IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

Zihm Cleaning, LLC [redacted] Appellant, **v.** Iowa Workforce Development, Respondent.	)	Case No. 25IWDM00006 **ADMINISTRATIVE LAW JUDGE DECISION**

STATEMENT OF THE CASE

Zihm Cleaning, LLC (Appellant) appealed from an August 2024, decision by Iowa Workforce Development (IWD or Department) computing an unemployment insurance contributory tax rate. IWD transmitted the matter to the Administrative Hearings Division to schedule a contested case hearing. A telephone hearing was conducted on November 22, 2024. Attorney, Laura Folkerts represented Zihm Cleaning at the hearing. Attorney Dane Hopwood represented IWD. IWD Field Auditor Deborah Pendleton appeared and testified for IWD. Sinaya Nadler appeared and testified for the Appellant. Jeffrey Koncsol also appeared and observed on behalf of IWD.

Prior to the hearing, IWD submitted a 115-page Case File, deemed as Exhibits 1 through 22, which included in part the notice of employer status and liability, the post audit notification letter, the appeal letter, a synopsis, pre-audit questionnaire, and the NAICS Code Description. IWD also submitted two audio exhibits labelled Exhibits 23 and 24. The Respondent's exhibits were admitted into evidence without objection. The administrative file consisting of the notice of hearing was also admitted under official notice.

ISSUE

Whether Zihm Cleaning, LLC was properly classified under 238991 All Other Specialty Trade Contractors of the North American Industry Classification System Code and whether Iowa Workforce Development computed the correct corresponding tax rate.

FINDINGS OF FACT

Zihm Cleaning, LLC is a business providing cleaning and janitorial services since approximately 2014 or 2015. Sinaya Nadler is the owner of the company. (Nadler Testimony; Respondent Exhibit 21).

While working on another audit, Field Auditor, Deborah Pendleton, found a 1099 issued regarding Zihm Cleaning. As per normal protocol, Pendleton checked whether Zihm Cleaning was an employer registered in Iowa. As Zihm Cleaning was not registered, IWD began an investigation. To determine whether workers had been properly classified and more importantly for the instant appeal, to determine the appropriate tax bracket if the workers were classified as employees, Pendleton reviewed the totality of the evidence gathered during the investigation. (Pendleton Testimony; Respondent Exhibit 7).

Initially, the auditor believed that Zihm Cleaning likely would have a 1% tax rate as it would fall in the non-construction industry. She believed the business was a cleaning company. However, after further investigation including phone conversations with Nadler, consultation with a subject matter expert, and review of certain documents, the auditor realized that despite providing cleaning services, a business still could fall in the construction industry. (Pendleton Testimony).

The responses on questionnaires and a review of the social media and online presence of the business indicated that Zihm Cleaning was associated with the construction industry. As part of the investigation, IWD sent the business a pre-audit questionnaire. Nadler completed the form. When asked to describe the business activity, Nadler responded "new construction cleaning." (Pendleton Testimony; Respondent Exhibit 13). Employees also indicated that they provided services cleaning newly constructed buildings and apartments. (Pendleton Testimony; Respondent Exhibit 20). IWD also considered online evidence such as the employer's website and social media accounts. On Zihm Cleaning's social media page, the introduction stated that the business is professional and experienced in all stages of construction cleaning. The page also added that Zihm Cleaning additionally provides janitorial and industrial cleaning. The business's website stated that the business is a "commercial cleaning service." The website further added that Zihm Cleaning provides "comprehensive post-construction cleaning services" that includes debris removal and final cleaning. On Nadler's own social media profile she was listed as owner of Zihm Cleaning, which was described as "Construction and Final Cleaning." The account further stated that Zihm Cleaning provides post construction cleaning such as rough cleaning, final cleaning, and window cleaning, and has worked on large projects for big general contractors. (Pendleton Testimony; Respondent Exhibit 21).

Other government documents also indicated that Zihm Cleaning was a construction business. Zihm Cleaning was registered as a contractor. As part of the registration, the business owner selected that it was in the construction industry. Nadler completed this registration in February 2024. (Pendleton Testimony; Nadler Testimony; Respondent Exhibit 15). IWD also reviewed Zihm Cleaning's incomplete unemployment insurance employer registration. Normally an employer would fill this out when they first hired employees. Generally the document is completed by the employer or authorized representative. The incomplete registration showed that Zihm Cleaning began to set up the account. The initial information provided by Zihm Cleaning classified the business as construction, specialty trade contractor, providing glass coating and tinting (except automotive) contractors, residential. So the business, in its incomplete attempt to fill out the registration identified itself with a NAICS Code of 23 238 151. The first classification of "23" means that the business is a construction entity. (Pendleton Testimony; Exhibits 16–17).

Finally, conversations with Nadler and a subject matter expert along with a review of the Iowa Code and related regulations indicated that Zihm Cleaning should be classified as a construction entity and be subject to the corresponding tax rate. The auditor discussed the nature of Zihm Cleaning's business with Nadler. Nadler told the auditor that in general Zihm Cleaning performed janitorial work or window cleaning 25% of the time and the rest, 75%, of the business's services were post-construction clean-up or final cleaning. Nadler explained that when a construction company finishes a building, Zihm Cleaning would go in and clean. Nadler was adamant that Zihm Cleaning was not within the construction industry. She said that her workers did not pick up debris. She elaborated that the workers cleaned the house and dusted. They cleaned cabinets, swept, mopped, vacuumed and cleaned windows so the house was dust-free. She also explained that the workers bagged up any dust or small debris for the construction crew to handle. Nadler also explained in these calls that she registered as a contractor because one of the construction companies Zihm Cleaning contracted with required them to have the contractor registration. (Respondent Exhibits 23–24; Pendleton Testimony). Based on these conversations, consultation with a subject matter expert, review of the law, and the above information, IWD determined the primary work that Zihm Cleaning completed fell in the NAICS Code for construction. (Pendleton Testimony; Respondent Exhibit 18).

After issuing a findings letter listing the workers who had been determined to be employees, IWD assigned the construction classification and construction contributory tax rate. On August 1, 2024, IWD sent a decision letter to Zihm Cleaning. (Respondent Exhibits 7–9). The tax contribution rate was set at 7.5% for 2020, 2021, and 2022, and 7% for 2023. The auditor determined the tax change after the audit of $37,498.78 based on the wages paid by the workers on the maximum wage base multiplied by the construction contribution rate for each of the years in the audit period. (Pendleton Testimony; Respondent Exhibit 8).

Zihm Cleaning appealed IWD's determination. Zihm Cleaning argued that it is not a construction employer and the business had zero unemployment claims. As such, Zihm Cleaning believed IWD applied the wrong tax rate. (Respondent Exhibit 6).

At the hearing, Nadler, Zihm Cleaning's owner, again asserted that the business is a cleaning business and should not be classified as construction. Nadler stated the work of the company was to do final cleaning. She also stated that janitorial services had comprised a smaller portion of the business's services, but that area had been increasing. She believes at this point fifty percent of Zihm Cleaning's business is comprised of janitorial work and the other fifty percent is final cleaning. All her workers are trained in the various types of services the business provides. She does not have one crew that would provide final cleaning services and a different crew that would provide janitorial cleaning. Nadler asserted that her workers are employed year-round and have not needed to claim unemployment. (Nadler Testimony).

On appeal Nadler also provided background for some of the evidence that IWD relied upon in making its determination. Nadler stated that she did not create or review the website or social media pages for either herself or the business. She was unaware of what was written or that her business was described as a construction cleaning business. She also stated that she filled out the contractor registration because one of the vendors she worked with required it. She could not find anything about cleaning when she was filling it out and she now believes she did not accurately describe the business.

Although Nadler contends the business and her own online presence as well as the documents reviewed by IWD do not accurately represent the business, she agreed that Zihm Cleaning provides post-construction clean-up. In testimony, Nadler stated that the business provides post-construction cleaning as well as janitorial cleaning. She again described the nature of the work and said that the business provides workers to do final cleaning when the building construction is complete.

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 Iowa Administrative Code 871--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]

Employer contributions accrue and are payable on all taxable wages paid by an employer for insured work.[4] IWD maintains a separate account for each employer and credits each employer's account with all contributions the employer has paid or which have been paid on the employer's behalf.[5]

A newly covered contributory employer, such as Zihm Cleaning, LLC, must pay contributions at the rate specified by law until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters immediately preceding the contribution rate.[6] There are two possible tax rates for newly covered contributory employers.[7] A "nonconstruction contributor employer" generally pays a tax rate of 1%. A "construction or landscaping contributory employer" generally pays a tax rate of 7.5%.[8]

By rule, IWD has defined "construction employer." The Department utilizes the North America Industry Classification System manual (2017 edition) to determine which employers will be classified as construction employers. The manual is available on the internet to view or download at https://wwww.census.gov/naics. The rules clarify that the construction sector is divided into three subsectors of construction activities: (1) building construction and land subdivision and land development; (2) heavy construction (except buildings), such as highways, power plants, and pipelines; and (3) construction activity by special trade contractors.[9]

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1 Iowa Code § 96.9(1).
2 Iowa Code § 96.11(1).
3 Iowa Code § 96.7(4).
4 Iowa Code § 96.7(1).
5 Iowa Code § 96.7(2)(*a*)(1).
6 Iowa Code § 96.7(2); Iowa Administrative Code (IAC) 871—23.7.
7 Iowa Code § 96.7(2)(*c*).
8 Iowa Code § 96.7(2)(*c*)–(*d*).
9 IAC Code 871—23.82(1).

The rule also provides the definition of "construction" and states, in part, that construction includes but is not limited to the following:

> (*n*) Other special trade contractors.
> . . .
> (6) All other special trade contractors. Establishments primarily engaged in specialized construction work. The other specialized work performed includes new work, additions, alterations, and maintenance and repairs.
> . . .
> Cleaning new buildings after construction – contractors.[10]

Similarly, the North American Industry Classification System manual utilized by the Department by rule specifically lists "[c]leaning building interiors during and immediately after construction" as an illustrative example of a particular construction classification.[11]

Iowa law provides that an employer may appeal from an initial determination of contribution rate.[12] The burden is on the employer.[13]

ANALYSIS

The parties in this case dispute Zihm Cleaning's classification as a construction employer for purposes of determining the contributory tax rate under chapter 96, regarding unemployment compensation. As noted above, Iowa regulations provide specific examples of construction industry employers. Construction employers include other special trade contractors. One example provided of the type of activity provided by a special trade contractor is "cleaning new buildings after construction."

The evidence in the record, including Nadler's testimony, shows that Zihm Cleaning provided cleaning services of new buildings after construction. While Zihm Cleaning was not directly involved in the construction itself, this type of business activity was specifically included in Iowa regulations as a construction employer activity. Zihm Cleaning provides post-construction cleaning services and under Iowa regulations, this requires IWD to classify Zihm Cleaning as a construction employer for purposes of the contribution rate.

Zihm Cleaning argued that it did not have unemployment claims and employed workers year-round, thus it should not be subject to the same contribution rate as other construction entities. Iowa regulations do not make such a distinction. Iowa regulations require that a business be classified as construction or nonconstruction for purposes of contribution rates. Zihm Cleaning primarily provided post construction cleanup. A business providing this type of service is considered a construction employer. As such, Zihm Cleaning is subject to the construction employer contributory rate.

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[10] IAC 871—23.82(2)(*n*).
[11] North American Industry Classification System, https://www.census.gov/naics/?input=23899&year=2017&details=238990 (last viewed December 6, 2024).
[12] Iowa Code § 96.7(4); IAC 871—23.52; IAC 871—23.55.
[13] IAC 871—23.55(1).

Zihm Cleaning also argued that it provided other services. However, the record establishes that Zihm Cleaning provided post-construction cleanup as a primary business activity. The business's recent increase in jobs for janitorial services does not affect this determination. Given the information provided to IWD and in the record, Zihm Cleaning provided post construction cleanup and is required to be considered a construction employer.

In sum, Zihm Cleaning has not presented sufficient evidence that it is a nonconstruction employer. The Appellant bears the burden in this case. The evidence in this case demonstrates that Zihm Cleaning is a construction employer and IWD correctly applied the construction employer contributory rate. IWD's decision must be AFFIRMED.

DECISION

Iowa Workforce Development's decision is AFFIRMED. IWD correctly determined that Zihm Cleaning should be taxed as a construction contributory employer. 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.[14]

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[14] IAC 871—26.17(5).

Case Title: ZIHM CLEANING, L.L.C. V. IOWA WORKFORCE DEVELOPMENT

Case Number: 25IWDM0006

Type: Final Decision

IT IS SO ORDERED.

Amber DeSmet, Administrative Law Judge