

Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

Cesar Garcia)	
3011 E. 36 th Ct.)	
Des Moines, IA 50317,)	Case No. 23IWDM0018
)	
Appellant,)	
)	
v.)	
)	ADMINISTRATIVE LAW JUDGE
Iowa Workforce Development,)	DECISION
)	
Respondent.)	
)	

STATEMENT OF THE CASE

Cesar Garcia, the appellant, appealed from a decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between his business and Ana Mendoza and other workers. The matter was transmitted by IWD to the Administrative Hearings Division to schedule a contested case hearing. A telephone hearing was held on June 20, 2023. Attorney Brock Menold represented Garcia. Garcia appeared and testified. IWD was represented by its attorney, Jeffrey Koncsol. Field auditor Lisa Gaeta appeared and testified for IWD. Stephanie Goods and Charles Mercer also appeared for IWD.

IWD submitted its 78-page Appendix, which includes the decision letter, the appeal letter, IWD’s synopsis, and other evidence.

ISSUE

Whether an employer-employee relationship existed between Cesar Garcia, Ana Mendoza, and/or other workers performing services for Cesar Garcia.

FINDINGS OF FACT

Cesar Garcia operates a business known as Garcia’s Handyman & Cleaning Services, LLC (“Garcia’s Handyman”). During the audit of another business, Lisa Gaeta found tax forms (1099s) issued to Garcia’s Handyman. She began an investigation into Garcia’s Handyman.

Gaeta inquired about eleven workers. This table summarizes the responses she received from Garcia as to those workers:

Worker	Name of worker's business	Services provided to Garcia's Handyman	Number of workers in business	How did Garcia's Handyman find worker?	Does this worker invoice Garcia's Handyman?	How is this worker paid?
Ana Mendoza	Sole proprietor	Cleaning	1	Facebook	No	Bid, based on size of home
Eutiquia Garcia Cruz	Sole proprietor	Cleaning	1	Facebook	No	Bid, based on size of home
Belen Hernandez	Sole proprietor	Cleaning	1	Facebook	No	Bid, based on size of home
Atanacia Cruz Cortez	Sole proprietor	Cleaning	1	Facebook	No	Bid, based on size of home
Leticia Garcia Cruz	Sole proprietor	Cleaning	1	Facebook	No	Bid, based on size of home
Maria Luciano Salvador	Sole proprietor	Cleaning	1	Facebook	No	Bid, based on size of home
Rafael Cotte Plaza	Sole proprietor	Construction – roofing	1	Was doing a job for another contractor and Garcia solicited a bid to do the roof on the same property from Rafael	No	Per job
Hector Rivera	Sole proprietor	Construction – framing	1	Referral from Rafael	No	Per project
Kevin Gonzalez Acevedo	Sole proprietor	Construction – repairs	1	Referral from Rafael	No	Per day

Edgar Buccio	Sole proprietor	Construction – siding	1	Facebook	No	Per job
Hector Contreras	Sole proprietor	Construction – siding	1	Facebook	No	Per job

(App. 32).

Gaeta also reviewed paychecks from the workers. Based on the paychecks she reviewed, she learned Ana Mendoza, for example, was paid [REDACTED]/hour consistently. (App. 37). Workers were paid weekly. (App. 37-68). Workers were often paid similar amounts from week to week. (App. 37-68). Gaeta believes this indicates hourly workers. (Gaeta testimony).

In May 2021, Garcia wrote a letter to Maria Luciano Salvador. The letter states:

This letter is to inform you that as of 5/21/2021, We will no longer require your services. We've enjoyed working with your house keeping services, but due to fail to comply with agreement, and absent on the job site several times, your working time and schedule doesn't meet our standards as well, we have decided to terminate your services.

All outstanding payments and deliverables are completed, this letter officially means contract terminate.

Thank you very much Cesar Garcia.

(App. 36).

Of the workers listed above, Gaeta found one—Rafael Cotte Plaza—with wages reported by other employers during the relevant period. (Gaeta testimony). No evidence was provided that the workers had business insurance or worker's compensation insurance. (Gaeta testimony). None of them were registered contractors. (Gaeta testimony). The workers did not hold themselves out to the public as independent businesses. (App. 25-26). The workers did provide some of their own tools. (Garcia testimony; App. 34).

Gaeta concluded these workers were employees of Garcia's Handyman. (Gaeta testimony). Besides the evidence listed above, she also based this conclusion on the fact that the workers worked for Garcia continuously throughout the year. (Gaeta testimony; App. 34).

Workers who worked in the cleaning business were able to hire people to work for them. (Garcia testimony). The workers could tell Garcia they were unavailable for a job. (Garcia testimony). The workers left business cards at houses they cleaned. (Garcia testimony).

CONCLUSIONS OF LAW

For purposes of unemployment compensation, the term “employer” is defined under Iowa law as an employing unit that, in any calendar quarter in the current or preceding calendar year, paid wages for service in employment. Iowa Code § 96.19(16)(a). “Employment” is defined as service performed for wages or under any contract of hire, written or oral, express or implied. *Id.* § 96.19(18)(a). “The burden of proof shall rest with an employing unit . . . which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.” Iowa Admin. Code r. 871-23.55(2).

“In the unemployment compensation context, it is well settled that the right to control the manner and means of performance is the principal test in determining whether a worker is an employee or independent contractor.” *Gaffney v. Dep’t of Emp’t Servs.*, 540 N.W.2d 430, 434 (Iowa 1995). “An independent contractor represents the will of his employer only as to the result of his work, and not as to the means by which it is accomplished.” *Meredith Publ’g Co. v. Iowa Emp’t Sec. Comm’n*, 6 N.W.2d 6, 10 (Iowa 1942).

The factors used to determine whether a worker is an employee or independent contractor are set forth in the Iowa Administrative Code. See Iowa Admin. Code r. 871-23.19. I will now discuss the factors set forth in the administrative rule.

23.19(1).

“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. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. 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 independent contractors and not employees. Professional employees who perform services for another individual or legal entity are covered employees.” Iowa Admin. Code r. 871-23.19(1).

Garcia wrote a termination letter to one worker, suggesting he had the right to discharge that worker. That letter also expressed concerns with the worker's performance. These concerns were more like those of an employer than of a contractor; for example, a contractor would not care about the working times of a subcontractor, as long as the work got done.

Garcia also testified that workers could decline jobs, which does suggest the workers were more like independent contractors.

There was little other evidence on this factor. The tribunal concludes this is a mixed factor.

23.19(2).

"The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience." *Id.* r. 871-23.19(2).

Here the workers worked continuously for Garcia. While he told Gaeta that workers would bid per job, the actual pay data tends to show he purchased workers' labor. In addition, there is no showing these workers held themselves out to the public for bids (except perhaps Rafael Cotte Plaza). In sum, this factor tends to show the workers were employees.

23.19(3).

"Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else." *Id.* r. 871-23.19(3).

While the workers did supply some of their own tools, there was no showing they had "significant investment" in any property used in performing services. It does not appear the workers could make a profit or loss. There was no showing the workers had unreimbursed expenses or ongoing costs. This factor tends to show the workers were employees.

23.19(4).

"Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments." *Id.* r. 871-23.19(4).

The workers were paid on a weekly basis. At least Ana Mendoza had an hourly rate. There is no showing any worker was paid "one sum for the entire work" or that the weekly checks were in fact installment payments toward that one sum. This factor tends to show the workers were employees.

23.19(5).

“The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.” *Id.* r. 871-23.19(5).

Garcia testified the workers could hire assistants. IWD does not dispute that. The tribunal accepts it as credible. This factor indicates an independent contractor relationship.

Discussion.

A presumption exists in favor of a finding of employment. *Id.* r. 871-23.19(6). As the Supreme Court of Kansas has persuasively put it, “the goal is not to simply compare the number of factors favoring one result against the number of factors favoring the other result. To the contrary, we are tasked with viewing the factors as a whole.” *Craig v. FedEx Ground Package Sys., Inc.*, 335 P.3d 66, 80 (Kan. 2014).

Here the tribunal finds these workers were employees. Notably, the workers worked for Garcia’s Handyman for months at a time and were paid weekly. The workers did not operate their own businesses. Garcia felt the need to terminate one of the workers. These are all strong indications the workers were employees. Garcia has the burden to show otherwise and he has not met that burden. IWD’s decision is affirmed.

DECISION

IWD’s decision is affirmed. IWD shall take any steps necessary to implement this decision.

Dated this June 28, 2023.

cc: Cesar Garcia, 3011 E. 36th Ct., Des Moines, IA 50317 (by mail)

Brock Menold, (by AEDMS)

Stephanie Goods, IWD (by AEDMS)

Lisa Gaeta, IWD (by AEDMS)

Jeffrey Koncsol, IWD (by AEDMS)

APPEAL RIGHTS

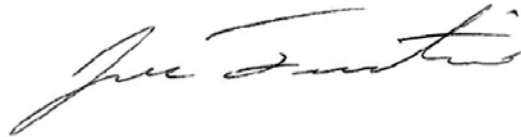
This decision constitutes final agency action.

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.

Case Title: CESAR GARCIA V. IOWA WORKFORCE DEVELOPMENT
Case Number: 23IWDM0018
Type: Final Decision

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read "Joe Ferrentino".

Joseph Ferrentino, Administrative Law Judge