

FILED

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Chief Financial Officer
Docketed by:



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF WORKERS'
COMPENSATION,

DOAH CASE NO.: 18-1632
DFS CASE NO.: 17-384-D5-WC

Petitioner,

v.

PFR SERVICES CORP,

Respondent.

FINAL ORDER

THIS CAUSE came on for consideration of and for final agency action on a Recommended Order. Petitioner timely filed exceptions to the Recommended Order. Respondent did not file exceptions or a response to Petitioner's exceptions.

RULING ON PETITIONER'S EXCEPTIONS

Exceptions to a recommended order are authorized by section 120.57(1)(k), Florida Statutes (2018), and Rule 28-106.217, *Florida Administrative Code*.

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

§ 120.57(1)(k), Fla. Stat. (2018).

Exception Number 1: Conclusions of Law Paragraphs 48-52

Petitioner challenges the conclusions of law contained in paragraphs 48-52 of the Recommended Order. These paragraphs are addressed together under one exception because they all relate to the same issue of statutory construction; *viz.*, the meaning of the term “provides” in section 440.107(7)(d)1.a., Florida Statutes. The statute reads, in pertinent part, as follows:

For employers who have not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers’ compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. . . .^[1] **The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 28 days after service of the stop-work order or first order of penalty assessment upon the employer** [emphasis added].

The Recommended Order concludes that the word “provides,” as used in section 440.107(7)(d)1.a., Florida Statutes, does not require **receipt** by the Department within 28 days after service of the stop work order or first order of penalty assessment. From this interpretation, the Recommended Order concludes that Respondent is entitled to a premium credit because the employer placed proof of coverage and payment in the mail before the 28-day deadline expired, even though the documents were received by the Department after the 28-day period expired.²

¹ The omitted language addresses employee leasing arrangements.

² The postal service returned the mail to Respondent, who then hand-delivered the documents to the Department outside of the 28-day timeframe. *See* Petitioner’s Exhibit 7 (Narrative, Sections 10-12) and Tr. 53:11-18.

The Recommended Order effectively construes the word “provides,” as used in section 440.107(7)(d)1.a., Florida Statutes, to include two different time-dependent meanings. According to the interpretation put forth in the Recommended Order, “provides” means: (a) “to attempt to deliver” before the expiration of the statutory 28-day period; and (b) “to actually deliver” at some point either before or after the 28-day period (without actual receipt at some point, there would be no basis for the Department to calculate a premium credit). Independent of policy arguments, and with no need to invoke any notion of deference to agency interpretation, there is no room in the statute for the strained interpretation put forward in the Recommended Order. “Provides” means that actual receipt by the Department must occur within the statutorily-required time frame. The Recommended Order’s interpretation effectively nullifies the 28-day time limit expressly set forth in section 440.107(7)(d)1.a., Florida Statutes.

The Recommended Order advises that, “[i]f the language of the statute is unambiguous and conveys a clear and definite meaning, the court must apply that meaning” Recommended Order, Conclusions of Law paragraph 49 (citing *Verizon Fla., Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002)). Yet, rather than follow this directive and conclude that “provides” requires actual delivery of the thing to be provided, the Recommended Order looks to Merriam-Webster’s New Collegiate Dictionary, 11th edition, for support. That dictionary defines “provides” to mean “to supply something.” From this definition, the Recommended Order concludes that actual receipt of the thing supplied is not necessary. Recommended Order, Conclusions of Law paragraph 50.

The word “provides,” by any dictionary definition, including the one relied upon in the Recommended Order, requires successful delivery of the thing being provided. Cambridge Dictionary³ defines “provide” to mean “to give something that is needed or wanted to someone.” Macmillan Dictionary⁴ defines the term to mean “to give someone something that they want or need.” Merriam-Webster’s New Collegiate Dictionary, the dictionary relied upon by the Recommended Order, includes the following synonyms for “provide:” “furnish,” “give,” and “hand over,” and defines the synonyms as follows: “furnish” – “to provide with what is needed;” “give” – “to put into the possession of another for his or her use;” and “hand over” – “to yield control of.” Macmillan Dictionary lists “supply” as a synonym of “provide” and defines “supply” as “to provide someone or something with something that they need or want.”

Moreover, statutory construction should avoid unreasonable results and related parts of a statute (or a chapter) should be construed together as a whole. *City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1282 (Fla. 1983). The term “provide” is used throughout chapter 440, Florida Statutes, and the Recommended Order’s recommendation that “provides” be interpreted to not require “receipt” would lead to many absurd results beyond section 440.107(7)(d)1.a., Florida Statutes. For example, under section 440.107(7)(e), Florida Statutes, and Rule 69L-6.028, *Florida Administrative Code*, the Department is required to calculate a penalty by imputing payroll⁵ when an employer does not “provide” business records within 10 business days

³ <https://dictionary.cambridge.org/us/dictionary/english/provide> (last checked March 20, 2019).

⁴ <https://www.macmillandictionary.com/us/dictionary/americanprovide> (last checked April 22, 2019).

⁵ Imputed payroll is based on the Average Weekly Wage established by the Florida Department of Economic Opportunity. See sections 440.12(2) and 440.107(7)(e), Florida Statutes.

following service of a request for its records. Otherwise, the penalty is calculated based on the employer's actual payroll. § 440.107(7)(d)1., Fla. Stat. (2018). If "provide" means "to attempt to deliver" within the statutory time-period, the process of calculating penalties by actual payroll or imputation becomes unworkable. The Department would not know when, if ever, to move to an imputed calculation.

Other sections of chapter 440 would be rendered non-sensical if "provides" is interpreted to include situations where delivery is unsuccessfully attempted. *See, e.g.*, § 440.02(28), Fla. Stat. ("wages" includes housing furnished to migrant workers unless "provided" after the time of injury); § 440.02(16)(a), Fla. Stat. ("employer" includes employee leasing companies that "provide" employees to others); and § 440.09(5), Fla. Stat. (benefits reduced if injured employee knowingly refused to use a safety appliance "provided" by the employer). Thus, chapter 440, Florida Statutes, including section 440.107(7)(d)1.a., Florida Statutes, clearly contemplates that the word "provides" be given its common sense meaning; *viz.*, actual delivery, not just attempted delivery. For section 440.107(7)(d)1.a., Florida Statutes, the common sense meaning of "provides" requires that actual delivery to the Department occur by the statutory deadline.

For the reasons stated above, the Recommended Order misinterpreted section 440.107(7)(d)1.a., Florida Statutes, and, because the Department did not receive proof of coverage and proof of payment within the statutory timeframe, the Department may not apply the premium credit. This interpretation of section 440.107(7)(d)1.a., Florida Statutes, is as or more reasonable than that of the Recommended Order. Therefore, Petitioner's Exception Number 1 is granted.

Exception Number 2: Recommendation

Petitioner's second exception challenges the Recommended Order's recommendation that the Department impose a penalty of \$30,296.32. The Recommended Order reaches this figure by deducting the \$1,000 downpayment (remitted on December 14, 2017) and a premium credit of \$3,966.00 from the total penalty of \$35,262.32. This approach confuses proper credits against a penalty amount with the proper calculation of that penalty. The issue in this matter is the accuracy of the total penalty set forth in the Amended Order of Penalty Assessment, not the balance due. Further, for the reasons stated in the ruling on Petitioner's Exception Number 1, the premium credit is not applicable. This interpretation is as or more reasonable than that of the Recommended Order. Therefore, Petitioner's Exception Number 2 is granted.

After reviewing the record, including all testimony and admitted exhibits, considering applicable law, and otherwise being fully apprised in all material premises, the Recommended Order is hereby adopted with the following modifications.

1. The name "PFR Services Corp." is replaced throughout with "PFR Services Corp".⁶ Inclusion of a period after "Corp" is not supported by competent, substantial evidence.
2. Findings of Fact paragraph 30 is modified by replacing "Stop-Work Order" in the first sentence with "Agreed Order of Conditional Release From Stop-Work Order," and rejecting the second sentence in its entirety. The replaced language is not supported by competent, substantial evidence.⁷ The second sentence is rejected because

⁶ There is no period at the end of "Corp" in the Division of Corporations' records for this entity. *See* Petitioner's Exhibit 2.

⁷ *See* Petitioner's Exhibit 6.

the issue in this matter is whether the Petitioner correctly calculated the total penalty, not the balance due. The rejection of the second sentence is as or more reasonable than the original. *See* discussion of Petitioner’s Exception Number 2, above.

3. Findings of Fact paragraph 32 is modified by deleting the word “timely” from the first sentence in related Footnote 7. The paragraph as modified is as or more reasonable than the original. *See* discussion of Petitioner’s Exception Number 1, above.

4. Conclusions of Law paragraph 47 is rejected. The rejection of this paragraph is as or more reasonable than the original. *See* discussion of Petitioner’s Exception Number 2, above.

5. Conclusions of Law paragraphs 48–52 are rejected. The rejection of these paragraphs is as or more reasonable than the original. *See* discussion of Petitioner’s Exception Number 1, above.

6. For the reasons stated in the ruling on Petitioner’s Exception Number 2, the recommendation that the Department issue a Final Order assessing a penalty in the amount of \$30,296.32 is rejected.

Accordingly, PFR Services Corp is assessed a penalty of \$35,262.32.

DONE and ORDERED this 7th day of August, 2019.





Ryan West
Chief of Staff

NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

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MAILED

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J. Johnson