

**DEPARTMENT OF LABOR
EMPLOYMENT SECURITY DIVISION
FIELD REPRESENTATIVE'S REPORT**

REG. NO.: 92-271-15	ASSIGNED TO:
TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC	Thomas Kjar
D/B/A ABOVE:	STATUS: 1/1/1985 TBA []
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC	DATE: 10/31/2007
P.O. BOX 1160	
COLUMBUS OH 43216-1160	

CORRECT NAME / ADDRESS:

BENEFIT CLAIMANT: Paul R. Chiappa	SSN: --
PREDECESSOR:	REG. NO.: --
SUCCESSOR:	REG. NO.: --
CORRECT STATUS:	CHANGED FROM:
DATE EMPLOYER DISCONTINUED:	LAST DAY OF PAYROLL:
NUMBER OF QUARTERS AUDITED:	AUDIT TO: /
EMPLOYER SUBJECT TO NET CONTRIBUTIONS: 345.00	NET CREDITS:

Remarks

Origin: Missing Wage & Field Audit Five Related Reports

ATTN: Carl Guzzardi, Tax Unit Manager

F/R contacted the claimant, both by phone and in person. The following information/documentation was presented:

Claimant stated he worked for FedEx Home Delivery (FHD), a division of FedEx Ground Package System, Inc., as a Delivery Driver, from April 2003 through August 2007. NOTE: all subsequent references to either FHD or FedEx Ground Package System, Inc. will be collectively referred to as "FedEx". The claimant has always been treated as an independent contractor by FedEx, with a 1099 issued each year. The claimant stated he responded to a newspaper ad for Independent Contractor positions offered by FedEx, a licensed motor carrier, engaged in providing package information, transportation & delivery services throughout the United States. The claimant attended a meeting at the Yankee Peddler Restaurant in Torrington, CT. At the meeting, the claimant expressed his interest in an area route in the northwest corner of CT, then filled out an application and left it with the FedEx representative. About a week later, the claimant was contacted by FedEx and was told a route in his desired area was available. The claimant then reported to the FedEx terminal in Windsor, CT and was brought to a computer, where he filled out additional paperwork needed to get him set up as an approved FedEx contracted driver. This paperwork included authorization

	Enclosures:			Distribution:	
Field Rep.: Thomas Kjar	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQB <input type="checkbox"/>	Status	_____
	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input type="checkbox"/>	WG Rec.	<u>EWB</u>
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: <u>[Signature]</u>	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	<u>[Signature]</u>
				FAU	_____

Wednesday, November 21, 2007

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 10/31/2007

for the claimant to submit to a background check, drug screening and physical examination, along with forms intended for the claimant to receive pay through ADECCO (a temporary placement company) as a "temporary employee" of ADECCO, while he went through FedEx's required training, before he was allowed to drive for FedEx. The claimant stated he never went to ADECCO for temp work and never spoke with or was supervised by an ADECCO representative (as far as he knew).

The claimant went through the required training classes held by FedEx at the North Haven, CT terminal location. The classes consisted of watching training videos, a written exam, a driving exam and "ride-a longs" with either a FedEx manager or FedEx approved drivers. While in training, the claimant received weekly pay from ADECCO as a temporary employee. At year-end, he also received a 2003 W-2 from ADECCO for this pay.

In order to service a specific route as a FedEx-approved contracted driver, the claimant had to purchase a vehicle. FedEx steered the claimant on where to purchase the vehicle, a new 2002 Chevy Express Cutaway 3500. This was a FedEx-approved 16' box truck. When the claimant was notified that his vehicle was ready, it was driven directly to his home, with all the necessary registration, license plates and insurance already taken care of. In addition, the vehicle already had all the necessary FedEx identifying markings, paint, logos, decals, etc. on it, which made it a FedEx-approved vehicle.

The claimant stated his route (Litchfield County) was pre-determined by FedEx and was a 14-ZIP Code area that included Cornwall, Goshen, Litchfield, Morris, Warren, Kent, Norfolk, Sharon, Salisbury, Canaan & North Canaan. The claimant never purchased the route from FedEx, it was given to him. The claimant was not able to deviate off the pre-determined route, without prior authorization from FedEx. In order to perform services for FedEx, the claimant was required to work under a FedEx Standard Contractor Operating Agreement (copy attached). The claimant stated the only way to become an approved Delivery Driver, was as a contractor with a signed operating agreement.

As part of the claimant's operating agreement, the claimant elected to "participate" in the business support package (at an original cost to the claimant of \$17.50 per week), which included: company decals, standard uniforms, random drug testing, contractor assistance programs, annual DOT inspection, lease of the FedEx scanner, home upload kit, vehicle washing service, etc. Generally, the claimant had a set Tuesday-Saturday work week (Home Delivery does not provide service on Sundays or Mondays). However, during peak times (Christmas), FedEx did require the claimant to also work on Mondays.

The claimant, who lives in Harwinton, CT, needed to begin his work day at 6:00 AM to check vehicle, fuel up and drive to the Windsor, CT terminal. Upon arrival by 7:00 AM, claimant would then scan packages and load the

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

INDICE ABOVE: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 10/31/2007

vehicle, then check the accuracy of the load (make sure there were no packages incorrectly loaded that were destined for towns not on the claimant's pre-determined FedEx route). Claimant would then drive to Norfolk, CT to begin his delivery route. Claimant needed to allow at least 1 hour & 45 minutes of driving time to and from the Windsor, CT terminal before a single stop on his route was made. Claimant regularly started deliveries on his route no earlier than 9:15 AM and regularly took until 6:30 PM-7:00 PM to successfully make all stops on his delivery route. Claimant was typically averaging 75-85 daily stops and during peak (Christmas), may reach up to 110+ stops.

In the beginning, the claimant stated FedEx explained the route he was given was going to be "split" between two drivers, because the route area was too large to be efficiently driven by one individual. Initially, the Terminal Manager asked the claimant to service the entire route himself until a second driver could be set up. The claimant agreed to do this, but only temporarily. The claimant drove the entire route by himself from April 2003 to August 2003, while continually reminding FedEx management that he was promised the route would be split. When FedEx ignored this, the claimant threatened to and finally quit on 9/1/03. That day, FedEx contacted the claimant and said they had another contracted driver (Kim Dore) to share the route. When the claimant quit, he had the opportunity to return to his old employer (which he did) from September 2003 to April 2005. Because the claimant was still obligated to pay for the vehicle, he agreed to service the new split route, but with a different driver (his wife, Stephanie). Stephanie Chiappa then went through the required FedEx training, became a FedEx-approved driver and serviced the route from October 2003 to September 2005. The claimant stated that while his wife drove for FedEx, daily contact with her regarding servicing the FedEx deliveries was not necessary, because everything was organized by FedEx (vehicle parked at home, pre-determined FedEx route, FedEx packages, end-of-day upload of delivered packages through the FedEx computerized system, etc.). The claimant stated while he was simultaneously employed at his other job, he did not service the route while his wife drove. When the claimant lost his other employment in April 2005, he collected unemployment benefits while his wife continued to service the route.

In August 2004, the claimant had a friend, Robert DiZinno, who also became interested in servicing a FedEx route. During the time of Robert's training at FedEx to become a FedEx-approved driver, it was determined that Robert's credit was unfavorable and it would not be affordable for him to purchase a vehicle directly. According to the claimant, because of FedEx's desire to have their Manchester, CT route serviced, it was the idea of then-FedEx Terminal Manager, Bruce Rodgers, to have Paul and Robert form an LLC (Scoville Hill Associates) as a way for Robert to have a vehicle and service the Manchester, CT route through Paul. The LLC-Partnership was formed (with the claimant, Stephanie & Robert) on 8/16/04, with Robert servicing the second route (Manchester, CT), driving the claimant's first vehicle and getting paid by FedEx through the LLC. The claimant then purchased his second vehicle (a new 2004 Freightliner Sprinter 140 Cargo Van) also having all the necessary FedEx identifying markings, paint, logos, decals, etc. already on it, which made it FedEx-approved vehicle. The claimant did not have to purchase the Manchester route. It was also, both pre-determined and given to him by FedEx. Stephanie now serviced the

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TO: NAME: FEDEX GROUND PACKAGE SYSTEM INC
 D/B/A ABOVE:
 ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
 P.O. BOX 1160
 COLUMBUS OH 43216-1160

Thomas Kjar
 STATUS: 1/1/1985 TBA
 DATE: 10/31/2007

Litchfield route, driving the claimant's second vehicle and also getting paid by FedEx through the LLC.

In late September 2005, Stephanie was involved in a traffic accident and could not drive or service the route. Both the claimant and Stephanie took a week's vacation. During that week, FedEx gave the claimant a "relief driver" (Sear Rangel) who drove the Manchester route, with Robert switching over and servicing the Litchfield route. The following week (October 2005) the claimant, again, took over servicing the Litchfield route, with Robert servicing the Manchester route.

After the claimant had re-taken over the Litchfield route from his wife, he would complain to management that the amount of daily stops he was expected to make either, dramatically exceeded what he was physically able to do, and/or was not profitable enough to be worth his time and effort. Regardless, the daily, FedEx-determined, delivery route required the claimant to work anywhere from 12-13 hours per day. The claimant did not want extra stops, because he reasoned that more than the 75-85 delivery stops would be difficult for him to complete his route without working an excessive number of hours. Packages not delivered that day "DNAs" were brought back to the terminal and were generally re-issued the next day, along with that day's new load.

Frequently, when the claimant would attempt to refuse the extra stops, he would get into heated disagreements with the Terminal Manager over the claimant's refusal to deliver all of the assigned daily loads. On occasion, this led to the Terminal Manager threatening to hold the claimant's scanner until the extra stops were accepted and the packages put on the vehicle. The claimant stated especially during peak (Christmas), FedEx management wanted the claimant to hire extra drivers/helpers (at the claimant's expense) to assist with the increased daily loads. The claimant would refuse, stating his route was not efficient enough to justify paying additional individuals.

The claimant stated he never acted in an unprofessional manner to management, maintains he worked very hard, kept a clean driving record with minimal customer complaints, received many of the incentive bonuses and awards, and never violated his operating agreement. In February 2007, the local Teamsters Union became involved in the FedEx situation regarding employment rights of the contracted drivers. The claimant ended up siding with the teamsters and agreed that he, along with Robert, had employment rights. The claimant maintains he never did anything wrong or violated his operating agreement, however, because he sided with the Teamsters and went against the FedEx "contractor/driver model", felt FedEx no longer wanted his services. On 8/4/07, the claimant received signed correspondence from Hagar, stating he was not fulfilling his operating agreement, because he was not servicing the customer to FedEx's satisfaction. Finally, the claimant received signed correspondence from Hagar stating his operating agreement was terminated, effective 09/01/07.

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 10/31/2007

F/R attempted to contact the employer by letter (attached), however no response was received.

Two factors need to be addressed in order to make determinations on whether the claimant's 1099 pay from FedEx Ground, Inc. was covered employment and who the proper employer is for the claimant's temporary/training W-2 wages (ADECCO or FedEx Ground, Inc.):

1st FACTOR

In order for an individual to be considered an independent contractor, an individual must meet all three parts of the test defined in Connecticut General Statutes Sec. 31-222(a)(1)(B), commonly known as the "ABC Test".

2nd FACTOR

The common law rules of direction and control found in Sec. 31-222(a)(1)(B)(ii)(I) are used to determine who the proper employer is.

Based on an analysis of the above two factors, I conclude the claimant failed to meet all parts of the ABC test, was never an employee of ADECCO and was always an employee of FedEx Ground, Inc., as follows:

- A -

INSTRUCTIONS: When the claimant began with FedEx, it was understood the claimant was to work as an independent contractor, under a Standard Contractor Operating Agreement which required his signature. Even though the employer maintained the claimant had every opportunity to review his agreement with his financial, tax and/or legal advisors, the claimant did not negotiate any terms of the contract. The claimant's vehicle was required to be purchased, and of a certain size and appearance. It had to be marked with certain colors, logos, numbers and insignias that would identify the vehicle as a part of the FedEx system. The claimant's operating agreement states the claimant agrees to mark the vehicle in this way, however, without any prior notice or knowledge, the claimant's vehicle was brought to him already permanently marked with the features identifying it as part of the FedEx system. Before being allowed in any pre-authorized FedEx vehicle, the claimant was required to fill out a job application, participate in a training session that included watching training videos, becoming familiar with various training manuals, take a written examination, take a driving test, participate in a one week "ride-a-long" with either FedEx management, or other FedEx approved representatives, and was required to sign a FedEx Standard Operating Agreement. Per that agreement, the claimant was required to wear the authorized FedEx uniform & ID badge and was required to adhere to a strict code of dress and appearance. FedEx prohibited the claimant from having long hair (for males), earrings (for males) and visible tattoos. As part of FedEx's "Business Support Package", the claimant

	Enclosures:			Distribution:	
Field Rep:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
 D/B/A ABOVE:
 ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
 P.O. BOX 1160
 COLUMBUS OH 43216-1160

Thomas Kjar
 STATUS: 1/1/1985 TBA
 DATE: 10/31/2007

was provided a scanner used to scan packages he delivered. The claimant's operating agreement did not specifically require the claimant to purchase this scanner; however, per language in the operating agreement, the scanner was vital toward meeting FedEx's standards of successful customer service. The claimant did not have to purchase this package scanner and software from FedEx, however, the scanner had to be compatible with FedEx's computer system. Any scanner/software purchased from a 3rd party would not have been cost-effective, therefore, the claimant "purchased" this equipment directly from FedEx, who amortized the total cost over a period of time and deducted a portion of this cost from the claimant's weekly pay as part of his "Business Support Package". The claimant was technically allowed to use his vehicle for his own personal use (or non-FedEx service); however, when performing services for FedEx, the claimant could not concurrently use the vehicle for any other purpose. Also, if the claimant used the vehicle for any non-FedEx service, he was required to cover up, or remove any and all markings identifying the vehicles as part of the FedEx system. Included as part of FedEx's "Business Support Package", the claimant was required to wash his vehicle weekly. This was done at the terminal, with FedEx-provided individuals, at a cost pre-determined by FedEx, deducted from the claimant's pay.

TRAINING: The claimant stated he never had a Driver/Delivery business for himself and FedEx did not require any individuals (including the claimant) to have either driving, or business experience. However, because FedEx requires all drivers to be qualified and approved, the claimant was required to participate in a one-week training program, which included familiarization with certain employer-issued manuals. These manuals were provided to assist the claimant in lowering costs and achieving a greater efficiency of service. In addition, the claimant was given required training on the use and implementation of the employer-issued scanner and home upload kit. Also, the claimant was required to periodically (generally every six months) participate in "ride-a-longs" for the purpose of becoming/staying familiar with the employer's route and driver/delivery system. When the claimant first became affiliated with FedEx, he filled out an application and was explained that until a route was available, he would be a "temporary driver" on various routes given to him those days by FedEx. The claimant stated that once driving "temp", FedEx management would show him a card with the days he worked, which he verbally approved, then was paid through ADECCO (a temporary placement company) as a "temporary employee" of ADECCO while he was waiting for a route and before he was allowed to drive for FedEx. As a beginning "temp", the claimant was a "ride-a-long" with either a FedEx manager or a FedEx approved driver, until he became familiar with employer's driver/delivery "system". While a temporary, the claimant continued to receive weekly pay as a temporary ADECCO employee. At year-end, he also received a W-2 from ADECCO for this pay. The claimant stated he never went to ADECCO for temp work and never spoke with or was supervised by an ADECCO representative. During this period as a "temp" the claimant was directed and trained by FedEx.

INTEGRATION: The employer is in the business of providing package delivery services to both businesses and (at

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 10/31/2007

times) residential customers. The claimant was employed to perform both the Driving and successful Delivery of these packages. The employer relies on these Drivers to successfully deliver packages to the end-user, in order to realize a profit-margin. Without the driving/delivery services that the claimant provided, the employer would generate no income. When the success and continuation of a business depends upon the performance of certain services, the person performing those services is typically subject to control. This was clearly the case with the claimant.

SERVICES RENDERED PERSONALLY: The claimant personally performed driving/delivery services for his specified route. The claimant could not "assign" his route to any other individual, or relief driver, at his discretion, without prior authorization from and notification to FedEx Ground. It was strict FedEx policy that non-approved FedEx individuals were never allowed in the vehicles.

HIRING, SUPERVISING & PAYING ASSISTANTS: While the claimant could hire & pay someone to help him make deliveries and hire & pay additional drivers for additional routes he obtained, FedEx directed whom he could potentially hire (by pre-determining who he could not hire) through background and training requirements FedEx insisted upon. Therefore, the claimant was not free to hire his own workers.

CONTINUING RELATIONSHIP: The claimant regularly experienced a 60+ hour work-week, from 2003 through August 2007. This long term continuing relationship is indicative of an employer/employee relationship.

SET HOURS OF WORK: The claimant was given a set schedule of Tuesday-Saturday (also Mondays during peak) and (although per contract, retained some flexibility over an exact arrival time) was expected to show up at the Windsor, CT terminal location by 7:00 AM each day to scan and load the vehicle with packages in order to meet FedEx's delivery commitments, which were never completed before 6:30 PM.

FULL TIME REQUIRED: In order to meet FedEx's daily delivery commitments, the claimant needed to regularly devote 12-13 hours per day and in many instances, in excess of 15 hours per day. Claimant began his day at 6:00 AM to check vehicle, fuel up and drive to the terminal. Upon arrival by 7:00 AM, claimant would then scan and load packages. Then, the claimant would check the load and drive to Norfolk, CT to begin his delivery route. Claimant needed to allow at least 1 hour & 45 minutes of driving time to and from the terminal before a single stop on his route was made. Claimant regularly started deliveries on his route no earlier than 9:15 AM and regularly took until 6:30 PM-7:00 PM to successfully make all stops on his delivery route. Claimant was averaging 75-85 daily stops and during peak (Christmas), may reach up to 110+ stops. The claimant stated daily stops would regularly exceed the amount the claimant knew he could be expected to successfully deliver, without working an excessive number of hours. Packages not delivered that day "DNAs" were brought back to the terminal and re-issued the next

	Enclosures:			Distribution:	
Field Rep:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
 D/B/A ABOVE:
 ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
 P.O. BOX 1160
 COLUMBUS OH 43216-1160

Thomas Kjar
 STATUS: 1/1/1985 TBA
 DATE: 10/31/2007

day, along with that day's new load. The fact that the claimant was compelled to work 12-13 hours per day to complete his route placed him under the control of FedEx in that he was unable to engage in other gainful work.

DOING WORK ON THE PREMISES: The claimant had to report to the FedEx terminal each morning to scan/load packages for that day's delivery. He then checked his load, drove and delivered the packages within a delivery route that was pre-determined by FedEx. The claimant could not deviate off the route and deliver packages outside the pre-determined area without FedEx's permission. FedEx also required the claimant to upload and provide delivery data, return the undelivered packages by certain deadlines each evening.

ORDER OR SEQUENCE SET: FedEx determined the number of packages the claimant would deliver each day. While the claimant had some flexibility as to the order in which he could deliver the packages and the course he could follow within his route, as a practical matter, FedEx determined the order and course that it deemed most efficient for delivering the packages.

ORAL OR WRITTEN REPORTS: FedEx required the claimant's delivery data to be uploaded each evening. This upload generated a daily "Delivery Settlement Report" that FedEx required the claimant to sign each evening. FedEx also required the claimant to file monthly vehicle maintenance reports and an annual report listing any traffic tickets the claimant received. In addition, the claimant was asked by FedEx to sign a sheet stating he took part in a weekly "safety meeting" held at the terminal each Friday morning; however, these "meetings" never actually took place. These "meetings" were theoretically to be conducted by the P & D Manager. There was a sign-in sheet and it was understood that the attendance signature was necessary, or risk violation of the operating agreement and possible termination.

PAYMENT BY THE HOUR, WEEK, MONTH: FedEx paid the claimant a piece rate, on a weekly basis, based on the number of stops and packages handled, a contractor van/vehicle settlement fee, a fuel/mileage fee, and additional fees for special or expedited services the claimant provided. The van/vehicle settlement (availability) fee was \$45/day. The contract also provided for FedEx to pay the claimant various bonuses, including a holiday van availability bonus and a performance related bonus, based on, among other factors, the claimant having no verified customer complaints against him. All fees/bonuses were included in the claimant's operating agreement, were set by FedEx, and not negotiated by the claimant.

PAYMENT OF BUSINESS OR TRAVELING EXPENSES: Many of the usual, day-to-day expenses that one would expect to be associated with a Driver/Delivery business (insurance, supplies, fuel, drivers/helpers, uniforms, vehicle cleaning, scanning equipment, software, etc.), were provided to the claimant by FedEx. Many of these expense items either had a cost that was pre-determined by FedEx, then deducted from the claimant's weekly pay, such as insurance

	Enclosures:			Distribution:
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status _____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier _____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Def. Acc. _____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec. _____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W. _____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU _____
				FAU _____

D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 10/31/2007

(where the claimant was "piggy-backed" on FedEx's policy) and vehicle cleanings, logos, scanner, software, uniforms, etc. (which were included as part of FedEx's "business support package"), or were supplemented by FedEx such as fuel (through a fuel supplement and/or the use of a fuel card, which allowed the claimant to purchase fuel at a discounted rate). The claimant did not have direct negotiations that were separate and apart from FedEx on the cost vs. value of these items; as would be expected with a bona fide independent contractor's delivery business.

FURNISHING OF TOOLS AND MATERIALS: Although the claimant had a vehicle used for the delivery work, he was steered by FedEx as to where to purchase it. FedEx specified the color, size and appearance of the vehicle to include that FedEx pre-determined identifying markings on them. In addition, FedEx technically allowed the claimant to provide his own scanner on the open market. However, given the software requirements and software updates needed to stay compatible with FedEx's computer system, as a practical matter the claimant had to and did use the scanner furnished him by FedEx. Finally, the scanner and other materials supplied by FedEx (home upload kit, uniforms & ID badges) were forwarded as part of FedEx's "business support package" at pre-determined cost, deducted from the claimant's pay.

SIGNIFICANT INVESTMENT: Although the claimant had a substantial investment in a delivery vehicle, which was purchased in his own name, he had little or no other invested capital. Virtually all other assets the claimant used (insurance, equipment, software, supplies, uniforms, fuel, etc.) were either "purchased", "rented", or "supplemented" through FedEx and/or their cost was deducted from the claimant's pay. While technically the claimant had the right to sell or assign his contractual rights to another individual, FedEx had to approve that individual. The claimant received nothing when FedEx terminated his contract, but he was still obligated to pay for the "purchase" of the FedEx vehicle. Essentially, the claimant had no assets he could sell as an on-going Delivery business on the open market. The one significant asset the claimant supposedly had - his vehicle - was essentially provided to him by FedEx, who steered the claimant as to where to purchase it. Prior to his affiliation with FedEx, the claimant had no assets of any kind that would have enabled him to operate a delivery business.

WORKING FOR MORE THAN ONE FIRM AT A TIME: The claimant regularly experienced a 60+ hour work-week for FedEx that averaged 12+ hours per day. It is specifically stated in the claimant's operating agreement, when equipment is in the service of FedEx, it shall be used by the contractor exclusively for the carriage of goods of FedEx, and for no other purpose. This precluded the claimant from working for a number of persons/firms at the same time, a common indicator of a true independent contractor. In fact, the claimant did not provide delivery services to any firm other than FedEx during his entire length of service from 2003 to August of 2007.

MAKING SERVICES AVAILABLE TO THE GENERAL PUBLIC: Per the operating agreement, the claimant (and any driver/helper the claimant wished to use) was required to maintain an image and adhere to specific standards of

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 10/31/2007

service, set forth by FedEx in sections 1.5, 1.10 & 1.12 of the agreement. These standards included: wearing a specific FedEx uniform & ID badge, FedEx guidelines for clothing & dress, using only FedEx-approved equipment identified with specific colors & Logos. Also, per section 1.4 of the operating agreement, it was forbidden to use the equipment for any other purpose, while it was in the service of FedEx. This resulted in the claimant being a de-facto representative of FedEx, making it impossible to provide services to the general public as an independent contractor.

RIGHT TO DISCHARGE: During the latter portion of the claimant's tenure with FedEx, the claimant would report to Scott Hagar, Terminal Manager of the Windsor, CT location, who worked with the claimant and all the contracted drivers to make certain that the packages were loaded at the beginning of each workday, the packages got delivered that day, and that FedEx Ground's customers were satisfied. The claimant stated he always met FedEx's standards of service and delivery results, per the guidelines in the operating agreement, and received bonuses and awards accordingly. On many occasions, however, the claimant would be engaged in heated discussions with Hagar over various issues, such as the load volume, route & delivery inefficiencies, customer complaints, paperwork, etc. Many of these occasions would end with Hagar threatening to terminate the claimant's contract per violation of section 1.10 of the operating agreement, forcing the claimant to obey his demands. The claimant maintained he was never told by management he was doing anything wrong, or was violating his operating agreement. The claimant received a generic letter, dated 08/4/07, from Hagar, stating he was not performing up to the FedEx standards of service outlined in the operating agreement. Finally, the claimant received a letter stating his operating agreement was terminated, effective 09/01/07. The claimant was not terminated due his failure to produce the desired results (successful delivery of packages to meet the needs of the customer) he was originally hired for. The right to discharge is a significant element of FedEx's control of forcing the claimant to obey their specific instructions, which is consistent with an employer/employee relationship.

Based on the above, it is clear that the claimant was not free from FedEx's direction and control both under his contract of hire and in fact. Therefore the claimant did not meet test A.

- B -

Taken from their website (www.fedex.com/us), FedEx Ground states they specialize in cost-effective, small package shipping, offering dependable business-to-business delivery or convenient residential service through FedEx Home Delivery and FedEx SmartPost. The claimant's duties of Driving/Delivery were within the normal course of the employer's business. The claimant also performed all of his services at the employer's places of business. The claimant had no business location separate from the FedEx terminal location in Windsor, CT. The claimant drove a vehicle with FedEx identifying markings colors, logos, etc., was expected to report to the employer's terminal location by 7:00 AM to scan and load packages, then was required to make FedEx customer deliveries within a route

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
 D/B/A ABOVE:
 ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
 P.O. BOX 1160
 COLUMBUS OH 43216-1160

Thomas Kjar
 STATUS: 1/1/1986 TBA []
 DATE: 10/31/2007

that was pre-determined by FedEx (an extension of the employer's location) all day, until he was finished. If a commercial/residential customer was not available for signature of a package delivery, the claimant would have to leave a FedEx door tag that only listed FedEx contact information on it, demonstrating FedEx attempted the service, not the claimant. Any specific comments or complaints by a customer, regarding the claimant or his service, were always addressed to FedEx then relayed to the claimant by FedEx. The claimant never dealt with customers directly, but only as a representative of FedEx. It is important to note that the claimant delivered packages to customers of FedEx. It was FedEx who contracted with these customers to deliver their packages. The claimant did not contract with any individual customers to deliver packages; those individuals were not his customers but rather were FedEx customers. The claimant provided services directly at FedEx's business locations (the terminal in Windsor, CT) and at FedEx's customer locations, which are an extension of FedEx's business location; the place where the business is customarily performed.

Based on the above, it is clear that the claimant provided services within the usual course of FedEx's business and provided services within the places that FedEx operates its business. Therefore, the claimant did not meet test B.

- C -

The claimant stated he never had his own Driver/Delivery business. Although the claimant paid for and had a vehicle used on his route, he did so in order to obtain work for FedEx and not because he wished to conduct an independently established business (see *BYRNE TRUCKING, INC. vs. EMPLOYMENT DIVISION, OREGON SUPREME COURT, 12/5/78*). FedEx not only specified the color, size and appearance of the claimant's vehicle, but also (without the claimant's prior notice or knowledge) altered the vehicle and added the FedEx pre-determined identifying markings to it. Also, the claimant never obtained his own vehicle or insurance. Instead, FedEx pre-arranged the vehicle, details, registration, agreement, funding source, cost, etc., with the claimant listed under FedEx's existing policy (FedEx's currently has an on-line enrollment for Protective Insurance), with the pre-determined cost deducted from the claimant's pay. In addition, although FedEx technically allowed the claimant to provide his own scanner on the open market, given the software requirements and software updates needed to stay compatible with FedEx's computer system, as a practical matter the claimant had to and did use the scanner furnished him by FedEx. This scanner and other "assets" supplied by FedEx (home upload kit, uniforms & ID badges) were forwarded as part of FedEx's "business support package" at a pre-determined cost, again, deducted from the claimant's pay. The claimant's service of both the driving and successful delivery of packages to businesses and residential customers was an integral part of the employer's business and required the claimant to regularly devote 12-13 hours per day to complete his route. The claimant regularly experienced a 60+ hour work-week for FedEx Ground. It is specifically stated in section 1.4 of the claimant's operating agreement, when equipment is in the service of FedEx, it shall be used by the contractor exclusively for the carriage of goods of FedEx, and for no other

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC538 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU	_____
				FAU	_____

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS

Thomas Kjar
STATUS: 1/1/1985 TBA []
DATE: 10/31/2007

OH 43216-1160

purpose. While servicing the routes, the claimant was required to maintain an image and adhere to specific standards of service, set forth by FedEx in sections 1.5, 1.10 & 1.12 of the agreement. These standards included; wearing a specific FedEx uniform & ID badge, FedEx guidelines for clothing & dress, using only FedEx-approved equipment identified with specific colors & Logos, rendering the claimant a de-facto representative of FedEx, making it impossible to provide services to either the general public, or for a number of firms at the same time. The claimant had to report to FedEx's terminal each morning to scan and load packages for that day's delivery. He then drove and delivered the packages within a delivery route that was pre-determined by FedEx. The claimant could not deviate off the route and deliver packages outside the pre-determined area without FedEx's permission. FedEx also required the claimant to upload and provide delivery data, along with the return of undelivered packages by certain deadlines each evening. While the claimant could hire & pay others to help him make deliveries and hire & pay additional drivers for additional routes he obtained, FedEx directed whom he could hire (by pre-determining who he could not hire) through background and training requirements FedEx insisted upon.

All these factors clearly show the claimant did not render services in the capacity of an entrepreneur. No evidence has been submitted to support the contention that the claimant established a package delivery business independent of his connection with FedEx, as is required by statute. No evidence has been submitted to support the contention that the claimant was customarily engaged in an independently established package delivery business at the same time he performed services for FedEx, as is required by statute (see DIONNE vs. NELSON FREIGHTWAYS No. 691-BR-89). FedEx failed to provide evidence the claimant held himself out to the public as an independently established business of the same nature as the service performed. The claimant did not operate a delivery business at a separate business location, or in a separate designated area in his home. The claimant did no advertising for any delivery business, had no separate phone line or listing, and did not use his own business cards. The claimant further stated all 2003-2007 income earned as a subcontractor was from delivery work he performed for FedEx. F.A.S. INTERNATIONAL vs. REILLY 179 Conn. 507. 427 A. 2d 392 (1980) states that a contractor must have one or more enterprises which exist apart from their relationship with the employer in question, which will survive the termination of that relationship. It has been FedEx's position that "contractors are equipped to independently engage in their own Delivery business", however, in JSF PROMOTIONS vs. ADMINISTRATOR (SC 16804), the court ruled that "...if the legislature had intended to exclude from the statutory definition of employment those workers who in addition to satisfying the first two prongs of the test are free to engage in an independently established trade, occupation, profession or business, but who have not done so customarily, it could easily have so provided... the third prong is not satisfied merely because the individuals are free to establish businesses or to work for other entities." F.A.S. INTERNATIONAL continues by stating the mere ability to engage in other activities is not sufficient. F.A.S. INTERNATIONAL also states that a worker is an employee until the party claiming the exemption proves otherwise. The claimant did sign the FedEx Standard Contractor Operating Agreement, because it was one of the conditions to getting the job. BROWN vs. THE CLEANING CREW No. 16-BR-89 (3-23-89) states

	Enclosures:			Distribution:	
Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQB <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETAQU	_____
				FAU	_____

Wednesday, November 21, 2007

INVOICE NUMBER: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 10/31/2007

that language in a contract which characterizes an individual as a contractor is not a controlling factor. The primary concern is what is done, not what a contract says. In addition, the claimant's signed operating agreement is invalid per Sec. 31-272 of the CT General Statutes, which states: "No agreement by an employee to waive, release or commute his rights to benefits or any other rights under this chapter shall be valid..."

Based on the above, it is clear that the claimant did not establish a package delivery business independent of his relationship with FedEx Ground. In addition, he was not customarily engaged in an independently established package delivery business, providing services for others while performing services for FedEx Ground. Therefore, the claimant did not meet test C.

In conclusion, the facts clearly demonstrate that FedEx has failed to show the claimant, a multiple-route contractor, met any parts of the ABC test (see FEDEX GROUND vs. OREGON EMPLOYMENT DEPARTMENT (2006)). In fact, LATIMER vs. ADMIN. 216 Conn. 237 252 (1990) states that an employer must satisfy all three parts of the ABC test. In addition, the claimant was never an employee of ADECCO. The claimant never had the intention for working for ADECCO as a temporary employee, never set foot in an ADECCO employment office, and never dealt with an ADECCO supervisor. ESA vs. ADMINISTRATOR No. 180-BR-89 (2-23-89) states that an employer/employee relationship is not established merely through a contract of hire between two parties, only an analysis of the common test for a master and servant relationship found in Sec. 31-222(a)(1)(B)(ii)(I) can be used to determine who the proper employer is. As it was clearly demonstrated above, because all services were performed for FedEx, and all direction and control was provided by FedEx, the claimant was only an employee of FedEx and all remuneration, regardless of the source, should be reported under FedEx Ground Package System, Inc.

The payment information (weekly settlement statements & 1099's) was forwarded by the employer. Because FedEx did not provide the claimant's payments, I am passing an estimate of the claimant's wages per the attached signed affidavit taken from those attached settlement statements and 1099. See attached copy of UC-767 for the claimant's base period and ABP.

Field Audit, please issue a 21-day letter with appeal rights. Carl Guzzardi, Tax Unit Manager, previously notified the employer of the reclassification of this claimant and they plan to appeal.

Please see the related reports on claimant's Chasse, Monahan & Villafane, along with a related report on 94-679-40.

PLEASE NOTE: a FERAT Request Audit is currently being conducted on this employer.

Notes: As there is a separate audit investigation in progress, we are only picking up wages for the calendar year of the claimant's base period and going forward. Any prior wages will be removed as part of the audit.

	Enclosures:			Distribution:
Field Rep.: Thomas Kjar	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status _____
	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier _____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc. _____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec. _____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W. _____
Reviewed: _____	Claimant affidavit, employer contact letter & claimant backup info.			ETACU _____
				FAU _____