

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

Sophia Nail & Spa, LLC
Chi Nguyen
3217 7th Ave., Ste 102
Marion, IA 52302,

Appellant,

V.

Iowa Workforce Development,

Respondent.

Case No. 25IWDM0005

ADMINISTRATIVE LAW JUDGE DECISION

STATEMENT OF THE CASE

Iowa Workforce Development (“IWD”) completed an investigation and determined that an employer-employee relationship existed between Sophia Nail & Spa, LLC (“Sophia Nail” or “Appellant”), and its workers. Sophia Nail appealed IWD’s determination. IWD transferred the case to the Department of Inspections, Appeals and Licensing (DIAL) to schedule a contested case hearing. A telephone hearing was held on September 25, 2024. Sophia Nail was represented by attorney Brian Fagan. Loc Pham, accountant for Sophia Nail, and Nam Pham, a nail technician at Sophia Nail, testified at hearing. Jeffrey Koncsol represented IWD. IWD employer auditor Edvonna Pack appeared and testified. IWD exhibits 1-18 and Appellant exhibits A-D were admitted as evidence. The record remained opened until October 4, 2024, for the parties to submit post-hearing briefs.

ISSUE

Whether an employer-employee relationship existed between Sophia Nail & Spa, LLC and all workers performing services for Sophia Nail & Spa, LLC.

FINDINGS OF FACT

In March 2024, IWD discovered that workers providing services for the Appellant had filed claims for Pandemic Unemployment Assistance (PUA) benefits. Field Auditor Edvonna Pack opened an investigation to verify the entity's compliance with the Iowa Employment Security Law.¹

Pack mailed out an audit notification letter and pre-audit questionnaire to the Appellant for the 2019-2023 tax years. She requested the business provide W2 forms, any general

¹ See Iowa Code Chapter 96.

ledgers, 1099 forms, and any documentation that would pertain to payment to individuals performing services for the salon. Audit documents were timely provided to IWD.

The pre-audit questionnaire was completed by salon owner Chi Nguyen and her spouse Loc Pham, who works as the salon's accountant. The pre-audit questionnaire confirmed that Chi Nguyen is the sole owner of Sophia Nail. The business is a limited liability company that operates one nail salon. The salon owner was reported to be actively engaged in the business. The Appellant reported all independent contractors of the business were issued 1099 forms. The 1099 forms were provided to the auditor. Of the 14 technicians reported, two of the technicians worked for the salon for one year, and the rest worked for the salon two years or longer. The Appellant reported that tipping is customary in the nail salon business and that the salon includes tips in wages reported to IWD.

One section of the form asked whether any of the following are provided at the employer's expense: expense reimbursement, company vehicle, meals, menu/cafeteria plan, profit sharing, lodging, health insurance plan, retirement plan, or other expenses. The Appellant did not indicate that any of items applied to the business. The form also asked whether the business took any deductions from pay, including for retirement, health/disability insurance, menu/cafeteria plan, dependent care, flexible spending, or other deductions from pay. The Appellant did not mark that any of the listed deductions applied to its business.

On May 14, 2024, Auditor Pack mailed to the Appellant a "Services Provided" questionnaire listing the names of workers receiving regular payments from the business between 2019 and 2023. The form listed a total of 14 workers. The questionnaire asked the type of services performed by each worker; how the business found each worker; how each worker was paid, whether he or she submitted invoices, and whether the worker paid rent or had a written contract with the salon. Pack also mailed "Questionnaires to Determine Status of Worker" to eight workers. The completed questionnaires were due by May 25, 2024. No questionnaires were returned.²

The Appellant returned the completed Services Provided Request on June 6, 2024. The Appellant described one named individual as a "salon admin/janitor" and the rest of the listed individuals as "nail technicians."³ The Appellant wrote "N/A" when asked whether any individual operated through a separate business name. All the workers listed came to the business because they were family or knew each other, as opposed to applications, an employment agency or a bidding process. The Appellant indicated the nail technicians do

² Auditor Pack testified she had the names of the workers that were sent questionnaires, but that information was generally not made available unless specifically requested. She sent questionnaires to workers who were provided 1099 forms by the salon. Loc Pham signed a sworn supplemental declaration after the hearing, which was submitted to the undersigned with the Appellant's post-hearing brief. Loc attested that during the audit, Sophia Nail received a phone call from a nail salon in Davenport informing them this salon had received mail intended for Sophia Nail. They asked the salon to return the mail. Loc attested that he asked the nail technicians at Sophia Nail if they received or completed a survey from IWD, and all denied receiving or completing a survey.

³ The status of the janitor position is not at issue in this appeal as Auditor Pack ultimately determined he was an independent contractor.

not invoice the business, but that they are paid by “commission on services” they provide to customers. The Appellant indicated the salon only had verbal agreements with the nail technicians and they did not have any complaints as long as the salon paid them. The salon’s menu of available services listed a starting price for each service with a plus sign, indicating the price could be higher.

The auditor and Loc corresponded over email regarding salon operations. Loc reported that each nail technician has a key to the salon. They are not required to wear a uniform and no uniforms are provided to them. The nail technicians “set most of their schedule but they normally work during Salon business hours.” The salon’s set hours are Monday to Friday, 10:00am to 7pm, and Saturdays 9am to 6pm. If a customer booked an appointment with a nail technician, and the technician is unable to work, the technician or the salon would call the customer to cancel or reschedule the appointment. If the salon gets a walk-in customer, any available nail technician would provide the service “according to their turn.”

If there is a customer complaint or dissatisfaction regarding a provided service, Loc reported that the “salon will handle customer complaints and address with worker appropriately.” He added that the salon will instruct the nail technician to improve their work/skill because they are not providing satisfactory services for salon clients. Loc further reported that if a nail technician disagrees with the salon, they can quit because they are contractor employees. He stated no advance notice is needed in this situation. When the service needs to be redone, the same nail technician will do the service or another nail technician can do it and charge the first nail technician for the service.

Loc reported that the salon collects customer payments. The salon will then pay the nail technicians their agreed upon commission, either 50/50 or 60/40 split. Loc provided an example of a customer payment for a \$100 service. The salon collects \$107 (cost of service plus 7 percent sales tax), and pays the technician \$50 (if the commission term is 50/50), or \$40 (if the commission term is 60/40). Loc reported that the salon provides most of the nail supplies such as polish, lotion, buffer, acetone.

Based on the documents received, along with her own search of state databases and the internet, Pack determined the nail technicians listed on the “services provided” form were employees during the years at issue. Pack found no evidence that any of the nail technicians operated an independent business, such as a business site and/or advertising, or holding their services out to the public as independent contractors. Further, none had contractor’s registrations, identifiable business insurance, unemployment insurance accounts or had registered with the Iowa Secretary of State. Pack noted that although the nail technicians had some flexibility in their schedule and provided some equipment necessary to complete the job, most of the factors considered indicated the technicians were employees of the salon. A findings letter was mailed to the business stating it was determined the nail technicians were determined to be employees. The auditor asked to receive any additional evidence relevant to the determination by June 20. No additional information was received.

On June 27, 2024, IWD issued its Unemployment Insurance Tax Audit Results showing amounts owed due to employee misclassification. The audit results letter indicated Auditor Pack relied on the following factors in determining the workers were employees:

- Method of payment indicates an employer/employee relationship.
 - The worker(s) were paid on a weekly basis.⁴
- Degree of Business Integration indicates an employer/employee relationship.
 - The workers performed duties in the regular service of the employer.
 - The worker(s) performed general labor services and did not provide specialized and distinct services.
 - The work performed was necessary for the business.
 - The work was performed under the name of the employer.
- Lack of Investment in business or facilities indicates an employer/employee relationship.
 - The workers did not have a significant financial investment in the business.
 - The workers did not have business insurance or workers' compensation insurance for the work they performed.
- Set hours of work indicates an employer/employee relationship.
 - The workers are given a schedule of hours to work.
 - The workers are only able to work during the store hours the employer sets.
- Work done on employer's premises indicates an employer/employee relationship.
 - The work is done at the employer's business location.
- The employer's Right to Discharge indicates an employer/employee relationship.
 - The employer could fire the worker(s) without incurring liability.
 - The worker(s) were required to provide their services personally.
- A continuing relationship indicates an employer/employee relationship.
 - The workers worked continuously for several months and years at a time.
- The Employee's Right to Quit indicates an employer/employee relationship.
 - The worker(s) could end the relationship without incurring liability.
- The fact the worker(s) did not make their Services available to the General Public indicates an employer/employee relationship.
 - The worker(s) did not invoice you for their work.
 - The worker(s) did not advertise their services to the general public.

⁴ Auditor Pack testified the decision letter incorrectly stated the technicians were paid hourly. The technicians were paid by commission or by job. Pack testified this error alone would not change IWD's determination because consideration of all relevant factors is required.

- The worker(s) inability to Realize a Profit or Loss indicates an employer/employee relationship.
 - The workers were paid for personal services rendered.
- The workers devoted substantially full-time hours to this employer.
- Services Rendered Personally indicates an employer/employee relationship.

The Appellant submitted a timely appeal disputing that the nail technicians were employees of the salon.

Loc Pham testified at the hearing. His spouse, Chi Nguyen, is the sole legal owner of the business. Loc handles the salon's accounting. They opened the salon in 2014 and only have one location. The salon currently has five nail technicians in addition to Chi, who provides nail services and manages the daily operations of the salon as its only employee.

The salon provides nail services either by appointment or walk-in. Loc testified the technicians set their own schedules and appointments. When scheduling, a customer can schedule directly with the nail technician. If a customer calls the salon to schedule, the salon would not schedule the service without confirming with the technician that they are willing to take the appointment. For walk-in appointments, technicians have the choice whether to accept walk-in clients. If willing to accept walk-ins for that day, the technician would write their name on a roster. Walk-in appointments would go to technicians in order of names listed on the roster. The salon maintains a master book of appointments at the salon for reference. However, nail technicians keep their own appointment books as they are responsible for their appointments, including rescheduling or cancelling if needed.

The salon has set business hours, which Loc testified were discussed and agreed upon by the nail technicians. The salon hours are partly intended to accommodate walk-in customers. However, nail technicians are not required to work within the salon hours. The nail technicians can and do work outside of the salon hours. Each technician has a key to the salon. The salon also does not require them to work a certain number of hours a day or week. The salon does not require technicians to be available or at the salon during times known to be busy, such as over the weekends. Loc testified that walk-in clients have left because there were not enough technicians at the salon and the customers did not wish to wait. The technicians are not penalized by the salon if they elect not to work on any given day.

Loc acknowledged the salon has an advertised service menu with base prices. The technicians agreed upon the base prices. However, technicians can still charge different prices. If they charge more, the salon would get a percentage of the charged price pursuant to the agreed upon commission split. If a technician offers their customer a discount or does a service for free, the technician would still be responsible for paying the salon its share of the service based upon the base price. The salon offers discounts and promotions, such as offering discounts on the purchase of gift cards. These promotions do not impact the independent contractor's pay, as the technicians are still paid the full amount based on the agreed upon commission split. The salon also offers group parties. Before

scheduling a group party, the salon asks the technicians if they want to work a group party. Once enough technicians agree to it, the salon calls the customer to schedule the group party.

The technicians are paid by agreed upon commission rate, either 40 or 50 percent of services provided. The salon does not provide any employees benefits, such as holiday, vacation or sick leave pay. The salon tracks the technicians' revenue on a daily basis. The Appellant provided documentation showing how revenue is tracked. For each day between September 16 to September 21, 2024, the provided documentation shows a listing of all technicians who performed services on the given day followed by the price of the services they provided. The sheet contains a daily total for each technician. Loc testified the daily sheets are maintained for each day. At the end of the day, the salon reconciles their amounts with the amounts each technician believes they generated in revenue. At the end of the week, on Saturday, the salon will add the daily totals for each technician and pay them their commission. The salon does not keep the daily tracking sheets once the technician agrees to the revenue amount and accepts payment for that week. Loc testified the salon has used this same process for tracking daily revenue of each technician since the salon opened. Tips are not included in the revenue total, and the entire tip amount is paid to the technician.

In addition to providing a pedicure chair, the salon also provides materials that they can purchase in bulk such as nail polish, gel, powder, and acetone. This increases the product selection technicians can offer to their clients. The cost of these materials is included in the commission split. Technicians are allowed to bring in their own product if they choose, and would negotiate a better commission split if they did not use the salon's products. The technicians provide their own tools and instruments, such as nail clippers and filers, cuticle nippers, LED lamp, gloves and masks.

Loc testified that the salon considers the nail technicians to be independent contractors. He further testified the nail technicians consider themselves to be independent contractors. The technicians want to control their hours. Loc testified the nail technicians are not subject to any non-compete restrictions. They are free to also work at other salons, or provide services on their own independent of the salon. The salon does not require the technicians to wear a uniform or to wear anything that bears the salon's logo. At the request of the technicians, the salon provides business cards bearing the salon's name and logo but have blank lines for the technicians to write appointments and their direct contact information for the customers. The salon does not dictate how technicians are to complete their work. The technicians come onboard trained and licensed. The salon does not provide performance reviews, and the salon does not require the technicians to submit any reports about their performance. The technicians are also responsible for maintaining their licensure and continuing education requirements at their own expense.

For customer complaints, Loc testified the nail technicians agreed on how to handle instances of customer complaints or dissatisfaction with a service. If the original nail technician is unable or unavailable to redo the service, another nail technician can do it and be reimbursed for the service by the first technician.

Information in the record shows the salon applied for and received a loan under the Paycheck Protection Program (PPP) in 2020 and 2021. Loc testified the PPP loans were for the sole employee and owner of the salon, Chi Nguyen. The salon did not apply for PPP loans for the nail technicians. Although the salon wished to financially help the nail technicians during the pandemic shutdown, Loc testified they did not qualify for the PPP loans as independent contractors and the salon did not include them as employees on their PPP applications.

Nam Pham, a nail technician for Sophia Nail for over ten years, also testified at hearing. He considers himself to be an independent contractor. Nam wants to remain an independent contractor in order to have control over his hours and work. At Sophia Nail, he sets his own appointments when he wants to work, and can access the salon with his key to perform services outside of salon hours. Nam further testified he is not prohibited from working for other salons, and has performed services independent of the salon. Nam testified there is nothing prohibiting him from taking his current clients with him to a different salon.

Nam testified he is paid by commission. He negotiated a 60/40 commission rate with the salon. Nam corroborated that the salon and technicians keep track of services provided and reconcile their revenue numbers at the end of each day and week before commission payment is issued. Nam testified he receives tips and keeps all the tips paid by customers. The nail technicians agreed upon “base prices” for different nail services, but each nail technician can charge more than the base price.

Nam testified that he supplies his own instruments, but the salon provides nail polish, powder and acetone because the salon can buy in bulk and allow him to offer larger selections. The nail technicians share the salon-provided supplies to use product faster and avoid product expiration. Nam is not required to provide the salon with reports of his work and does not receive performance reviews by the salon. The salon does not require him to do his work in a certain manner or sequence. If a customer is unsatisfied with a service, Nam testified he bears the loss if he has to redo the service or reimburse another technician for redoing the service. This is a rule the technicians agreed upon themselves.

CONCLUSIONS OF LAW AND ANALYSIS

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96.⁵ IWD’s Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.⁶ 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.⁷ Services performed by an individual for remuneration are presumed to be employment, unless proven otherwise.⁸ An individual or business bears the burden of proving the individual

⁵ Iowa Code § 96.9(1).

⁶ *Id.* § 96.11(1).

⁷ *Id.* § 96.7(4).

⁸ 871 Iowa Administrative Code (IAC) 23.19(6).

or business is exempt from coverage under Iowa Code chapter 96.⁹ 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.¹⁰

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.”¹¹ An employing unit includes any individual or organization that has in its employ one or more individuals performing services for it in Iowa.¹² The term “employment” is defined as service “performed for wages or under any contract of hire, written or oral, express or implied.”¹³ 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.”¹⁴

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.”¹⁵ 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.¹⁶ 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.¹⁷ IWD has also adopted a number of rules with factors to consider in determining whether a worker is an independent contractor or employee.¹⁸

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

⁹ Iowa Code § 96.19(18)f; *Id.* § 22.7(3).

¹⁰ 871 IAC 22.19(7).

¹¹ Iowa Code § 96.19(16)a.

¹² *Id.* § 96.19(17).

¹³ *Id.* § 96.19(18)a.

¹⁴ *Id.* § 96.19(18)a(2).

¹⁵ *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)).

¹⁶ *Gaffney v. Dep't of Employ. Servs.*, 540 N.W.2d 430, 434 (Iowa 1995).

¹⁷ 871 IAC 23.19(6).

¹⁸ *Id.* 23.19.

which the services are performed; it is sufficient if the employer has the right to do so.¹⁹

The right to discharge or terminate a relationship is “an important factor indicating that the person possessing that right is an employer.”²⁰ If the discharging party may be liable for damages for breach of contract, the circumstances are indicative of an independent contractor relationship.²¹

The furnishing of tools, equipment, materials, and place to work to the individual who performs the service are characteristic of an employer.²² “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.”²³

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.²⁴ 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.²⁵ 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.²⁶

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.²⁷ Independent contractors often have significant investment in real or personal property that they use in performing services for others.²⁸ Independent contractors have the right to employ assistants with the exclusive right to supervise their activity and completely delegate work.²⁹

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.³⁰ 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

¹⁹ *Id.* 23.19(1).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* 23.19(2).

²⁵ *Id.*

²⁶ *Id.* 23.19(4).

²⁷ *Id.* 23.19(3).

²⁸ *Id.*

²⁹ *Id.* 23.19(5).

³⁰ *Id.* 23.19(2).

independent contractors and not employees.³¹ Professional employees who perform services for another individual or business are covered employees.³²

Viewing the evidence as a whole, the undersigned concludes Sophia Nail and Spa has met its burden to prove that the nail technicians identified in IWD's June 27, 2024, Audit Results Letter operated as independent contractors, not as employees, during the time period at issue.

The testimony of Loc and Nam demonstrated that the nail technicians control every aspect of their work, including when to work, how much to work, and what to charge for their work. While the salon has advertised business hours, the evidence shows the technicians have the ability to work within or outside of those hours. Each technician has a key to access the salon for their appointments. The evidence also demonstrates the technicians have full control over how much they work by way of accepting or rejecting appointment requests. The salon does not penalize a technician if they choose not to work at all, or if they cancel an existing appointment. Similarly, the technicians are not subject to non-compete agreements. They are allowed to provide services to their existing clients independent of the salon without consequence. The salon does not require the technicians to wear uniforms or wear apparel bearing the salon's business name. Further, the technicians are allowed to provide their personal contact information to customers and do not have to go through the salon to schedule services with the technicians. While testimony indicated the salon has business cards with the salon's logo, there is nothing to suggest the salon requires technicians to use the salon's business cards. It appears the technicians requested business cards to have for writing appointment times and their contact information for customers.

In terms of payments and expenses, the evidence shows the technicians are paid by commission for the services they provide. The salon has an advertised menu of services and base prices. The technicians have agreed upon the base prices. As both Loc and Nam testified, the technicians are not bound by the base prices and can charge more for their services without salon approval. If more is charged, the salon would receive their share of the charged price. However, if a technician chooses to offer a price lower than the base or do a service for free, the technician is still liable to pay the salon its commission share of the base price for the service. The evidence further shows that technicians, not the salon, bear the risk of loss when a service has to be redone for an unsatisfied customer either by redoing the service themselves or paying another technician to redo the service. Before a technician is paid at the end of the week, the salon and the technician do a reconciliation and agree on the amount of revenue the technician generated for that week. The Appellant provided examples of daily hand-written sheets the salon uses to track revenue of each technician. Although it would have been helpful if the Appellant had maintained a more formal invoicing system, such formality is not required under the law.

The evidence presented indicates the salon provides the technicians with supplies that are purchased in bulk, such as gel, powder, polish and acetone. While the salon provides these

³¹ *Id.* 23.19(1).

³² *Id.*

supplies for all the technicians, Loc testified the cost of these products is paid by the salon's share of the technicians' revenue. The technicians are not required to use any of the supplies provided by the salon, and can negotiate a better commission percentage if they choose to purchase all supplies on their own. However, both Loc and Nam testified allowing the salon to purchase these supplies in bulk allows for better selection. The technicians must still provide, at their own expense, all other tools and equipment needed for doing nails, such as clippers, filers, nippers, masks and gloves. Furthermore, the technicians are responsible for maintaining, at their own expense, licensing and continuing education requirements for their trade.

Upon review and consideration of the evidence presented, the undersigned finds that the manner of operation between the Appellant and the nail technicians more closely resembled that of a business and its independent contractors than an employer/employee relationship. Accordingly, IWD's decision must be reversed.

DECISION

IWD's decision is REVERSED. IWD shall take any further action necessary to implement this decision.

cc: Sophia Nail & Spa, LLC, Chi Nguyen, 3217 7th Ave., Suite 102, Marion, IA 52302
(by Mail)
Brian Fagan, Attorney for Chi Nguyen, 115 3rd St., SE, Ste. 1200, Cedar Rapids,
IA 52401, (By AEDMS)
Jeffrey Koncsol, Stephanie Goods, Edvonna Pack, IWD, (By AEDMS)

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

³³ IAC 871—26.17(5)

Case Title: SOPHIA NAIL & SPA LLC V. IOWA WORKFORCE
DEVELOPMENT
Case Number: 25IWDM0005
Type: Final Decision

IT IS SO ORDERED.

A handwritten signature in blue ink, reading "J. Sarajlija". The signature is written in a cursive, flowing style with a large initial "J".

Jasmina Sarajlija, Administrative Law Judge