

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
CENTRAL PANEL BUREAU

Patrick Boileau	)	
Boileau Construction	)	
307 E 3rd St	)	Case No. 24IWDM0004
Washington, IA 52353	)	
	)	
Appellant,	)	
	)	<b>ADMINISTRATIVE LAW</b>
v.	)	<b>JUDGE DECISION</b>
	)	
Iowa Workforce Development,	)	
	)	
Respondent.	)	

**STATEMENT OF THE CASE**

Patrick Boileau appealed from a June 26, 2023, decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between his business, Boileau Construction and a number of individuals including: Vic Lucy, Aidan Miller, Clark Dean Conry, Jonathan Sammons, Lincoln Hanson, Jeffrey Marie, Benjamin Schiefer, Jeffrey Bierman, Jeremy Hotle, Ernie White, Bob Stutzman, and Noah Bruns. The matter was transmitted by IWD to the Administrative Hearings Division to schedule a contested case hearing. A telephone hearing was conducted on September 27, 2023. Power of attorney, Jackie Gunn, represented Boileau Construction and testified. Boileau appeared for the hearing and testified. Attorney Jeffrey Koncsol represented IWD. IWD Field Auditor Lisa Gaeta also appeared and testified for IWD.

Prior to the hearing, IWD submitted its 52-page Appendix, which includes the decision letter; the appeal letter; IWD’s synopsis, a pre-audit questionnaire, the services provided list, the questionnaire to determine the status of the worker, the depreciation schedule, the findings letter, a list of documents submitted by year, a 2019 and 2020 list of payments to subcontractors, a response for services provided request, and emails with Jackie Gunn. The documents were admitted into evidence without objection.

The Appellant submitted exhibits A through GG prior to the hearing. The following Appellant Exhibits were admitted into the record: Exhibit A, Exhibits C–J, Exhibit N, Exhibit P, Exhibits R–W, page 2 of Exhibit Y, Exhibit AA pages 9–12, 21–25, Exhibit BB, Exhibit DD, Exhibit EE pages 9–13, 22–29, Exhibit GG.

**ISSUE**

Whether an employer-employee relationship existed between Patrick Boileau, Aidan Miller, and/or other workers performing services for Patrick Boileau/Boileau Construction.

## **FINDINGS OF FACT**

Patrick Boileau, doing business as Boileau Construction provides construction for both new and existing buildings. (IWD App. 17). Boileau Construction is a sole proprietor and has been in business for forty years. (IWD App. 41).

IWD initiated an investigation of Patrick Boileau d/b/a Boileau Construction due to an unemployment claim. IWD investigated Boileau and Boileau Construction's status as a potential employer in the state of Iowa. Field Auditor, Lisa Gaeta, was assigned to the case. (Gaeta Testimony). Through the investigation IWD received Boileau's answers to a pre-audit questionnaire and a services provided chart listing the names of workers to whom checks had been written between 2019 and 2022 and requesting certain information. Boileau also provided four documents he stated were invoices from workers. He additionally provided notes about his business and his relationship with workers. (IWD App. 17-19, 40-47). After requesting information from four workers, IWD received one completed worker questionnaire. (Gaeta Testimony; IWD App. 21-23).

On April 27, 2023, IWD sent a findings letter to Boileau. In this letter Gaeta stated that IWD determined fourteen workers were misclassified as independent contractors when they should be considered employees of Boileau Construction. (IWD App. 25-26). IWD requested that any additional evidence or questions be submitted by May 19. After this findings letter Gaeta and Boileau's sister and power of attorney, Jackie Gunn had various email and phone conversations. (IWD App. 48-52; Appellant Exhibits P, T-V).

On June 26, 2023, IWD completed the audit of Boileau Construction finding twelve workers were misclassified as independent contractors when they should be considered employees. (IWD App. 8-11). Specifically, IWD determined the following workers were misclassified: Vic Lucy, Aidan Miller, Clark Dean Conry, Jonathan Sammons, Lincoln Hanson, Jeffrey Marie, Benjamin Schiefer, Jeffrey Bierman, Jeremy Hotle, Ernie White, Bob Stutzman, and Noah Bruns. (IWD App. 9). The notice of decision cited the following factors for the determination:

- The workers performed under the name of the employer;
- The workers performed duties in the regular service of the employer;
- The services provided by the workers were an integral part of the business;
- The workers did not have financial investment in the business;
- The workers could end the relationship without incurring liability;
- The employer could fire the worker without liability;
- The workers had a continuing relationship with the employer;
- The workers were paid on a weekly basis at an hourly rate;
- The workers did not have contractor's registration and did not invoice the employer for the work; and
- The workers did not have business insurance or workers' compensation insurance for the work they performed.

(IWD App. 9).

As aforementioned, IWD sent Boileau Construction a list of workers they wanted more information on, labeled the “services provided” list. (IWD App. 20). This list included the twelve workers at issue along with two others. (IWD App. 20). Boileau included notes and a letter stating that his business is word of mouth and he is hired on a handshake. He also indicated his workers were independent contractors. (IWD App. 40-41). Boileau indicated in his notes that he treats his workers as independent contractors that are hired to complete certain tasks, but the worker retains the right to control how and when they do the work. He also stated that the workers performed the services without his direct supervision. (IWD App. 41). He stated the workers use their own tools. (IWD App. 41).

On the chart provided by IWD, Boileau indicated that all the individuals were sole proprietors and did not list any business entity that any worker may be doing business as. (IWD App. 20). Boileau provided that the workers provided drywall, mud, floors, framing, paint, carpenter, laborer, and miscellaneous services. Most of the workers were listed as providing laborer services. (IWD App. 20). Boileau stated that he found out about the workers through word of mouth or referral. Boileau indicated that each of the workers was paid hourly. The form also asked if these workers invoiced Boileau. Boileau provided four documents to indicate an invoice. (IWD App. 20). The four documents provided as invoices all provided the task performed, the number of hours worked in a day, and the number of hours worked for the week. (IWD App. 44-47). Only one of the documents included the year. (IWD App. 44-47). Three of the four documents provided the job site. (IWD App. 44-47). Additionally, three of the four documents indicated a total amount owed. (IWD App. 44-47).

IWD also received one completed worker questionnaire. (IWD App. 21-23). The worker confirmed that he was paid on an hourly basis. The worker marked that Boileau decided how work assignments were completed, but also marked that he did not have to submit reports. He stated that “termination” could occur if the worker’s services were unsatisfactory. The worker marked that any problems or complaints were handled by Boileau and the worker. The worker indicated that he could not hire assistants. When asked whether Boileau supplied equipment, supplies, materials, the worker marked that Boileau did supply those items. The worker indicated that both the worker and Boileau provided tools. The worker also indicated that Boileau did not have the right to the worker’s fixed hours of work. Finally, the worker indicated that Boileau did have the right to require instructions to be followed. (IWD App. 21-23).

IWD determined as part of a 2019 tax return that Boileau purchased equipment and materials., including scaffolding, a skid loader, and tools. (IWD App. 15). Boileau indicated his workers could borrow the tools if needed, but would be responsible to repair or replace it if damaged. (Boileau Testimony; IWD App. 41).

IWD obtained payment information for the twelve individuals at issue. (IWD App. 15-16, 32-39). The documents showed the following:

- Boileau paid Lucy 21 times in 2020 for an approximate total of \$12,500, 33 times in 2021 for a total of \$18,491, and 28 times in 2022 for an approximate

- total of \$20,000. (IWD App. 15; Appellant Exhibit AA at 12, 23; Appellant Exhibit BB at 16-18; Appellant Exhibit EE at 23).
- Boileau paid Marie approximately 56 times in 2019 for an approximate total of \$25,950, approximately 50 times in 2020 for an approximate total of \$26,090, and 14 times in 2021 for a total of \$8,439. (IWD App. 15; Appellant Exhibit AA at 11; Appellant Exhibit BB at 10-11; Appellant Exhibit EE at 10-11, 22).
  - Boileau paid Miller four times in 2020 for a total of \$1,272, 18 times in 2021 for an approximate total of \$4,200, and 25 or more times in 2022 for an approximate total of \$19,000. (IWD App. 15; Appellant Exhibit AA at 10, 24).
  - Boileau paid Bierman 17 times in 2022 for an approximate total of \$13,000. (IWD App. 15; Appellant Exhibit AA at 25; Appellant Exhibit BB at 20-21).
  - Boileau paid Hanson 12 times in 2022 for an approximate total of \$5,104. (IWD App. 15; Appellant Exhibit AA at 22).
  - Boileau paid Schiefer 16 times in 2021 for a total of \$6,446.50. (IWD App. 15; Appellant Exhibit AA at 9; Appellant Exhibit BB at 13-14).
  - Boileau paid Bruns 12 times in 2019 for a total of \$3,989, and four times in 2020 for a total of \$1,327.50. (IWD App. 15; Appellant Exhibit EE at 12, 28).
  - Boileau paid Conry nine times in 2019 for a total of \$3,010, and 10 times in 2020 for a total of \$1,630. (IWD App. 15-16 Appellant Exhibit BB at 2-4; Appellant Exhibit EE at 27).
  - Boileau paid Sammons 11 times in 2020 for a total of \$3,889. (IWD App. 15-16; Appellant Exhibit BB at 23-24; Appellant Exhibit EE at 13, 25).
  - Boileau paid Hotle 30 times in 2020 for a total of \$14,093. (IWD App. 15-16; Appellant Exhibit BB at 6-7; Appellant Exhibit EE at 24).
  - Boileau paid White 26 times in 2019 for a total of \$13,945. (IWD App. 15-16).
  - Boileau paid Stutzman 14 times in 2019 for a total of \$6,135. (IWD App. 15-16; Appellant Exhibit EE at 9).

Boileau paid his workers hourly on a weekly basis. (Boileau Testimony). One of the workers, Miller, was sixteen when he began working with Boileau. (IWD App. 12-15). Bruns and Sammons also began working with Boileau at a young age, 20 and 21 respectively. (IWD App. 12-15). Nine of the twelve workers at issue (Miller, Bierman, Hanson, Schiefer, Conry, Sammons, Hotle, White, and Stutzman) had wages from other employers during the time they worked with Boileau. (IWD App. 12-15).

There is no evidence in the record that any of the workers advertised their services to the general public. There is no evidence that at the time of IWD's decision any of the workers maintained contractor registration as required for some 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. The services provided by the workers were the usual and necessary services for Boileau's business.

On appeal, Boileau maintains that the twelve workers at issue are independent contractors. Boileau portrays his business as a small-town, word-of-mouth business. He operates on a handshake with both the clients and the workers. He does not write down any contract between himself and the client or himself and the workers. Boileau does not provide bids to his clients. He bills based on time and material. His workers do not provide bids to him. They bill based on time. Boileau believes this works out best for the relationship between himself and the client as clients can make changes and that could increase the cost if the project were bid rather than based on time and materials. (Boileau Testimony).

Generally, after Boileau discussed the details of a job with the customer, he contacted workers to see if they were interested in doing some of the work. He told them what the job entails and asked what they were interested in doing. They discussed how soon the worker could get to the job and how long it would take the worker to complete the job. Boileau claims the workers knew the jobs had a beginning and an end. As mentioned above, none of the workers submit bids to him. (Boileau Testimony).

When Boileau contacted a potential worker, the worker would request a certain hourly amount. The number of hours the job would take was up in the air as details of the job could change. So he and the individuals would merely agree to the type of work being performed and the worker's hourly rate. (Boileau Testimony). Generally, Boileau paid the individuals on a weekly basis, although occasionally it would be a biweekly basis. (Boileau Testimony).

Boileau stated he does not direct the workers or tell them how to do their work. Initially, Boileau would take the worker to the job and relay the customer's wishes, for example which way to lay the floor, what texture needs to be on the wall, the colors, how high the railing needs to be, etc. (Boileau Testimony).

Boileau contends the workers were free to set their own hours. There were times that a homeowner is living in the home so it was normal for the workers only to work during normal work hours in those situations, but Boileau does not give them a schedule. Boileau said he has had workers work on evenings and weekends, but it is up to the worker to set those hours. (Boileau Testimony).

Boileau stated the workers use their own tools. If Boileau is on the job and his tools are there, the workers can borrow the tools. However, if the worker breaks the tool it is up to that person to replace or repair the tool. (Boileau Testimony). However, the workers did not provide the materials. Normally, the materials were purchased by the client or by Boileau. None of the workers dealt with providing the materials for the job. (Boileau Testimony).

Boileau stated the workers would need to make up mistakes on their own time. Boileau generally worked with individuals that he knew and the workers did not generally make mistakes. Boileau has not fired any of the workers. If he is unhappy with the worker, he just does not request

their services again. Boileau also stated that the individuals could make a profit or a loss as any mistakes would come out of the worker's earnings. (Boileau Testimony).

Boileau also stated the workers could use assistants. Boileau stated a couple of the workers have had someone come help them. Boileau states the worker pays for the assistant. (Boileau Testimony).

Boileau also clarified that he did not realize that the individuals should have contractor's registrations. His insurance company and his tax consultant did not advise him that contractor's registrations could be necessary for the workers. (Boileau Testimony).

At hearing, Boileau also presented affidavits from seven workers, Conry, Hotle, Marie, Lucy, Bierman, Sammons, and White. Five of the seven affidavits were notarized. (Appellant Exhibit BB). These documents were prepared and signed in preparation for the hearing to provide additional evidence of an independent contractor relationship. Thus, the affidavits are not as credible as other testimony, but still provide some insight into the relationship. (Boileau Testimony; Gunn Testimony; Appellant Exhibit BB).

In the affidavits, the workers verified some information provided by Boileau. The workers verified that they used their own tools. They confirmed that they set their own hours. They stated that Boileau did not tell them how to complete their work. They stated they were free to accept other jobs. One of the non-notarized affidavits additionally stated that he was free to hire assistants, but chose not to do so. The workers stated they were free to work for others. (Appellant Exhibit BB).

### **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>

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1 Iowa Code § 96.9(1).

2 Iowa Code § 96.11(1).

3 Iowa Code § 96.7(4).

4 Iowa Administrative Code (IAC) 871—23.19(6).

5 Iowa Code § 96.1A(16)(f); IAC 871—22.7(3).

6 IAC 871—23.19(7).

An “employer” is defined under Iowa law 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>

In the unemployment compensation context, the right to control the matter and means of performance is the principal test for determining whether a worker is an employee or independent contractor.<sup>11</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>12</sup>

The Department’s regulations outline several factors to consider in determining whether a worker is an independent contractor or an employee.<sup>13</sup> Factors that support the existence of an employer-employee relationship include:

- Employer’s right to discharge an employee without being held liable for damages for breach of contract;
- Employer furnishes tools, equipment, material, and a place to work;
- Continuous performance of work for the employer and the labor is purchased;
- Professional employees who perform services for another individual or business;
- Payment of a fixed wage on a weekly or hourly basis.

Factors that support an independent contractor relationship include:

- Worker is subject to control or direction of another merely as to the result to be accomplished by the work, but not the means and methods for accomplishing the result;

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7 Iowa Code § 96.1A(14)(a).

8 Iowa Code § 96.1A(15).

9 Iowa Code § 96.1A(16)(a).

10 Iowa Code § 96.1A(16)(a)(2).

11 *Gaffney v. Dep’t of Emp’t Servs.*, 540 N.W.2d 430, 434 (Iowa 1995) (citations omitted).

12 IAC 871—23.19(1).

13 IAC 871—23.19.

- Performance of a specific job at a fixed price whether the payment be made in a lump sum or installments;
- Following a distinct trade, occupation, business, or profession in which an individual offers services to the public to be performed without the control of those seeking the benefit of their training or experience;
- Worker can make a profit or loss and are more likely to have unreimbursed expenses and fixed, ongoing costs regardless of whether work is currently being performed;
- Worker has significant investment in real or personal property that is used in performing services for someone else;
- Worker has the right to employ assistants with the exclusive right to supervise their activity and completely delegate the work.<sup>14</sup>

The regulations also provide that if an employer-employee relationship exists after examination of the facts, the parties' own designation or description of the relationship is immaterial.<sup>15</sup> Whether an employer-employee relationship exists is determined based upon an analysis of the individual facts in each case, not necessarily on any label used to identify the parties in a contract.<sup>16</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. The determination of whether the relationship is an employer-employee relationship or an independent contractor relationship is not limited to one single factor. 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 workers have flexibility in their schedules as they were not required to work set hours. Some of the workers also had some skill specialization such as carpentry, etc. The workers primarily used their own tools. Generally, the workers were directed as to certain aspects of the finished product, but were not instructed how to complete their work, although the one employee questionnaire did state that Boileau decided how work assignments were completed. The workers did not provide reports to Boileau. These are all factors supporting an independent contractor relationship.

However, the factors supporting an employee-employer relationship are more persuasive. First, the workers were paid hourly on a weekly basis. Based on the limited documentation in the record, the workers' billing statements did not necessarily include an overall amount owed. Additionally, none of the workers at issue held their own business insurance. None held contractor registrations although it may be required under Iowa Code chapter 91C. At the time of the audit, there was no evidence the workers at issue had any entity registration with the Iowa

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<sup>14</sup> IAC 871—23.19.

<sup>15</sup> 871-23.19(7).

<sup>16</sup> 871 IAC 23.19(6); *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)).



Secretary of State. At the time of audit, there was no evidence that the workers advertised their services to the public. Many of the workers were paid regularly by Boileau and continued employment for prolonged periods. Half of the workers were paid in excess of \$10,000 in a single year and worked for long stretches of time throughout the year.

There is limited evidence about whether these workers could incur a loss on the project. Additionally, it is unclear whether Boileau or the workers could terminate the work relationship without incurring liability. The evidence in the record is mixed regarding whether the workers could employ assistants. Boileau testified that it has occurred on at least one occasion and a worker submitted an affidavit confirming that; however, the one completed questionnaire indicated that the worker could not employ an assistant.

In sum, Boileau Construction has not presented sufficient evidence that the twelve workers were independent contractors. While this is a close case, the Appellant bears the burden of establishing the relationship is not an employer-employee relationship. There is evidentiary support in the record of an independent contractor relationship; however, the evidence indicating an employer-employee relationship is more persuasive. 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 Boileau and Vic Lucy, Aidan Miller, Clark Dean Conry, Jonathan Sammons, Lincoln Hanson, Jeffrey Marie, Benjamin Schiefer, Jeffrey Bierman, Jeremy Hotle, Ernie White, Bob Stutzman, and Noah Bruns.

**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>17</sup>

cc:

Patrick Boileau/Boileau Construction, Appellant (By mail)  
Jackie Gunn, Authorized Representative (By mail and email)  
Jeffrey Koncsol, IWD (By AEDMS)  
Lisa Gaeta, IWD (By AEDMS)  
Stephanie Goods, IWD (By AEDMS)

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<sup>17</sup> IAC 871—26.17(5).

**Case Title:** PATRICK BOILEAU V. IOWA WORKFORCE DEVELOPMENT  
**Case Number:** 24IWDM0004  
**Type:** Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Amber DeSmet". The signature is written in a cursive style with a large initial "A" and "D".

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Amber DeSmet, Administrative Law Judge