

FILED

JUN 15 2020

Chief Financial Officer  
Docketed by:



CHIEF FINANCIAL OFFICER  
JIMMY PATRONIS  
STATE OF FLORIDA

DEPARTMENT OF FINANCIAL  
SERVICES, DIVISION OF WORKERS'  
COMPENSATION,

Petitioner,

DOAH CASE NO.: 19-1238  
DFS CASE NO.: 18-498-D4-WC

v.

FORGUE GENERAL CONTRACTING,  
INC.,

Respondent.

---

FINAL ORDER

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

RULINGS ON RESPONDENT'S EXCEPTIONS

Exceptions to a recommended order are authorized by section 120.57(1)(k), Florida Statutes (2019), 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. (2019).

Respondent's Exception No. 1: Proof of Employment

Respondent's first exception takes issue with the Recommended Order's determination that the four individuals observed working at the jobsite were Respondent's employees as that term is defined by section 440.02(15)(a), Florida Statutes (2018). Respondent asserts that, for the workers to be considered employees, section 440.02(15)(a), Florida Statutes, requires the Department to submit sufficient evidence that the workers actually received remuneration.

A worker is an employee if the parties expected remuneration to be exchanged, regardless of whether the exchange of remuneration actually occurred. *See Wesco Ins. Co. v. Don Bell, Inc.*, 574 F. App'x 872, 874 (11th Cir. 2014) ("it is the intent to remunerate that creates the relationship"). Moreover, the Recommended Order's determination that the four workers were Respondent's employees is rooted in the credibility determination made by the Administrative Law Judge ("ALJ") in assessing the testimony presented by the parties' respective witnesses. The evidence presented at the hearing included testimony from Investigator Cavazos and Ms. Qureshi that Mr. Chavez (the owner of RC Painting and a witness for Respondent) confirmed that the four workers were his employees. (*See Recommended Order* ¶¶ 15, 43, 58). As the First District has explained:

Credibility of the witnesses is a matter that is within the province of the administrative law judge, as is the weight to be given the evidence. The judge is entitled to rely on the testimony of a single witness even if that testimony contradicts the testimony of a number of other witnesses.

If, as in this case, the issue is primarily one of the weight or credibility of the witnesses, it does not matter that there might be competent substantial evidence to support a contrary view of the evidence.

*Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006) (citation omitted).

The challenged findings and conclusions in the Recommended Order are supported by competent, substantial evidence.<sup>1</sup> See *Pillsbury v. Dep't of HRS*, 744 So. 2d 1040, 1041 (Fla. 2d DCA 1999). Therefore, Respondent's first exception is rejected.

Respondent's Exception No. 2: Statutory Employer

In its second exception, Respondent asserts that it is not the statutory employer of the workers because, according to Respondent, the record lacks evidence that a contract existed between it and the alleged subcontractor, RC Painting Services, Inc. ("RC Painting"). This argument ignores paragraph 15 of the Recommended Order, in which the ALJ found that Mr. Chavez "informed Investigator Cavazos that RC Painting had been hired by Respondent to paint the building." This competent, substantial evidence supports the ALJ's determination. Therefore, Respondent's second exception is rejected.

ADOPTION OF THE RECOMMENDED ORDER

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.

Accordingly, Forgue General Contracting, Inc., is assessed a penalty of \$129,089.60.

DONE and ORDERED this 9th day of June, 2020.

  
\_\_\_\_\_  
Peter Penrod  
Chief of Staff

<sup>1</sup> The determination that the workers were Respondent's employees is contained within the Conclusions of Law portion of the Recommended Order, but this inquiry is ordinarily a question of fact. 57 Fla. Jur 2d *Workers' Compensation* § 52. The label affixed to a statement or a segment of a recommended order is not dispositive. 2 Fla. Jur. 2d *Administrative Law* § 322.

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.

Copies furnished to:

Claude M. Harden, III  
The Harden Eldridge Law Group, PA  
3730 Cleveland Heights Blvd., Suite 1  
Lakeland, Florida 33803  
tharden@hardenlawgroup.com  
aguskay@hardenlawgroup.com

Leon Melnicoff  
Senior Attorney  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0333  
Leon.Melnicoff@myfloridacfo.com

J. Bruce Culpepper  
Administrative Law Judge  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060



*06.15.2020*  
*J Johnson*

*(Via Email)*