

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF UC BENEFITS AND
ALLOWANCES

NOTICE OF DETERMINATION

The final day to timely appeal this
determination is July 30, 2007.

SSN: [REDACTED]
Type Claim: UC
AB Date: November 26, 2006
Mailed On: July 13, 2007
Page: 1 of 3

CLAIMANT:

ANNETTE L. CRAIG
PO BOX 60206
KING OF PRUSSIA PA 19406-

EMPLOYER:

FEDEX CORPORATION
800 PRIMOS AVE
FOLCROFT PA 19108-

FINDINGS OF FACT

1. The name of the company where the Claimant is working is fedex corporation.
2. fedex corporation considers the Claimant a consultant or an independent contractor.
3. fedex corporation provided the Claimant with a Form 1099.
4. The Claimant is not free from direction or control in the performance of her job.
5. Determination is based on referee's decision #07-09-E-0748R.

DISCUSSION

Section 402(h) of the Pennsylvania UC Law provides, in part, that a self-employed Claimant is ineligible for benefits. Precedent court decisions have stated that the Claimant is to be considered self-employed where she is free from direction or control in the performance of the job and is customarily engaged in an independently established trade, occupation, profession or business. In this case, the Claimant was not free from direction or control in the performance of the job. As such, the Claimant is not self-employed and benefits are allowed under Section 402(h) of the Law.

DETERMINATION

The Claimant is eligible for benefits beginning with waiting week ending 12/2/2006 under Section 402(h) of the Pennsylvania UC Law.

In addition, the following weeks are also eligible: 12/09/2006 through , 04/28/2007.

UC Representative: fgr

APPEAL INSTRUCTIONS

The last day to timely appeal this determination is: July 30, 2007.

Under Section 501(e) of the Pennsylvania Unemployment Compensation Law, this determination becomes final unless you file an appeal. For your appeal to be timely, it must be filed within fifteen calendar days after the mailing date shown on the determination. However, if the fifteenth day is a Saturday, Sunday or legal holiday, you may file a timely appeal on the next business day. If your appeal is not filed on time, the UC Board of Review will determine if you had good cause for filing a late appeal.

You may use a Petition for Appeal form, a letter or e-mail to appeal. Regardless of the format you choose, your appeal must include the name and address of the claimant, the social security number of the claimant, if known, the date of the determination being appealed, the reason for the appeal and the name and address of the individual filing the appeal. If you use a Petition for Appeal form or a letter to appeal, you may file your appeal by mail, common carrier or fax, or by personal delivery to any CareerLink office. Please follow these appeal instructions carefully:

The last day to timely appeal this determination is: July 30, 2007

If you disagree with this determination, you may appeal. If you want to file an appeal, you must do so on or before the date shown above. Information for filing an appeal is included in this determination.

- If you file your appeal by mail, the appeal is filed on the date of the U.S. Postal Service postmark, certificate of mailing, or certified mail receipt. If there is no postmark, certificate of mailing or certified mail receipt, but the appeal contains a postage meter mark, the appeal is filed on the date of the postage meter mark. If there is no Postal Service information or postage meter mark, the appeal is filed on the date recorded by the Department when the appeal is received. If you file your appeal by common carrier, the appeal is filed on the date it is delivered to the common carrier as established by the records of the common carrier. If the date of the delivery to the common carrier cannot be determined by documents in the record, the appeal is filed on the date it is received by the Department. Please send a letter of appeal to:

**Phila UC Service Center
2901 Grant Avenue
Philadelphia PA 19114-1069**

- If you file your appeal by fax, the appeal is filed on the date of receipt imprinted by the receiving fax machine. If the receiving fax machine does not imprint a legible date, the appeal is filed on the date of transmission imprinted by the sending fax machine. If the faxed appeal does not contain a legible date of transmission, it is filed on the date recorded by the Department when it receives the appeal. If you appeal by fax, you are responsible for any delay, disruption, or interruption of electronic signals and the readability of the appeal, and you accept the risk that the appeal may not be properly or timely filed. Please fax a letter of appeal to: **215-560-6981**.
- If you file your appeal by e-mail, the appeal is filed on the date of receipt recorded by the Department's electronic transmission system, if the e-mail is in a form capable of being processed by the Department's system. If you appeal by e-mail, you are responsible for any delay, disruption, or interruption of electronic signals and the readability of the appeal, and you accept the risk that the appeal may not be properly or timely filed. If you wish to appeal by e-mail, forward your appeal information to the Department at L&I-UC-Appeals@state.pa.us. **Warning: information submitted by e-mail is not secure.**
- If you file your appeal by personal delivery to a CareerLink, your appeal is filed on the date it is delivered to the CareerLink, during normal business hours. If you wish to appeal by personal delivery, take a letter of appeal to the nearest Pennsylvania CareerLink. The CareerLink representative will forward your appeal or letter of appeal to the UC Service Center. **NOTE: Appeals can not be filed in-person at UC Service Centers.**

IMPORTANT: If you remain partially or fully unemployed while an appeal concerning your eligibility is pending, continue to file your bi-weekly claims for benefits. If the appeal is decided in your favor, only benefits for the weeks you claimed will be released for payment. Your employer has the same rights of appeal as you do.

PROVISIONS OF THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION LAW

Section 402(h) of the Pennsylvania UC Law provides, in part, that a claimant shall be ineligible for any week in which she is engaged in self-employment.

THE EXPLANATION OF THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION LAW PROVISIONS IS PROVIDED FOR INFORMATION ONLY. FOR FURTHER EXPLANATION OF THIS DETERMINATION, CONTACT THE PENNSYLVANIA UC SERVICE CENTER INDICATED IN THE APPEAL INSTRUCTIONS.

The last day to timely appeal this determination is: July 30, 2007

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CLAIMANT: ANNETTE L. CRAIG
EMPLOYER: FEDEX CORPORATION

SSN: [REDACTED]
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CONTRIBUTING BASE YEAR EMPLOYER: This is not a determination on relief from charges. However, this determination may affect a request for relief from charges.

- An appeal to a Claimant's eligibility and a request for relief from charges MUST BE FILED SEPARATELY.
- For procedures and time limits for requesting relief from charges, see Form UC-44FR previously sent to you with the Claimant's Notice of Financial Determination or contact the Employers' Charge Section, 7th Floor, Labor & Industry Building, 7th & Forster Streets, Harrisburg, PA 17121.

A REQUEST FOR RELIEF FROM CHARGES, WHETHER GRANTED OR NOT, WILL HAVE NO EFFECT ON THIS DETERMINATION.

The last day to timely appeal this determination is: July 30, 2007
If you disagree with this determination, you may appeal. If you want to file an appeal, you must do so on or before the date shown above. Information for filing an appeal is included in this determination.

UNEMPLOYMENT COMPENSATION
BOARD OF REVIEW

Department of Labor and Industry
Commonwealth of Pennsylvania

UC-59 REV 5-07



APPEAL NUMBER 07-09-E-0748-R

DATE MAILED 6/20/2007

FINAL DATE TO
APPEAL 7/5/2007

SSN [REDACTED]

REFEREE'S DECISION/ORDER

CLAIMANT

EMPLOYER

ANNETTE L CRAIG
PO BOX 60206
KING OF PRUSSIA PA 19406

FEDEX CORPORATION
800 PRIMOS AVE
FOLCROFT PA 19108

CLAIM:

FILED: 11/26/2006

DETERMINATION/S ISSUED: 1/12/2007

BY: PHILADELPHIA UC SERVICE CENTER

CLAIMANT DETERMINED UNDER UC LAW: Ineligible code u

FOR WAITING WEEK ENDING:

FOR COMPENSABLE WEEK/S ENDING:

APPEAL:

FILED: 1/29/2007

BY: Claimant

HEARING HELD: 6/13/2007

IN: SPRINGFIELD, PA

ATTENDED BY: Claimant

ENCLOSURE: A translation document UC-1627 is enclosed with this notice.

FINDINGS OF FACT:

1. The claimant worked from September 2005 through November 30, 2006, as a full-time Delivery Person for Fedex Corporation. The claimant earned approximately \$1,100 to \$1,300 per week.
2. The employer terminated the claimant.
3. The claimant did not violate the employer's rules and regulations.
4. The claimant signed an operating agreement with Fedex.
5. The employer provided the claimant with a time schedule for assigned duties.
6. The claimant did not have the option of selecting what assignments she wanted to accept or reject.
7. As a driver for Fedex the claimant was responsible for picking up packages for delivery on specific assigned routes.
8. A supervisor oversaw duties and responsibilities of the claimant's position.
9. The employer established the working hours, days on which the claimant worked, and the wages for such work.
10. The claimant does not own stock in Fedex and is not an officer of Fedex.

ISSUE: Whether the claimant's work performance as a driver with Fedex was considered to be employment subject to the Unemployment Compensation Law.

REASONING: Although duly notified of the time and place of the hearing, the employer did not appear to offer testimony. The above findings are, therefore, based on the sworn testimony of the claimant and the records of the Office of Employment Security.

On January 12, 2007, the Unemployment Compensation Service Center issued a Notice of Financial Determination notifying the claimant that she was not financially eligible for benefits since there were no wages reported during her base year from Fedex Corporation. The claimant's base year is from July 1, 2005 through June 30, 2006.

The claimant worked as a driver for Fedex from September 2005 through November 30, 2006, but the employer did not report wages that the claimant received as Fedex did not consider the claimant to be an employee.

Section 401 of the Pennsylvania Unemployment Compensation Law provides, in part, that "compensation shall be payable to any employee who is or becomes unemployed..." 43 P.S. §801. As to whether an individual is considered an "employee," Section 4(1)(2)(B) of the Law provides that:

Services performed by individuals for wages shall be deemed to employment subject to this Act unless and until it is shown to be satisfaction that a) such individual has been and will continue to be free from control of direction from the performance of such services both under his contract of service and, in fact; and b) as to such services, such individual is customarily engaged in an independent established trade, occupation, profession, or business.

43 P.S. §753(1)(2)(B)

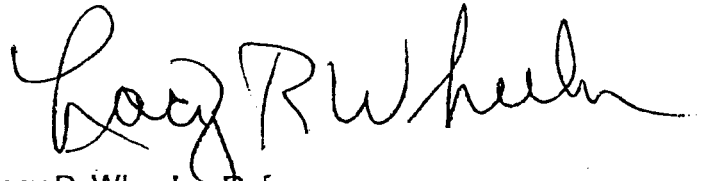
This provision presumes that an individual who performs for wages is an employee and not an independent contractor. However, this presumption may be overcome if the putative employer sustains its burden of showing that the claimant was free from control and direction in the performance of his services and that, as to such services, was customarily engaged in an independent trade or business. Unless both prongs are met, the presumption stands that one who performs services for wages is an employee.

The uncontested testimony of the claimant was that she was not free from control and direction. The claimant's testimony clearly states that she was unable to turn down any assignments, that she was supervised by Fedex personnel as to her duties and responsibilities, she was required to drive assigned routes for the employer, at the assigned times and assigned destinations.

It should also be noted that the evidence was clearly established that the claimant made deliveries for the employer as per the employer's directions and that the claimant could not perform driving services for any other business entity. Moreover, the claimant did not have an option of selecting what assignments she wanted to accept or reject.

In summary, the uncontested testimony/evidence was that the employer, Fedex, had control and direction over the claimant's performance and services as a driver. The claimant was not engaged in an independent established trade or occupation. Accordingly, the claimant performed services for wages and thus, was an employee in accordance with Sections 401 and 4(1)(2)(B) of the Law.

ORDER: The Notice of Financial Determination dated January 12, 2007, by the Unemployment Compensation Service Center is hereby **VACATED**. The Unemployment Compensation Service Center is directed to issue a revised Notice of Financial Determination, which includes the wages claimant earned with Fedex during the four quarters of her base year.



Lacy R. Wheeler, Referee

jtw- 9140

Pursuant to the provisions of the Law, the above decision shall become final on the date it was mailed to the parties, unless any aggrieved party files a further appeal to the Pennsylvania Unemployment Compensation Board of Review within the fifteen (15) day appeal period.

The last date to file an appeal to this decision is 7/5/2007.

IF YOU WISH TO FILE A FURTHER APPEAL

You have the right to file a further appeal to this decision within fifteen (15) days of the date of mailing. Your appeal must include the following information: ► your name; ► the claimant's name and social security number; ► the date of the decision being appealed; ► the reason for appeal; ► the appeal number; ► your address. Under the provisions of Act 5 of 2005, you may file your own appeal, or your appeal may be filed by an attorney or by any other advocate of your choice.

You may file your appeal by mail. If you file your appeal by mail, the appeal is filed as of the date of the U.S. Postal Service postmark or a U.S. Postal Service form 3817 (Certificate of Mailing) or a U.S. Postal Service certified mail receipt. If there is no U.S. Postal Service postmark, the date of filing will be the date of a postage meter mark on the envelope containing the appeal. If the appeal contains neither a postmark nor a postage meter mark, the date of filing will be the date recorded by the Department when the appeal is received. Your appeal should be mailed to the following address:

PHILADELPHIA UC SERVICE CENTER
2901 GRANT AVE
PHILADELPHIA, PA 19114-1069

You may file your appeal by common carrier. If you file your appeal by common carrier, the appeal is filed on the date it is delivered to the common carrier as established by the records of the common carrier. You should use the above address to send your appeal by common carrier.

You may file your appeal by fax. If you file your appeal by fax, it must be received by the Department by 11:59 p.m. on the last day to appeal. The filing date will be determined by the date of receipt imprinted by the receiving fax machine. If there is no receipt date imprinted by the receiving fax machine, the sender's fax banner will control the date of filing. If neither date appears on the fax, the date of receipt recorded by the Department will serve as the date of filing. Your appeal should be **faxed** to the following number:

215-560-6981

NOTE: A party filing an appeal by fax is responsible for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

You may file your appeal via electronic mail (e-mail). If you file your appeal by e-mail, the appeal is filed on the date of receipt recorded by the Department's electronic transmission system. If you wish to file your appeal by e-mail, forward your appeal information to the Department at:

L&I-UC-Appeals@state.pa.us

WARNING: Information submitted by e-mail is not secure.

NOTE: A party filing an appeal via the Internet or electronic mail is responsible for using the proper format and for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

If you wish to file your appeal **in person**, you may do so at any CareerLink office during normal business hours on or before the last day to appeal shown above. The CareerLink office will forward your appeal to the UC Service Center for processing. Appeals cannot be filed in person at UC Service Centers.

**Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program**

