florida Statutes.

Findings of Fact: The claimant filed a claim for benefits effective November 29, 2015, establishing a base period from July 1, 2014 through June 30, 2015. The claimant worked full time as an Assistant to the Director at Lighthouse Ministries, Inc. during the base period of this claim. Lighthouse Ministries, Inc. is a 501(c) 3 non-profit organization. The mission statement of Lighthouse Ministries states that the organization exists to communicate the Gospel of Jesus Christ to meet the physical, emotional, and other needs of the poor and at-risk population. The organization offers chapel service seven days a week. Biblical life skills are taught throughout the week. Over ninety percent of the organization's financial support comes from individuals. The organization's Board of Directors consists of citizens who are from a variety of different business backgrounds. No member of the board is a duly ordained, commissioned, or licensed minister of a church. The organization is not connected to any one specific church but instead works closely with over twenty-six churches providing outreach and missionary work to the people. The organization employs between ninety and one hundred full time and part time workers. The organization requires that all staff have a close, personal relationship with God. All board members, staff, and volunteers are members of their own respective churches. The property where Lighthouse Ministries is located is owned by Lighthouse Ministries. Lighthouse Ministries is voluntarily certified by two different evangelical associations.

During the third quarter of 2014, Lighthouse Ministries, Inc. paid the claimant gross wages of \$5,575.50. During the fourth quarter of 2014, Lighthouse Ministries, Inc. paid the claimant gross wages of \$5,575.50. During the first quarter of 2015, Lighthouse Ministries, Inc. paid the claimant gross wages of \$6,750. During the second quarter of 2015, Lighthouse Ministries, Inc. paid the claimant gross wages of \$6,750. The claimant did not otherwise work as an employee at any other organization or company during the base period of this claim.

Conclusions of Law: Section 443.1216, Florida Statutes (2012) 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.

Once it is established that the organization is a church or is church-controlled, the claimant needs to prove that the work was covered. See, His Kids Daycare v UAC, 904 So.2d 477 (Fla. 1stDCA 2005).

To qualify for Reemployment Assistance benefits, the claimant must have:

- (a) Base period wages for insured work in two or more calendar quarters of the base period; and
- (b) Total base period wages equaling at least 1.5 times the wages paid during the high quarter of the base period, but not less than \$3400.

The "base period" is the first four of the last five completed calendar quarters immediately preceding the first day of the benefit year. The "high quarter" is the calendar quarter in which the most wages were paid. The weekly benefit amount equals one twenty-sixth of the total wages paid during the high quarter, but not less than \$32 or more than \$275. Available benefits equal twenty-five percent of total base period wages, with a maximum established by law.

For claims submitted during a calendar year, the duration of benefits is limited to:

1. Twelve weeks if this state's average unemployment rate is at or below 5 percent.
2. An additional week in addition to the 12 weeks for each 0.5 percent increment in this state's average unemployment rate above 5 percent.
3. Up to a maximum of 23 weeks if this state's average unemployment rate equals or exceeds 10.5 percent.

The maximum amount of benefits for any claims filed in the calendar year 2015 is \$3850, or 19 weeks times the weekly benefit amount, based on an unemployment rate of 8.5%. The maximum amount of benefits for any claims filed in the calendar year 2014 is 16 weeks times the weekly benefit amount (up to \$4400 if the weekly benefit amount is \$275), based on an unemployment rate of 7.0%.

The testimony provided by the employer and the claimant demonstrate that the claimant was employed by a non-profit organization. The organization had at least four individuals in employment for some portion of a day in each of twenty different weeks during the current and preceding calendar year. The organization is not a church or a convention or association of churches. While there is no doubt that the organization is operated primarily for religious purposes working closely with over twenty six churches, the testimony has not shown that one specific church or a convention or an association of churches operates, supervises, controls, or principally supports the organization. Over ninety percent of the organization's financial support comes from individuals. The organization's Board of Directors consists of citizens who are from a variety of different business backgrounds. The organization and the Board of Directors consists of various individuals, who are themselves members of their own churches, but in no way a head of a church. The organization is certified voluntarily by two different evangelical associations. No church, convention, or association of churches operates the organization. No church, convention, or association of churches supervises the organization. No church, convention, or association of churches controls the organization. No church, convention, or association of churches principally supports the organization. Under Florida Reemployment Assistance Law, the testimony provided by the claimant and the employer demonstrate that the wages from Lighthouse Ministries, Inc. should be included in the calculations to determine if the claimant is monetarily eligible for benefits. Therefore, the wages from Lighthouse Ministries, Inc. can be used in the claimant's monetary determination.

The record demonstrates that the claimant was paid wages in at least two quarters of the base period. The claimant earned total base period wages of \$24,651. The high quarter of this claim is the second quarter of 2015 where the claimant earned \$6,750. The law requires that the claimant earn total base period wages of at least 1.5 times the wages earned in the high

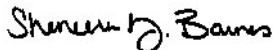
quarter. In this specific case, the claimant would have to earn total base period wages of at least \$10,125 to be monetarily eligible for benefits. The claimant's total base period wages exceed this amount. The claimant has earned base period wages for insured work in two or more calendar quarters of the base period. The claimant has earned over \$3400 in base period wages with total base period wages higher than 1.5 times the high quarter. The claimant has met all of the requirements necessary to qualify for reemployment assistance benefits. Therefore, the claimant is monetarily eligible for the receipt of reemployment assistance benefits on this claim.

Decision: The determination dated January 26, 2016, holding that wages earned from Lighthouse Ministries, Inc. are excluded from coverage under Florida Reemployment Assistance Law, is REVERSED. Furthermore, the monetary determination dated December 3, 2015 is MODIFIED to reflect wages of \$5,575.50 paid in the third quarter of 2014, wages of \$5,575.50 paid in the fourth quarter of 2014, wages of \$6,750 paid in the first quarter of 2015, and wages of \$6,750 paid in the second quarter of 2015 by Lighthouse Ministries, Inc. (3350519).

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the department and set forth in a separate overpayment determination, unless specified in this decision. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on March 30, 2016.

R. Castillo
Appeals Referee



By:

SHANEDRA BARNES, Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.004, filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Department and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at connect.myflorida.com or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la distribución/fecha de envío marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.004, el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante rembolsar esos beneficios. La cantidad específica de cualquier sobrepago [pago excesivo de beneficios] será calculada por la Agencia y establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden.

Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [*docket number*] y el número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat distribisyon/postaj. Si 20yèm jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.004, depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesajè lèt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon. Pou evite reta, mete nimewo rejis la ak nimewo sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

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