

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 11/08/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

FARMERS INSURANCE,) No. 1 CA-UB 12-0265
)
Appellant,) DEPARTMENT E
)
v.)
) A.D.E.S. Appeals Board
ARIZONA DEPARTMENT OF ECONOMIC) No. U-1312000-BR
SECURITY, an Agency,)
) **DECISION ORDER**
and)
)
GLAFIRA GONZALEZ,)
)
Appellee.)
)

Judges Diane M. Johnsen, Maurice Portley and Philip Hall have considered the application for appeal in 1 CA-UB 12-0265.

At issue are the reasonable interpretation of language in the September 19, 2011 Determination ("Determination") and whether the Arizona Department of Economic Security appropriately construed the employer's response to the October 7, 2011 Notice to Employer to be an appeal from the Determination. Responding to the August 16, 2011 notice, the employer explained why it did not believe the claimant was an employee. When it received the Determination, it construed the

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statement in the Determination that "YOU WILL NOT BE CONSIDERED AN INTERESTED PARTY TO ANY ACTION TAKEN" to mean that no further action was required on its part. When, without explanation, the employer received another nearly identical notice dated October 7, 2011, it responded - in the space provided on that notice - with the same explanation.

The Arizona Administrative Code (A.A.C.) section R6-3-1404 states,

The submission of any payment, appeal, application, request, notice, objection, petition, report, or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to: Department error or misinformation, delay or other action of the United States Postal Service or its successor, or when the delay in submission was because the individual changed his mailing address at a time when there would have been no reason for him to notify the Department of the address change.

We conclude the Appeals Board abused its discretion by construing the employer's response to the October 7 notice to be an appeal of the Determination. The language quoted above from the Determination constituted "misinformation" that misled the employer as to the agency's procedures and the employer's rights

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with respect to those procedures. Accordingly, and upon consideration,

IT IS ORDERED granting the request for appeal;

IT IS FURTHER ORDERED reversing the decision appealed from and remanding for a hearing and any other appropriate proceedings on the issue of whether the circumstances of the claimant's separation entitled her to benefits.

/s/

DIANE M. JOHNSEN, Judge