

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
CENTRAL PANEL BUREAU

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Krystal Clean Subcontracting Services, LLC	)	Case No. 24IWDM0013
114 Northwest 5th Street, Ste 1	)	
Ankeny, IA 50023	)	
	)	
Appellant,	)	
	)	<b>ADMINISTRATIVE LAW</b>
v.	)	<b>JUDGE DECISION</b>
	)	
Iowa Workforce Development,	)	
	)	
Respondent.	)	

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**STATEMENT OF THE CASE**

Krystal Clean Subcontracting Services, LLC (Appellant or Krystal Clean) appealed from a December 4, 2023, decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between the Appellant and a number of individuals performing services for the Appellant, including: Angela Jones, Crystal Wheeler, Dustin Martin, Heather Vertz, Holly Vertz, James Laxton, James Shepherd, Jason Luckenbill, Jeff Aller, Jerry Grimes, Jessica Rose, Joshua Franke, Katie Gardner, Kayla Allen, Lillie Miller, Lisa Lewellin, Lucas Laxton, Max Hendricks, Rusti Robbins, Ryan Ceron, Shanna Curtis, Taylend Quinn, Terry Rowe, Travis Campbell, and Wayne Walske.

The matter was transmitted by IWD to the Administrative Hearings Division to schedule a contested case hearing. An in-person hearing was conducted on May 3, 2024. Billy Mallory represented the Appellant. Bradley Wheeler, the owner of Krystal Clean appeared and testified. Attorney Jeffrey Koncsol represented IWD. IWD Auditor Deborah Pendleton appeared and testified for IWD.

The undersigned took official notice of the administrative file. IWD submitted Exhibits 1 through 18, which were admitted into evidence without objection. The Appellant submitted Exhibits A and B, and amended those exhibits to reflect page numbers and the case number. The Appellant’s Exhibits A and B were also admitted into the record without objection.

**ISSUE**

Whether an employer-employee relationship existed between the Appellant and Angela Jones, and twenty-four other workers performing services for Krystal Clean Subcontracting Services.

## **FINDINGS OF FACT**

Krystal Clean is a business that provides services such as painting, maintenance, and cleaning and specializes in providing those services for apartments and property managers. (Wheeler Testimony). Bradley Wheeler is the sole member of the business. (Wheeler Testimony; Pendleton Testimony).

IWD initiated an investigation of Krystal Clean as part of its regular audit procedures. IWD investigated Krystal Clean's status as a potential employer in the state of Iowa. Field Auditor, Deborah Pendleton, was assigned to the case. (Pendleton Testimony). The investigator requested that the Appellant submit a detailed general ledger, bank statements or cancelled checks, tax returns, and any payments to individuals. IWD also sent a pre-audit questionnaire. (Pendleton Testimony; Exhibits 9, 10). In response, IWD received 1099s as well as a ledger that was done on a periodic basis. IWD requested additional information, but did not receive a detailed general ledger or bank statements or cancelled checks. (Pendleton Testimony; Exhibit 14, p. 45-47). In the pre-audit questionnaire, the owner of the business, Bradley Wheeler, described the business as a subcontracting service. (Exhibit 10, p. 26). IWD determined that rather than a subcontracting business, the business actually provided property management services. (Pendleton Testimony; Exhibit 13). On the tax forms, the business was listed as janitorial services business. (Exhibit 18; Pendleton Testimony).

IWD sent questionnaires to Krystal Clean's workers using the addresses from the 1099s. IWD did not receive any responses. (Pendleton Testimony; Exhibit 11). IWD also reviewed the Krystal Clean social media sites and did general web searches to learn more about Krystal Clean and its workers. (Pendleton Testimony; Exhibit 11).

On September 19, 2023, Pendleton emailed Wheeler a findings letter. In this email, Pendleton stated that IWD determined that from 2019 through 2022, twenty workers were misclassified as independent contractors, when they should be considered employees of Krystal Clean. (Exhibit 14, p. 39). IWD requested that any additional evidence or questions be submitted by September 29. (Exhibit 14, p. 41). After this email, Wheeler and Pendleton exchanged multiple emails about the findings. Wheeler expressed his disagreement with IWD's findings and provided additional information to IWD. (Exhibit 14).

On December 4, 2023, IWD completed the audit of Krystal Clean Subcontracting Services, LLC, finding that between 2019 and 2022, twenty-five workers were misclassified as independent contractors when they should be considered employees. (Exhibit 7, p. 10-11). The notice of decision cited the following factors in reaching its determination:

- Method of payment indicates an employer/employee relationship as the workers were paid on a regular basis;
- Degree of business integration indicates an employer/employee relationship as the workers performed duties in the regular service of the employer and the work performed was necessary for the business and the work was performed under the name of the employer;

- Lack of investment in business or facilities indicates an employer/employee relationship as the workers did not have a significant financial investment in the business and the workers did not have business insurance or workers' compensation insurance for the work they performed;
- Furnishing tools and materials by the employer indicates an employer/employee relationship as the employer provided tools such as vacuums and painting equipment and workers were provided with materials to complete the job;
- Instructions given by the employer indicates an employer/employee relationship as the employer provided instructions as to how and when to do the work and the workers were assigned a location to work at;
- Order or sequence set given by the employer indicates an employer/employee relationship;
- Employer's right to discharge indicates an employer/employee relationship as the employer could fire the workers without incurring liability;
- A continuing relationship indicates an employer/employee relationship as five workers worked for more than four years and workers worked continuously for several months and years at a time;
- Payment of business and/or travel expenses indicates an employer/employee relationship as the employer paid for cleaning supplies and tools;
- The employee's right to quit indicates an employer/employee relationship as the workers could end the relationship without incurring liability;
- The fact the workers did not make their services available to the general public indicates an employer/employee relationship as the workers did not invoice for the work, did not advertise their services to the general public, and did not have a contractor's registration;
- The workers did not have the ability to realize a profit or loss, which indicates an employer/employee relationship as the workers were paid for personal services rendered;
- The workers devoted substantially full-time hours to the employer;
- The services rendered personally indicates an employer/employee relationship as the workers were unable to assign the work to another person or business; and
- Not being able to work for more than one person or firm indicates an employer/employee relationship as the employer represented the workers as employees of the business.

(Exhibit 7, p. 11-12). Krystal Clean appealed from the Department's determination. (Exhibit 6). The Appellant disputes IWD's findings.

On appeal, the Appellant maintains that the twenty-five workers at issue are independent contractors and think of themselves as independent contractors. (Wheeler Testimony; Exhibit 14, p. 39). Wheeler described the business as a subcontracting company that subcontracts painting, maintenance, and cleaning and specializes in working in apartments with property managers. (Wheeler Testimony). The customers of his business are generally property management

companies and property owners. (Wheeler Testimony). Wheeler takes calls about cleaning vacant units, painting vacant units, or other various jobs from the customers. He then has a consistent list of workers that handle this type of job. He contacts the worker through email, text message, or phone calls about the particular job, and the worker either accepts the job or denies the job. If the worker denies the job, then Wheeler moves down the list. (Wheeler Testimony). Once a worker accepts the job, the worker would then work on the property owned by the third-party customer. (Wheeler Testimony). Once the worker is finished with the job, the worker notifies Wheeler so Wheeler can request payment from the client. Wheeler provides payment to workers per job when the job is complete. He pays a lump sum per project. (Wheeler Testimony). Wheeler is consistently looking at advertising for work and finding more workers. (Wheeler Testimony, Exhibit 15).

*A. Whether workers were integral to the type of business*

The parties dispute whether the workers were integral and necessary to the business as the parties disagree on the business type. IWD determined that Krystal Clean is a property management business rather than a subcontracting business. (Pendleton Testimony; Exhibit 13). On the tax returns filled out by Krystal Clean's accountant, the business lists that it is a janitorial services business. (Exhibit 18; Wheeler Testimony).

IWD contends Krystal Clean's workers provide integral services to the business as the workers perform general labor, cleaning, painting, drywall, and maintenance services and do not provide any specialized or distinct services. (Pendleton Testimony).

Wheeler describes the business as a subcontracting company that subcontracts painting, maintenance, and cleaning specializing in apartments and working often with property managers. (Wheeler Testimony). However, the company's social media page advertised that the business provided professional and top-quality cleaning services and stated that it is licensed and insured. (Exhibit 15, p. 129; Exhibit 16, p. 48).

The evidence shows the business provides cleaning services. Although Krystal Clean may be subcontracting the work out and its name indicates as such, the business is advertised to clients as a cleaning service. Thus, workers providing such cleaning services are integral to the business.

*B. Whether workers were holding themselves out separate from the employer*

The parties also present a factual dispute on whether the workers held themselves out as separate from the Appellant, Krystal Clean. IWD contends the workers performed work under the name of Krystal Clean and did not have investment in a business or facilities, which indicates an employer/employee relationship. Krystal Clean denies this.

There is no evidence in the record that any of the workers advertised their services to the general public. At the time of IWD's decision, there was no evidence that any of the workers maintained a contractor registration as required for some workers by Iowa Code chapter 91C. At the time of IWD's decision, there was no evidence that any of the workers held their own business

insurance or workers' compensation insurance. There is no information that any of the workers had a Secretary of State registration. (Pendleton Testimony). Although IWD did not discover any evidence that the workers had insurance, many of the workers did enter into an agreement with Krystal Clean that required the worker to maintain commercial liability insurance. However, Wheeler did not verify the workers had this insurance. (Exhibit A; Wheeler Testimony). IWD relied, in part, on the lack of registration, insurance, and advertising in determining the workers were not independent contractors.

IWD also relied on social media posts that showed that some workers wore Krystal Clean shirts while on the job. (Exhibit 15 p. 85–87; Pendleton Testimony). But Wheeler testified the workers did not have uniforms and that he used these shirts as advertising. (Wheeler Testimony). Considering the shirts were not a uniform and not all workers were wearing the shirts in the photographs provided, these social media posts have very little persuasive value as to whether the workers were employees.

Social media posts in the record also showed that Krystal Clean had vans wrapped with their logo that were at some job sites. (Exhibit 15, p. 73, 101, 144). Again this has very little persuasive value in this case. Wheeler explained that he paid two of the workers to advertise his business on their vehicles. This payment was separate from what they received working on different jobs. (Wheeler Testimony). As such, this use of advertising has very little relevance as to whether the workers were employees.

Krystal Clean also regularly advertised for workers on social media. (Exhibit 15, p. 52, 53, 57, 69, 71, 72, 74, 75, 76, 80, 89, 90, 91, 96, 102, 139). Although IWD appeared to rely in part on this type of information in making its decisions, these posts are not persuasive in this case in determining whether the workers were employees. In some of these postings Krystal Clean stated they were looking for lead cleaners or people to work with a group or work for the team. (Exhibit 15, p. 71, 74, 75, 76, 80, 96). Reviews from Krystal Clean's clients also refer to the workers as part of a team. (Exhibit 15, p. 104, 105, 120). However, in some social media posts, Krystal Clean also specifically referred to the workers as contractors. (Exhibit 15, p. 53, 89, 110). The social media posts cited by IWD only reveal that Krystal Clean needed workers and had workers perform jobs. These posts do not show whether or not the workers were employees or independent contractors.

IWD also presented evidence that two workers stated on their social media posts that they worked for Krystal Clean. (Exhibit 15, p. 111, 115). Again, simply stating that a worker works for Krystal Clean does not show whether the individual is an employee or an independent contractor. The individuals may say they worked for Krystal Clean regardless of whether they were independent contractors or employees. However, this information does tend to indicate these two workers did not have an independent business.

Although IWD indicated that none of the workers had their own business, the record does have evidence that at least one worker maintained an independent business. In the services provided list, Wheeler stated that Grimes and Arpy had businesses. (Exhibit 14, p. 43). IWD determined Grimes was an employee, while Arpy was not. (Exhibit 7).

Although not all the evidence provided is persuasive, on balance Krystal Clean has not shown that the workers at issue clearly held themselves apart from the business as most the workers did not operate as a separate business.

*C. Payment of workers*

IWD stated the Krystal Clean's method of payment and payment of business and traveling expenses to its workers indicated an employer/employee relationship. Upon review of the record, the payments to the workers actually indicate an independent contractor relationship.

During the investigation, Krystal Clean did not supply IWD with a detailed ledger or a copy of bank statements or cancelled checks. However, using the information provided IWD was able to ascertain whether a worker was paid in any given month. Multiple workers received payment from Krystal Clean every month from 2019 through 2022. (Exhibit 16). Additionally, the amount of the payment remained relatively similar for at least four individuals, specifically, Crystal Wheeler, Wayne Walske, James Shepherd, and Lucas Laxton). (Exhibit 16). In response to the initial findings, Wheeler communicated with IWD that workers were paid on request after work was complete. (Exhibit 14, p. 38).

At hearing, Wheeler credibly testified that he paid workers a lump sum per job as that is how the work comes to him. In testimony, Wheeler forthrightly stated that some of his workers sent invoices, some sent him the total, and some just let him know when the job was done because he knew what they were supposed to receive. The workers were not paid until the job was complete. (Wheeler Testimony). Wheeler's forthrightness, and his admission that he did not bid jobs and many of his workers worked continuously bolstered his credibility. Additionally, Wheeler's testimony was consistent with his earlier correspondence with the auditor during the investigation.

As mentioned above, Wheeler also discussed that workers generally did not bid for the jobs, he simply called through his list of subcontractors until someone accepted the job. The workers were free to turn the job down. (Wheeler Testimony).

The evidence in the record further supports the finding that workers were not reimbursed for travel or other expenses. Although one social media post from Krystal Clean stated that workers would receive lodging expenses when doing a job in Cedar Rapids that is not enough to find that Krystal Clean actually provided such reimbursements. (Exhibit 15, p. 99). The post does not state that Krystal Clean would provide such reimbursement, and the assumption that Krystal Clean provided reimbursement is merely speculation. In testimony, Wheeler credibly explained that one customer agreed to provide housing for workers that would come help out after a storm in Cedar Rapids.

Wheeler maintained in response to IWD's initial findings and in his testimony that the business did not provide payment for travel or expenses and did not provide bonuses or paid breaks. (Exhibit 14, p. 38; Wheeler Testimony). The evidence presented by the Appellant regarding reimbursement payments was more credible than the information presented by IWD as

Wheeler, a person with knowledge, provided specific testimony, which was more persuasive than a vague social media post.

The evidence in the record establishes that Krystal Clean paid on a per job basis and did not provide any reimbursement to its workers. This type of method of payment indicates the workers were independent contractors.

*D. Continuous performance of work for employer*

The evidence in the record shows that many workers did work for Krystal Clean for a continuous period, indicating an employer/employee relationship. Over half of the workers received payment for all twelve months of a calendar year. A few of the workers received income from Krystal Clean for every month of 2019 through 2022. (Exhibit 16, p. 41). Krystal Clean advertised for both full and part time help on social media and often requested for dependable workers. (Exhibit 15, 57, 91, 127, 136). In response to IWD's finding of a continuous relationship, Wheeler stated that the work is temporary or permanent, and that a continuing relationship does carry on with a good contractor as it would for an employee. Wheeler credibly testified he has a consistent list of workers that he calls when a job comes in. Wheeler also stated that some clients request certain workers, which again can add to the continuous and consistent work of that individual. (Wheeler Testimony). The evidence in the record supports a finding that workers have a continuing relationship with Krystal Clean.

*E. Direction and control of work*

The evidence in the record does not support IWD's finding that Krystal Clean had or exercised direction or control over the workers. In its initial findings, IWD stated that the employer provided instructions as to how and when to do the work and that the employer set the hours of work. (Exhibit 14, p. 40). This finding is inconsistent with the evidence in the record.

In response to the initial findings Wheeler responded that workers could choose to work at any time and whether to come to work without losing employment. Wheeler stated that the worker controlled the hours. (Exhibit 14, p. 35). Wheeler maintained in his testimony that workers worked on properties owned by third parties. He did not meet with his workers. He relayed any instructions to the workers from the third-party clients, but he did not provide personal instructions. Wheeler also credibly testified that workers did not check in with him to give him progress updates. (Wheeler Testimony).

At times, workers were given specific instructions on how to perform work and when to arrive to a job. Social media posts corroborated this. (Exhibit 15, p. 71, 72, 77, 91, 98, 127). However, none of the evidence in the record showed that Krystal Clean or Wheeler told the workers when to perform work or how to perform the work. The direct and consistent evidence in the record from Wheeler is that he relayed instructions from clients. However, the employer did not direct these workers how to perform their work or when to arrive at work.

*F. Right to employ assistants*

Evidence in the record is mixed as to the authority that workers had to employ assistants. At the time of the audit, the only evidence providing any justification for a finding that workers could not hire assistants were social media posts regarding the hiring of a worker to lead a group of girls and in one particular post, discussing the need for a lead cleaner. (Exhibit 15, p. 71, 74, 75, 76, 80, 90, 96, 98, 103, 126, 139). However, even at the time of the audit, the services provided list showed that eight of the twenty-six workers on the list had multiple workers. (Exhibit 14, p. 43). Despite this, IWD determined in its initial findings that the workers had an inability to hire assistants. (Exhibit 14, p. 41). In response, Wheeler contended that some contractors bring helpers with them without his knowledge and the workers paid the helpers out of pocket. (Exhibit 14, p. 38). In testimony, Wheeler maintained that he had some workers take on multiple jobs, so he assumed the workers must hire others to perform the job. (Wheeler Testimony).

At hearing, the Appellant also presented a subcontractors' agreement signed by many of the workers. In this agreement, the subcontractor agreed not to assign the work without written consent. (Exhibit A, p. 2). The contract also stated, however, that the worker shall identify all sub-subcontractors and supplies from whom the worker intends to obtain materials, equipment or labor in certain situations. (Exhibit A, p. 2). The agreement further provided that Krystal Clean could terminate the agreement if the worker failed to supply enough properly skilled workers. (Exhibit A, p. 3).

The evidence in the record suggests that workers could employ assistants. Yet, the subcontractor agreements did place some restrictions on this. However, in practice, based on Wheeler's testimony, Krystal Clean allowed workers to employ assistants.

*G. Tools, equipment, material, and place to work*

The evidence in the record also shows, contrary to IWD's findings, that Krystal Clean did not furnish tools or materials to the workers. IWD found that Krystal Clean provided tools such as vacuums and painting equipment and that the employer paid for cleaning supplies. (Exhibit 14, p. 40–41). In the general ledger provided by Krystal Clean to IWD during the audit, the business had purchased vehicles over the course of several years and also purchased other non-identified equipment in September 2020. (Exhibit 14, p. 45–47). However, there is nothing in the record to show these purchases included tools or materials for the workers.

In response to the initial findings Wheeler stated that the worker supplied his or her own equipment and that material may be purchased by the third-party client properties. (Exhibit 14, p. 35, 38). In social media posts, however, IWD noted references to snowblowers and floor cleaning equipment to show the employer provided the tools. (Pendleton Testimony; Exhibit 15, p. 55, 56, 71, 72, 92, 93, 94, 142). These social media posts are not persuasive in finding the employer provided tools or equipment. Simply posting a picture of a snowblower is not enough evidence to show Krystal Clean was providing these tools to its workers.



The more reliable and credible evidence is Wheeler's testimony and earlier response to the initial findings, denying that Krystal Clean provided these tools and equipment. Additionally at hearing, Krystal Clean presented the subcontractor agreement in which it stated the worker shall pay for all equipment, materials, and labor. (Exhibit A, p. 1–2).

#### *H. Right to discharge*

The evidence in the record is mixed about whether Krystal Clean could discharge workers without incurring liability and whether the worker had the right to quit without incurring liability. In its initial findings, IWD determined Krystal Clean had the right to discharge without incurring liability and the worker could quit without incurring liability, which indicated the presence of an employer/employee relationship. (Exhibit 14, p. 41).

On appeal, Krystal Clean presented evidence that many workers had a subcontractor agreement with Krystal Clean, which included an indemnification clause. (Exhibit A, p. 3). The agreement also included a termination clause allowing Krystal Clean to terminate if the worker breached or refused or failed to supply enough properly skilled workers or proper materials. This section also provided that the worker would pay the difference to Krystal Clean if the expense exceeded the unpaid balance. (Exhibit A, p. 3). Wheeler stated in testimony that when a property manager alerted him to an issue or did not like the work, sometimes Krystal Clean would lose the job and sometimes he would send in a new worker. He stated that this type of situation could result in Krystal Clean losing money as it paid two workers. (Wheeler Testimony; Exhibit 14, p. 38).

Based on the evidence in the record, workers could incur liability if the worker breached the agreement or failed to perform appropriately. However, based on the testimony, it does not appear that workers, in practice, incurred liability and it is unclear whether Krystal Clean would incur liability.

#### *I. Subcontractor agreements*

As mentioned above, at hearing Krystal Clean presented Subcontractor Agreements from twelve of the workers at issue. (Exhibit A). IWD stated that had the Appellant provided the agreements during the audit, the investigation may have changed, but opined that the determination that the workers were employees rather than independent contractors would remain the same. (Pendleton Testimony).

### **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 Iowa Administrative Code 871--23.

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1 Iowa Code § 96.9(1).

2 Iowa Code § 96.11(1).

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>

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>6</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>7</sup> “The term “employment” is defined as service “performed for wages or under any contract of hire, written or oral, express or implied.”<sup>8</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>9</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>10</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>11</sup>

The Department’s regulations outline several factors to consider in determining whether a worker is an independent contractor or an employee.<sup>12</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;

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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 Iowa Code § 96.1A(14)(a).

7 Iowa Code § 96.1A(15).

8 Iowa Code § 96.1A(16)(a).

9 Iowa Code § 96.1A(16)(a)(2).

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

11 IAC 871—23.19(1).

12 IAC 871—23.19.

- 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;
- 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>13</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>14</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>15</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 employee-employer relationship include the workers' continuous performance for Krystal Clean. Many of the workers were paid at least on a monthly basis by Krystal Clean for prolonged periods of times. Also, based on the limited documentation in the record, the workers did not hold contractor registrations although it may have been required under Iowa Code chapter 91C. At the time of the audit, there was no evidence that the workers at

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13 IAC 871—23.19.

14 IAC 871—23.19(7).

15 IAC 871—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)).

issue had any entity registration with the Iowa Secretary of State. There was also no evidence that the workers advertised their services to the general public. The workers generally did not hold themselves out separately from Krystal Clean.

However, the factors supporting that the workers are independent contractors are more persuasive. The evidence showed the workers had flexibility in their schedules and the Appellant did not require the workers to work set hours. Krystal Clean did not direct the workers as to the work to be performed beyond relaying any instructions from the third-party client. The workers did not provide progress reports to Krystal Clean about the work. The workers were paid per job after the job was complete rather than on an hourly or weekly basis. Additionally, the workers generally furnished their own tools and equipment, except when materials were supplied by the third-party client.

There is also limited or mixed evidence about some factors. Although IWD did not find the workers at issue had business insurance, the subcontractor agreement entered into with a number of the workers did require the workers to have general commercial liability insurance. Also, although the Appellant contended the worker could incur a loss or profit on a project, the Appellant presented no definitive evidence to show that workers have experienced a profit or loss. Additionally, although the subcontractor agreement included an indemnification and termination clause, the record lacked specific evidence about those sections being used in practice. Finally, although the subcontractor agreement and the other evidence in the record does show workers had the right to employ assistants, the subcontractor agreement also placed restrictions on this right.

On balance, Krystal Clean has presented sufficient evidence that the twenty-five workers were independent contractors. There is some evidentiary support that the workers are employees, but most of that evidence was indirect and held little relevant value in light of the direct testimony from Wheeler. The majority of the credible evidence shows the workers were independent contractors. Although it would have been helpful if Krystal Clean had provided the written contracts during the audit or given more detailed ledgers to explain the operations, such writings are not required under the law. Additionally, Krystal Clean completed the pre-audit questionnaire and services provided list and provided some of the requested information. Wheeler's credible hearing testimony then confirmed the manner of operation between Krystal Clean and the worker who provided services. The facts in this case more closely resemble the regulatory description of a business and its independent contractor than an employer/employee relationship.<sup>16</sup> In particular, Krystal Clean provided only the general parameters of the cleaning or other general maintenance job and did not set hours, control the manner of work, or provide equipment or tools.<sup>17</sup> Additionally, Krystal Clean paid per job rather than at an hourly or weekly rate and did not offer paid benefits or other holiday pay or reimbursements.<sup>18</sup> The evidence in the record of an independent contractor relationship was more persuasive. As such, IWD's decision must be REVERSED.

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<sup>16</sup> See *Gaffney*, 540 N.W.2d at 434 (right to control “manner and means of performance” is principal test to determine whether worker is an employee); see also IAC 871—23.19(1) (with employer/employee relationship employer has the right to control and direct “details and means by which that result is accomplished.”).

<sup>17</sup> IAC 871—23.19(1).

<sup>18</sup> IAC 871—23.19(4).

**DECISION**

Iowa Workforce Development’s December 4, 2023, decision that an employer-employee relationship existed between the individuals identified during the audit and Krystal Clean Subcontracting Services, LLC is REVERSED. IWD shall take all steps necessary to effectuate this decision.

**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>19</sup>

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<sup>19</sup> IAC 871—26.17(5).

**Case Title:** KRYSTAL CLEAN SUBCONTRACTING SERVICES, LLC V.  
IOWA WORKFORCE DEVELOPMENT  
**Case Number:** 24IWDM0013  
**Type:** Proposed Decision

IT IS SO ORDERED



A handwritten signature in black ink, appearing to read "Paul DeWitt", is written over a solid horizontal line.