

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

DANN OCEAN TOWING, INC.,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-6543

FLORIDA UNEMPLOYMENT  
APPEALS COMMISSION and  
CHRISTOPHER S. TROUDT,

Appellees.

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Opinion filed June 21, 2010.

An appeal from the Unemployment Appeals Commission.  
Alan Orantes Forst, Chairman.

David F. Pope and Allen Von Spiegelfeld of Banker Lopez Gassler P.A., Tampa,  
for Appellant.

Geri Atkinson-Hazelton, General Counsel, and Louis A. Gutierrez, Senior  
Attorney, Unemployment Appeals Commission, Tallahassee, for Appellees.

PER CURIAM.

In this unemployment benefits appeal, the record demonstrates that the  
appeals referee correctly concluded that appellant failed to prove that its employee  
was discharged for misconduct connected with his work because it failed to

demonstrate that the drug test the employee allegedly failed was conducted in compliance with the requirements of section 443.101(11), Florida Statutes (2008). Accordingly, the Unemployment Appeals Commission correctly affirmed the referee's decision. The record further demonstrates that the federal preemption argument appellant makes on appeal was not raised before the referee and, therefore, was waived. See generally New Pointe, Inc. v. Unemployment Appeals Comm'n, 932 So. 2d 360, 361 (Fla. 2d DCA 2006) (the employer may not make legal arguments for the first time on appeal). Accordingly, we affirm.

AFFIRMED.

WEBSTER, WETHERELL, and MARSTILLER, JJ., CONCUR.