

Iowa Department of Inspections and Appeals  
Administrative Hearings Division

Mike Rosewall  
Rosewall’s Handyman & Remodeling  
2620 Cambridge  
Des Moines, Iowa 50313,

DIA Case No. 24IWDM0001

Appellant,

**ADMINISTRATIVE LAW JUDGE  
DECISION**

v.

Iowa Workforce Development,

Respondent.

**STATEMENT OF THE CASE**

Iowa Workforce Development (“IWD”) completed an investigation and determined that an employer-employee relationship existed between Rosewall’s Handyman & Remodeling, LLC (“RHR”) and six of its workers. After RHR owner Mike Rosewall (“Rosewall”) appealed, IWD transferred the case to the Iowa Division of Administrative Hearings to schedule a contested case hearing. A contested case hearing was held on September 13, 2023 by telephone conference call. Rosewall appeared self-represented and testified. Jeffrey Koncsol represented IWD. IWD field auditor Lisa Gaeta appeared and testified. Exhibits submitted by IWD were admitted into the record. The matter is fully submitted.

**ISSUE**

Whether IWD properly determined that an employer-employee relationship existed between RHR and six workers.

**FINDINGS OF FACT**

On April 10, 2023, IWD field auditor Lisa Gaeta (“Gaeta”) completed an audit of RHR, finding six workers were misclassified by RHR as independent contractors when they should be considered employees. Ex. 12. Specifically, workers Chris Nash, Kat Moreno, William Robinson, Dana Bergloff, Mike Enos, and Dustin Jones were misclassified by RHR. Id. The notice of decision cited the following factors for the determination:

- The workers performed duties in the regular service of the employer.
- The work was performed under the name of the employer.
- The service provided by the workers was an integral part of the business.
- The workers did not have a financial investment in the business.
- The workers could end the relationship without incurring liability.
- The employer could fire the workers without incurring liability.

- The worker had a continuing relationship with the employer.
- The workers were paid on a weekly basis.
- The employer provided tools such as a paint sprayer, siding brake, drills, table saw.
- The workers did not have a contractor's registration.
- The workers did not have a contractor's registration or invoice you for their work.
- The workers did not have business insurance or worker's compensation insurance.

Id. IWD had sent RHR a list of employees they wanted more information on, including the six at issue. IWD ex. 11. The list included the six individuals at issue and a few others that IWD was also investigating. Id. RHR indicated that all of the individuals are "self-employed" and did not list any business entity that any worker may be doing business as or for. Id. For all the people listed except Kat Moreno, RHR responded "laborer" when asked what services they provided. Id. RHR responded "laborer/cleaning" for Kat Moreno. Id. The form also asked if these workers invoiced RHR, to which RHR responded "N/A" for all. Id. RHR also said that workers are paid by the job, versus hourly or salaried, and Rosewall found most through Craigslist or had a personal relationship with them. Id.

IWD determined as part of a tax return in 2020, RHR had purchased tools such as paint sprayer, \$2,000 in drills, siding brake, and a table saw. IWD ex. 14. It is unclear whether workers had access to these tools or only Rosewall in his own work for RHR.

IWD obtained payment information for the six individuals at issue. IWD exs. 9, 13. William Robinson was paid by RHR 37 times in 2019 for a total of \$19,755.00, 25 times in 2020 for a total of \$14,161.00, and 37 times in 2021 for a total of \$19,848.06. IWD ex. 9. Dustin Jones was paid 35 times in 2019 for a total of \$17,325.00, ten times in 2020 for a total of \$3,400.00, and three times in 2021 for a total of \$3,295.00. Id. Chris Nash was paid sixteen times in 2020 for a total of \$6,955.00 and nine times in 2021 for a total of \$4,050.00. Id. Dana Bergloff was paid 25 times in 2021 for a total of \$15,039.99. Id. Kat Moreno was paid sixteen times in 2020 for a total of \$5,960.00 and 34 times in 2021 for a total of \$12,785.00. Id. Mike Enos was paid nine times in 2021 for a total of \$3,050.00. Id. Workers were paid in their own name and not to a "dba" or other legal entity.

When looking at actual payments to these individuals, many were paid at least every week or two and were often paid in whole numbers. See IWD ex. 13. For example, in 2021, Dana Bergloff was paid an even \$400.00 and \$800.00 four times each. Id. Every payment to him was exactly an even, whole hundred-dollar amount except two (\$999.99 and \$840.00). Other workers' payment form was similar. These whole dollar amount payments can indicate hourly wages.

There is no evidence in the record that any of the workers advertised their services to the general public. There is no evidence that any of the workers maintained contractor

registration as required for some of the workers by Iowa Code chapter 91C. There is no evidence that any of the workers held their own business insurance. There is no information that any had Secretary of State registration. There is no evidence that any of the workers ever incurred a loss on a project or could incur a loss.

Following the audit, RHR claimed to have found old invoices and bids from the workers that they provided to IWD as part of their appeal request. IWD ex. 6. Two of the provided invoices were purported to be from Robinson Construction and were sequentially stamped invoice numbers 3473551 and 347352. Id. However, even though they were back to back in the invoice form book, one was dated August 6, 2019 and the second September 11, 2021. Id. This would indicate that Robinson did not invoice anyone between these two dates although Robinson would have been paid dozens of times by RHR alone during this period. There was also a January 1, 2020 “additional work authorization” form purported to be from Chris Nash and Nash Tree Service for \$300.00. Id. However, apparently Chris Nash did not start working for RHR until the third quarter of 2020. IWD ex. 9. Overall, this judge does not find that these bids are credible and they were likely not created contemporaneously with the alleged work done. It is likely they were created after the fact, and most likely after the audit, in an attempt to provide some evidence of an independent contractor relationship with the workers.

On appeal, Rosewall testified that he believed he did everything correctly to classify these workers as independent contractors. He would have them issued 1099 forms instead of W-2 forms. Rosewall claimed that all the workers told him that they had business insurance; even though he did nothing to verify their insurance certificates. Rosewall said that he paid his workers weekly or even sometimes multiple times within a week when jobs were completed depending on RHR’s cash flow. Rosewall said for all projects he provided materials but the workers used their own tools.

To get work, workers would call Rosewall to see if he would have any work available and Rosewall claimed he would then send them to a potential project to bid it. After receiving the bid, Rosewall would tell them whether they were hired or not. Rosewall testified that he believed all workers were also employed by other companies but he did not provide any credible evidence to support this assertion. Rosewall testified that the workers were free to hire assistants. However, when Dustin Jones hired an assistant once, RHR paid the assistant, not Jones. Rosewall testified that if a worker did not show up, he would complete the job himself. Similarly, if a worker did deficient work, he would remedy it and not require the worker to fix the issue. Rosewall testified that he never had to fire anyone; either a worker would just quit or not show up to a project.

Rosewall testified to the type of work each person provided. William Robinson did siding and roofing; Dustin Jones did concrete work; Chris Nash did demolition, general labor, and clean up; Kat Moreno, his significant other, did cleaning; Dana Bergloff did siding and plumbing; and Mike Enos did concrete and framing drywall. Overall, Rosewall still maintains that these were independent contractors.

## CONCLUSIONS OF LAW

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96.<sup>1</sup> IWD's Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.<sup>2</sup> IWD has adopted rules found at 871 IAC chapter 23.

IWD initially determines all issues related to liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship.<sup>3</sup> Services performed by an individual for remuneration are presumed to be employment, unless proven otherwise.<sup>4</sup> An individual or business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96.<sup>5</sup> If an employer-employee relationship exists, the designation or description of the relationship by the parties as anything other than an employer-employee relationship is immaterial.<sup>6</sup>

An employer is defined as "any employing unit which in any calendar quarter in either the current or preceding calendar year paid wages for service in employment."<sup>7</sup> An employing unit includes any individual or organization that has in its employ one or more individuals performing services for it in Iowa.<sup>8</sup> The term "employment" is defined as service "performed for wages or under any contract of hire, written or oral, express or implied."<sup>9</sup> Employment includes service performed by "[a]ny individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."<sup>10</sup>

Whether a person is an independent contractor or an employee is a "factual determination based on the nature of the working relationship and many other circumstances, not necessarily on any label used to identify the parties in the contract."<sup>11</sup> In other words, if the relationship of employer and employee exists, the parties' designation or description of the worker as an independent contractor is immaterial and of no consequence.

The right of control, as developed through the common law, is the principal test for determining whether a worker is an employee or independent contractor in the

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<sup>1</sup> Iowa Code § 96.9(1).

<sup>2</sup> *Id.* § 96.11(1).

<sup>3</sup> *Id.* § 96.7(4).

<sup>4</sup> 871 IAC 23.19(6).

<sup>5</sup> Iowa Code § 96.19(18)*f*, *Id.* 22.7(3).

<sup>6</sup> 871 IAC 22.19(7).

<sup>7</sup> Iowa Code § 96.19(16)*a*.

<sup>8</sup> *Id.* § 96.19(17).

<sup>9</sup> *Id.* § 96.19(18)*a*.

<sup>10</sup> *Id.* § 96.19(18)*a*(2).

<sup>11</sup> Pennsylvania Life Ins. Co. v. Simoni, 641 N.W.2d 807, 813 (Iowa 2002) (quoting Harvey v. Care Initiatives, Inc., 634 N.W.2d 681, 684 n. 2 (Iowa 2001)).

unemployment context.<sup>12</sup> Whether an employer-employee relationship exists under the usual common law rules is determined based upon an analysis of the individual facts in each case.<sup>13</sup> IWD has also adopted a number of rules with factors to consider in determining whether a worker is an independent contractor or employee.<sup>14</sup>

Under IWD's rules,

The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.<sup>15</sup>

The right to discharge or terminate a relationship is "an important factor indicating that the person possessing that right is an employer."<sup>16</sup> If the discharging party may be liable for damages for breach of contract, the circumstances are indicative of an independent contractor relationship.<sup>17</sup>

The furnishing of tools, equipment, materials, and place to work to the individual who performs the service are characteristic of an employer.<sup>18</sup> "In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor."<sup>19</sup>

Another factor includes the nature of the worker's contract for the performance of a certain type, kind or piece of work at a fixed price.<sup>20</sup> Generally an employee performs the work continuously and his or her labor is primarily purchased, whereas an independent contractor undertakes the performance of a specific job.<sup>21</sup> An employee is typically paid a fixed wage on a weekly or hourly basis, whereas an independent contractor is typically paid one sum for the entire work, whether it is paid in a lump sum or installments.<sup>22</sup>

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<sup>12</sup> Gaffney v. Dep't of Employ. Servs., 540 N.W.2d 430, 434 (Iowa 1995).

<sup>13</sup> 871 IAC 23.19(6).

<sup>14</sup> *Id.* 23.19.

<sup>15</sup> *Id.* 23.19(1).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* 23.19(2).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* 23.19(4).

Independent contractors can make a profit or loss and are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed.<sup>23</sup> Independent contractors often have significant investment in real or personal property that they use in performing services for others.<sup>24</sup> Independent contractors have the right to employ assistants with the exclusive right to supervise their activity and completely delegate work.<sup>25</sup>

An independent contractor follows a distinct trade, occupation, business or profession in which the worker offers his or her services to the public to be performed without the control of those seeking the benefit of the worker's training or experience.<sup>26</sup> Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business, or profession, in which they offer services to the public, are independent contractors and not employees.<sup>27</sup> Professional employees who perform services for another individual or business are covered employees.<sup>28</sup>

### **ANALYSIS**

As noted above, services performed by an individual for remuneration are presumed to be employment, unless proven otherwise and the business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96. As in most of these cases, there are factors that support both an employer, employee relationship and an independent contractor relationship.

Factors supporting an independent contractor relationship include the testimony that workers were paid per project rather than being paid hourly. However, there is some concern that many of the payment amounts to these individuals were round numbers, which can indicate hourly pay. The workers also had some skill specialization such as concrete work, siding work, etc. It appears that the workers primarily used their own tools, although \$2,000 worth of drills purchased by RHR might indicate those were provided to workers. The workers also seem to have flexibility in their schedules as they are not required to work set hours. These are all factors supporting an independent contractor relationship.

However, the factors supporting an employee, employer relationship are more credible and persuasive. First, none of the workers listed held their own business insurance. None held contractor registration, even though many would be required to under Iowa Code chapter 91C. There is no evidence that the workers have any entity registration with the

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<sup>23</sup> *Id.* 23.19(3).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* 23.19(5).

<sup>26</sup> *Id.* 23.19(2).

<sup>27</sup> *Id.* 23.19(1).

<sup>28</sup> *Id.*

Iowa Secretary of State. There is no evidence that the workers advertised their services to the public. Workers performed work in the name of RHR. These workers were paid in their individual names and not through their purported companies or other legal entities. Many of the payments to the workers were round numbers, which could indicate being paid hourly. Many of the workers were paid regularly by RHM and continued employment for prolonged periods. Several workers were paid in excess of \$10,000 per year.

There is no evidence that these workers could incur a loss on a project. Either RHR or the worker could terminate the employment relationship at any time without liability. When Dustin Jones hired an assistant, RHR made payment to the assistant, not Jones. Assistant pay should be the responsibility of the worker if they are actually independent contractors. Rosewall testified that should any of the worker's product be deficient, he would make the needed fixes himself instead of requiring the worker to remedy problems. Rosewall would also do the work himself if one of the workers did not show up to a project.

There is no credible evidence that the workers invoiced for their work. On the "services provided" form that RHR completed, "N/A" was marked for all workers when asked "does the worker invoice you?" Further, the invoices that were submitted by Rosewall as part of his appeal are not credible. For example, invoice numbers 347351 and 347352 are purported to be from Robinson Construction. Even though these two invoices are sequentially number stamped, one is dated August 6, 2019 and the other dated September 11, 2021. Based on payment records, we know William Robinson worked many times for RHM alone between 2019 and 2021, so it defies logic that these two invoices would be back to back if created contemporaneously with the alleged work that was performed. Unfortunately, it appears these invoices were created well after the fact in an attempt to appear as if William Robinson was actually invoicing for his work. Rosewall's testimony that he just happened to find these "invoices" after the audit is not credible. Similarly, it appears a work authorization form from Chris Nash is dated before he would have begun his work for RHR. This also indicates a fabricated invoice.

In sum, RHR has not shown sufficient evidence that the six workers were independent contractors. While there is some evidentiary support of an independent contractor relationship, the evidence indicating an employer, employee relationship is more robust and credible. Finding no error, IWD's decision must be AFFIRMED.

### **DECISION**

Iowa Workforce Development's decision is AFFIRMED. IWD correctly determined that an employer-employee relationship existed between RHR and Chris Nash, Kat Moreno, William Robinson, Dana Bergloff, Mike Enos, and Dustin Jones.

### **APPEAL RIGHTS**

This decision constitutes final agency action. Any party may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing. Any party may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.<sup>29</sup>

CC:

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<sup>29</sup> 871 IAC 26.17(5)



**Case Title:** ROSEWALL'S HANDYMAN & REMODELING L.L.C. V. IOWA  
WORKFORCE DEVELOPMENT  
**Case Number:** 24IWDM0001  
**Type:** Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'TA' with a long horizontal stroke extending to the right.

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Thomas Augustine, Administrative Law Judge