

Iowa Department of Inspections and Appeals
Administrative Hearings Division

Raymond Helmuth
Bluff Country Doors, LLC
35659 Hilton Rd.
Edgewood, Iowa 52042,

Appellant,

v.

Iowa Workforce Development,

Respondent.

DIA Case No. 25IWD0001

**ADMINISTRATIVE LAW JUDGE
DECISION**

STATEMENT OF THE CASE

The contested case hearing was held on August 20, 2024 by telephone conference call. Bluff Country Doors, LLC ("BCD") was represented by attorney John Compton. BCD owner Raymond Helmuth appeared and testified. Jeffrey Koncsol represented IWD. IWD field auditor Vu Vo appeared and testified. Exhibits submitted by IWD and the appellant were admitted into the record. The matter is fully submitted.

ISSUE

Whether an employer-employee relationship existed between Bluff Country Doors, LLC, Andrew W. Hershberger and/or all other similarly situated workers at Bluff Country Doors, LLC.

FINDINGS OF FACT

The facts of this case do not appear disputed. On May 9, 2024, IWD completed an unemployment tax audit on BCD covering 2021 through 2023. Ex. 7. IWD found that Andrew Hershberger and eleven other workers were misclassified as independent contractors by BCD when they should have been considered employees. Id. The primary reasons for this decision are these workers were paid hourly, tools and materials were furnished by BCD, work was done on BCD premises, there was no invoicing or billing by the workers, the workers' work was integral to BCD, the workers provided general labor services instead of specialized and distinct services, the work was performed in the name of BCD, BCD provided training to the workers, BCD instructed the workers how to perform the assigned tasks, the workers performed duties in regular service to BCD, the workers at issue do not appear to have significant investment in real property to perform their work, the evidence does not suggest the workers can hire assistants, the workers could be terminated by BCD without incurring liability, the workers could terminate their employment with BCD without incurring liability, workers were unable to realize a profit or

loss, and the workers did not have contractor's registration; among other factors. *Id.* Certain other BCD workers who performed work using their own tools in their own shops were removed from the audit and were not considered employees by IWD.

BCD appealed. On appeal, BCD did not dispute that the twelve workers at issue were correctly determined to be employees by IWD when applying the relevant Iowa regulations. Instead, they challenge whether they should be required to participate in Iowa's unemployment insurance system. BCD is owned by Helmuth, who is a member of the Old Amish religious faith. Every employee of BCD, besides contracted drivers, are also members of the Old Amish faith. BCD, and other Old Amish businesses, apparently will only hire people who are of the Old Amish faith. It would be contrary to Old Amish tenets if a member would accept government issued unemployment benefits as that money was not earned.

BCD uses Social Security as an example of a government benefit program that allows members of the Old Amish faith to opt out because of their beliefs. BCD believes it is a violation of their First Amendment Constitutional rights to be required to participate in a government program that violates sincerely held tenets of their religious faith. However, BCD acknowledges that there is no law or regulation allowing opting out of Iowa's unemployment insurance program; unlike a federal law that allows Old Amish members to opt out of Social Security. BCD further believes it would be fundamentally unfair to require BCD to pay into a fund that they will likely never see benefit from. BCD finally asks that if they are required to participate in Iowa's unemployment insurance program that any fines and interest that may be due be waived.

CONCLUSIONS OF LAW

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96.¹ IWD's Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.² 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.³ Services performed by an individual for remuneration are presumed to be employment, unless proven otherwise.⁴ An individual or business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96.⁵ 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.⁶

¹ Iowa Code § 96.9(1).

² *Id.* § 96.11(1).

³ *Id.* § 96.7(4).

⁴ 871 IAC 23.19(6).

⁵ Iowa Code § 96.19(18)f, *Id.* 22.7(3).

⁶ 871 IAC 22.19(7).

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.”⁷ An employing unit includes any individual or organization that has in its employ one or more individuals performing services for it in Iowa.⁸ The term “employment” is defined as service “performed for wages or under any contract of hire, written or oral, express or implied.”⁹ 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.”¹⁰

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.”¹¹ 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 unemployment context.¹² 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.¹³ IWD has also adopted a number of rules with factors to consider in determining whether a worker is an independent contractor or employee.¹⁴

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.¹⁵

⁷ Iowa Code § 96.19(16)a.

⁸ *Id.* § 96.19(17).

⁹ *Id.* § 96.19(18)a.

¹⁰ *Id.* § 96.19(18)a(2).

¹¹ 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)).

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

¹³ 871 IAC 23.19(6).

¹⁴ *Id.* 23.19.

¹⁵ *Id.* 23.19(1).

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

The furnishing of tools, equipment, materials, and place to work to the individual who performs the service are characteristic of an employer.¹⁸ “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.”¹⁹

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.²⁰ 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.²¹ 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.²²

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.²³ Independent contractors often have significant investment in real or personal property that they use in performing services for others.²⁴ Independent contractors have the right to employ assistants with the exclusive right to supervise their activity and completely delegate work.²⁵

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.²⁶ 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

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* 23.19(2).

²¹ *Id.*

²² *Id.* 23.19(4).

²³ *Id.* 23.19(3).

²⁴ *Id.*

²⁵ *Id.* 23.19(5).

²⁶ *Id.* 23.19(2).

independent contractors and not employees.²⁷ Professional employees who perform services for another individual or business are covered employees.²⁸

ANALYSIS

BCD agrees that the twelve employees at issue were correctly determined to be employees by IWD when applying Iowa's regulations regarding such. In regards to their First Amendment claim, neither this proceeding nor IWD has authority to resolve constitutional issues. Whatever merits there are to the claim, administrative proceedings such as this can only preserve and not decide such claims.²⁹ However, BCD's constitutional claim is preserved should there be judicial review.

In regards to BCD's fundamental fairness argument, no relief can be granted either. It would actually be fundamentally unfair for IWD to exempt a religious faith from participating in Iowa's unemployment insurance system without a duly passed exemption. All employers in Iowa are required, and should be required, to participate in this program unless Iowans' elected representatives choose to create exemptions or provisions to opt-out. Going through the legislative process ensures scrutiny by the legislative branch, executive branch, and public at large. Everyone then has the opportunity to be heard on the issue.

It is conceivable that certain non-Amish companies have never had a former employee file for unemployment insurance. However, they are still required to pay into the system because it is possible that a former employee could file for unemployment benefits. It is not unconceivable that a former BCD employee could be separated from employment and file for unemployment benefits. While they would have to leave the Old Amish faith; it is not impossible nor implausible that this could occur.

One can safely presume most people's state and federal taxes probably help fund certain programs that they will never use themselves nor they, or their religion, necessarily agree with. This is just part of being a citizen. We can hope we will never need the fire or police departments for example but they need to be funded in the event that we, or those we care about, need such services.

The Social Security program provides guidance on how an exemption should be created in programs like this. The United States Supreme Court considered an appeal by members of the Old Order Amish faith challenging the requirement that they participate

²⁷ *Id.* 23.19(1).

²⁸ *Id.*

²⁹ See, e.g., *McCracken v. Iowa Dept. of Human Services*, 595 N.W.2d 779, 785 (Iowa 1999) (citation omitted) ("To preserve constitutional issues for . . . review, a party must raise such issues at the agency level. The party must raise such issues, even though the agency lacks authority to decide constitutional issues.")

in the Social Security system.³⁰ The Court ruled that while the Social Security tax interfered with the free exercise of the Old Amish faith; without a duly passed exemption by Congress, no relief could be granted and Social Security tax participation was mandatory.³¹ Chief Justice Berger succinctly concluded his opinion writing, “[t]he tax imposed on employers to support the social security system must be uniformly applicable to all, except as Congress provides explicitly otherwise.”³² Congress ultimately passed a law, which became 26 U.S. Code § 3127, which generally allows exemption from Social Security on religious grounds. If the appellant wants a similar exemption from the Iowa unemployment insurance fund, he should consult with his legislators.

In regards to BCD’s request that all interest and penalties be waived; this request is outside the scope of this proceeding. The only issue to be determined with this appeal is whether the workers at issue were correctly determined to be employees by IWD. The amount owed by BCD, including any fees and interest, would need to be challenged in a separate appeal.

DECISION

Iowa Workforce Development’s decision is AFFIRMED. The twelve workers at issue were correctly found to be employees by IWD.

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.³³

CC:

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³⁰ See United States v. Lee, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982).

³¹ See Id.

³² Id. at 261.

³³ 871 IAC 26.17(5)

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DEVELOPMENT
Case Number: 25IWDM0001
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.

Thomas Augustine, Administrative Law Judge