

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

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Greg Thompson	)	
4216 NW 98 <sup>th</sup> St.	)	
Urbandale, IA 50061,	)	Case No. 22IWDM0002
	)	
Appellant,	)	
	)	
v.	)	
	)	<b>ADMINISTRATIVE LAW JUDGE</b>
Iowa Workforce Development,	)	<b>DECISION</b>
	)	
Respondent.	)	
	)	

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**STATEMENT OF THE CASE**

Greg Thompson, the appellant, appealed from a decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between Thompson’s business, Accelerate Business Coaching, LLC, and Amanda Lundstedt and all 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 October 29, 2021. IWD was represented by its attorney, Jeffrey Koncsol. Field auditor Deborah Pendleton appeared and testified for IWD. Thompson appeared. CPA Dennis Desmond appeared on Thompson’s behalf.

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

**ISSUE**

Whether IWD properly determined that an employer-employee relationship existed between Accelerate Business Coaching, LLC, Amanda Lundstedt, and all other workers performing services for Greg Thompson.

**FINDINGS OF FACT**

Amanda Lundstedt is a business coach. In 2014, she formed a limited liability company called Active Edge LLC. In 2016, this entity acquired a fictitious name of Lundstedt Coaching & Consulting. In 2019, Lundstedt Coaching & Consulting entered into an agreement with Accelerate ActionCOACH, LLC, Greg Thompson’s business. The agreement refers to Accelerate

ActionCOACH, LLC, as a “franchisee.” The agreement further refers to Drewelow & Associates as the “master franchisee” and to ActionCOACH as the “franchisor.” The agreement obligates Accelerate ActionCOACH to provide training and compensation to Lundstedt Coaching & Consulting and gives Lundstedt Coaching & Consulting access to certain branded marks, provided Lundstedt Coaching & Consulting does not engage in unauthorized use of those marks. The agreement prohibits Lundstedt Coaching & Consulting from competing with Accelerate ActionCOACH and requires Lundstedt Coaching & Consulting to provide coaching services in accordance with the franchise’s system. The agreement provides for an early termination fee of \$20,000 should Lundstedt Coaching & Consulting attempt to end the agreement early. The agreement is signed by Thompson, Lundstedt, and David Drewelow, a representative of the master franchisee.

In 2020, IWD began an audit of Thompson’s business. Pendleton conducted the audit. Pendleton spoke to Thompson. Thompson told her that Lundstedt was paid commission. Thompson said he invoices clients as Accelerate Business Coaching and collects their payments; he then pays the Lundstedt. Thompson also told Pendleton that the firm paid for shirts with “Accelerate Business Coaching” on them. Facebook pictures show Lundstedt wearing such a shirt.

Pendleton also spoke to Lundstedt, who told her that she does not pay a franchise fee. Instead she works under Thompson’s franchise and is reimbursed for her expenses.

Pendleton also looked at multiple websites, including the website for Thompson’s business ([www.accelerateactioncoach.com](http://www.accelerateactioncoach.com)), Lundstedt’s business page on Facebook ([www.facebook.com/coachamandalundstedt](http://www.facebook.com/coachamandalundstedt)), and Lundstedt’s personal site ([www.amandalundstedt.com](http://www.amandalundstedt.com)). Thompson’s business page lists both Thompson and Lundstedt as “business coach[es]” and contains a biography of Lundstedt. The Facebook page includes photos of Lundstedt from an event where she wore a branded Accelerate Action Coach shirt; it also promotes events with Accelerate Action Coach branding. Lundstedt’s personal site includes pages dedicated to her other interests and endeavors, but it also includes a page dedicated to her coaching business. That page also includes Accelerate Action Coach branding and calls her a “certified business coach with ActionCOACH.”

Thompson returned a questionnaire about the nature of the business. On the questionnaire, he reported that he had no employees (beyond himself).

Pendleton requested the business’s ledger. Pendleton noted that, according to the ledger, the business regularly paid “Amanda Lundstedt” (that is, not Lundstedt Coaching & Consulting). Pendleton noted four checks paid to Lundstedt in the fourth quarter of 2019. On October 1, 2019, Lundstedt was paid [REDACTED]. On October 29, she was again paid [REDACTED]. On November 22, she was again paid [REDACTED]. On December 31, she was paid [REDACTED].

Pendleton also noted certain expenses that were reimbursed to Lundstedt in the fourth quarter of 2019. On August 5, 2019, Lundstedt was paid \$150 and the ledger noted “business expenses – Amanda.” On August 12, Lundstedt was paid \$34.38 for a “logo shirt.” On August 19, Lundstedt

was paid ██████████ and the ledger indicated this was for “Amanda’s launch breakfast” at the Machine Shed restaurant.

Pendleton ultimately concluded Lundstedt was an employee, not an independent contractor, of Thompson’s business. Pendleton considered a number of factors in making her determination. She found the following factors indicated “some independence” for Lundstedt:

- The worker(s) provided some of the equipment necessary to complete the job (hand tools).
- The worker(s) had some flexibility in the schedule.

But Pendleton found the following factors supported a finding Lundstedt was an employee:

- The worker(s) performed duties in the regular service of the employer.
- The work was performed under the name of the employer.
- The service provided by the worker(s) was an integral part of the business.
- The worker(s) did not have a financial investment in the business.
- The worker(s) could end the relationship without incurring liability.
- The employer could fire the worker(s) without incurring liability.
- The worker(s) had a continuing relationship with the employer.
- The worker(s) were paid commission and were paid regularly.
- The worker(s) did not have a contractor’s registration or invoice you for their work.
- The worker(s) did not have business insurance or worker’s compensation insurance.

Thompson filed a timely appeal.

### **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).

The weight of the evidence suggests Thompson controlled how the services were provided. Specifically, the agreement Thompson and Lundstedt signed obligated Lundstedt to provide coaching services in accordance with the franchise’s system. That is, however Lundstedt might have coached clients prior to signing the agreement was irrelevant and in signing the agreement she aligned herself with the ActionCOACH brand. This suggests an employee-employer relationship.

*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).

Lundstedt did not perform just one specific job. She worked continuously for Thompson. She was paid steadily. These facts suggest an employee-employer relationship.

*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).

It does not seem as though Lundstedt could make a profit or loss. Her expenses seem to have been reimbursed. She did have her own website, which arguably represents a fixed, ongoing cost, but Thompson also provided her a page on his professional website. On the whole, this factor suggests an employee-employer relationship.

*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).

Lundstedt seems to have been paid monthly. This suggests she was an employee. Notably, she was paid a consistent amount for three months in the third quarter of 2019 before December’s different amount. This suggests regular intervals of steady pay, which is unlike what one would expect to see from independent contractors.

*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).

Lundstedt did not hire assistants. This suggests an employer-employee 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).

Viewing the factors as a whole, the employer here has not rebutted the presumption in favor of employment. IWD’s decision is affirmed.

**DECISION**

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

Dated this November 5, 2021.

A handwritten signature in black ink, appearing to read "Joe Ferrentino". The signature is written in a cursive style with a large initial "J".

Joseph Ferrentino  
Administrative Law Judge

cc: Greg Thompson, [gregthompson@actioncoach.com](mailto:gregthompson@actioncoach.com) , Appellant (by email and mail)

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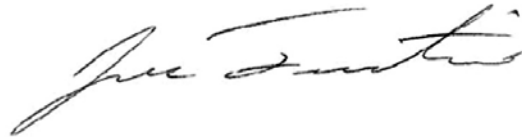
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**Case Title:** GREG THOMPSON V. IOWA WORKFORCE DEVELOPMENT  
**Case Number:** 22IWDM0002  
**Type:** Proposed Decision

IT IS SO ORDERED.

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

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Joseph Ferrentino, Administrative Law Judge