

UNEMPLOYMENT COMPENSATION  
BOARD OF REVIEW

Department of Labor and Industry  
Commonwealth of Pennsylvania

UC-59 REV 8-02



APPEAL NUMBER 07-09-E-1699-R  
DATE MAILED 5/11/2007  
FINAL DATE TO APPEAL 5/29/2007  
SSN [REDACTED]

**REFEREE'S DECISION/ORDER**

CLAIMANT

EMPLOYER

MICHAEL E WASHINGTON  
3712 W COUNTRY CLUB RD  
PHILADELPHIA PA 19131

ATTN: HUMAN RESOURCES  
FEDEX  
900 PRIMOS ROAD  
FOLCROFT PA 19032

**CLAIM:**

FILED: 2/4/2007  
DETERMINATION/S ISSUED: 2/28/2007 BY: PHILADELPHIA UC SERVICE CENTER  
CLAIMANT DETERMINED UNDER UC LAW: Ineligible code 2  
FOR WAITING WEEK ENDING:  
FOR COMPENSABLE WEEK/S ENDING:

**APPEAL:**

FILED: 3/13/2007 BY: Claimant  
HEARING HELD: 5/10/2007 IN: SPRINGFIELD, PA  
ATTENDED BY: Claimant, Agency Representative

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

**FINDINGS OF FACT:**

1. The claimant was a full-time Delivery Driver for the employer, FedEx Ground, who began his employment on October 23, 2001 and whose last day of work was February 3, 2007. Claimant was paid approximately \$1,150 to \$1,350 per week.
2. The claimant was terminated by the employer.
3. The claimant did not violate any of the rules and regulations of the employer.
4. The claimant signed an operating agreement with FedEx.
5. As a driver with FedEx the claimant was responsible for picking up and delivering packages on a specific route assigned to him by FedEx.
6. FedEx provided the claimant with a time schedule for his assigned duties.
7. From time to time FedEx assigned a supervisor to travel with claimant in order to ascertain whether or not claimant was following the rules and regulations of the employer and performing the duties and responsibilities of his position.
8. The claimant did not have the option of selecting what assignments he wanted to accept or reject.
9. The claimant was required to purchase and wear a FedEx uniform.
10. The claimant was not permitted to use his truck to perform pick-up and deliveries for another entity.

11. The claimant submitted monthly maintenance reports to the employer in regards to the working order of his truck.
12. The [REDACTED] determined to be not financially eligible on a Notice of Financial Determination dated February 28, 2007.
13. The claimant filed a Petition of Appeal to the determination asserting that the employer has misclassified him as an independent contractor when he was an employee.

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

**REASONING:** Following a timely appeal, a Notice of Hearing was mailed to the claimant and the employer informing them of the date, time and location of the hearing. The claimant appeared at the hearing and provided testimony. The employer did not appear at the Referee's hearing and thus provided no testimony or evidence in this matter.

On February 28, 2007, the Unemployment Compensation Service Center issued a Notice of Financial Determination notifying the claimant that he was not financially eligible for benefits since there were no wages reported during his base year, which is from October 1, 2005 through September 30, 2006.

The claimant worked as a driver with FedEx from October 23, 2001 through February 3, 2007, but the employer, FedEx, 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 claimant was that he was not free from control and direction. Claimant's testimony clearly states that he was unable to turn down any assignments, that he was supervised by FedEx personnel as to his duties and responsibilities, he was required to wear a company uniform, required to maintain his own personal truck as per the specifications of FedEx and required to comport himself within the rules and regulations of the employer.

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

In summary, the uncontested testimony/evidence states 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 February 28, 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 his base year.



Lacy R. Wheeler, Referee

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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 5/29/2007.**

**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:

215-560-8981

**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](mailto: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.  
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