

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

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Leonel Contreras	)	
Contreras Roofing	)	
831 E Lacona	)	Case No. 23IWDM0010
Des Moines, IA 50315,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>ADMINISTRATIVE LAW JUDGE</b>
	)	<b>DECISION</b>
Iowa Workforce Development,	)	
	)	
Respondent.	)	

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**STATEMENT OF THE CASE**

Leonel Contreras, the appellant, appealed from a decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between his business, Contreras Roofing, and Jerry Bentley, Jr., 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 October 7, 2022. IWD was represented by its attorney, Jeffrey Koncsol. Field auditor Lisa Gaeta appeared and testified for IWD. Contreras appeared, along with his attorney, Valeria Cramer. Two witnesses testified on Contreras's behalf: Flavio Ibarra and Jose Eduardo Contreras. An interpreter assisted with the hearing.

IWD submitted its 25-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 Contreras Roofing, Jerry Bentley, Jr. and/or other workers performing services for Contreras Roofing.

**FINDINGS OF FACT**

During an audit of another employer, IWD field auditor Lisa Gaeta found 1099 tax forms issued to Leonel Contreras by the Internal Revenue Service. Gaeta began investigating.

She sent Contreras a form asking about eleven workers. For each worker, the form asks for the worker's "name of business," "services provided" to Contreras, and "number of workers." It also asks Contreras how he found the worker/business, whether the worker invoices him, and how the worker is paid. For six of the eleven workers, Contreras's responses were identical. He wrote that the worker's business shares a name with the worker. For example, Jerry Bentley, Jr., has a business of the same name. In other words, the workers do not have different business names; they operate under their own name. Contreras wrote that each worker was a roofer, each worker had one employee (i.e., they worked by themselves), he found the worker through bid, the worker invoiced him sometimes, and the worker is paid by "piece work." The only responses that differed were under the "how did you find worker/business" column. Five of the eleven workers are relatives of Contreras's and he responded that he found them through that, rather than through a bid. These relatives include Contreras's two witnesses. Jose Eduardo Contreras is his brother, and Flavio Ibarra is his brother-in-law. (App. 21).

Gaeta asked for invoices from the workers but did not receive any. None of the workers listed had registered with the State of Iowa as contractors as required by law. None of the workers had workers' compensation insurance. Gaeta was unable to find any advertising on the Internet for any of the workers' businesses. (Gaeta testimony).

Gaeta sent questionnaires to four of the workers but apparently did not receive any responses. (Gaeta testimony). She sent a questionnaire to Contreras, who reported zero employees. (App. 18).

Gaeta reviewed the wages paid to the workers. She excluded from her review Leonel Contreras's father, Eduardo Contreras, who operated a sole proprietorship. For the other ten workers, she found the following 1099 wages paid to them:

Name	2017	2018	2019	2020
██████████	\$70,165	\$60,000	\$75,000	\$90,000
██████████	\$69,816	\$60,000	\$75,000	\$90,000
██████████	\$55,625	\$60,915	\$65,000	\$70,000
██████████	\$45,851	\$46,252	\$51,000	\$55,000
██████████		\$40,262	\$45,000	\$45,000
██████████	\$45,691	\$46,219	\$51,000	\$55,000
██████████			\$75,000	\$90,000
██████████	\$51,261			
██████████	\$41,621			
██████████	\$41,695			

(App. 16).

Ultimately, Gaeta concluded the ten workers (excluding Eduardo Contreras) were employees. She wrote:

Although some factors indicate some independence for the individual(s)

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

The factors used to make the determination as an employee are:

- 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) 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

(App. 22). For the years 2017, 2018, 2019, and 2020, IWD assessed additional unemployment insurance tax against Contreras Roofing. In total, IWD assessed an additional \$64,862. (App. 9). Contreras appealed. (App. 7).

At hearing, Contreras testified. He stated he pays his workers by the job and that they show up to jobs without knowing how much they will all net at the end of the job. He stated the workers supply their own tools. He does not provide health insurance or retirement benefits for workers. The workers are permitted to hire their own assistants. He does not set precise hours for the workers and does not control how they perform the work because they already know how to do it. The workers did not provide him with written invoices. None of the workers had brought assistants to a job. (Contreras testimony). Flavio Ibarra and Jose Eduardo Contreras testified in accord. (Ibarra testimony; J.E. Contreras 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).

The tribunal finds that the workers provided their own tools. If Contreras controlled their work, it was with a light touch. Very little evidence was presented on this—the factor said to be the “principal” one—but in general, what little evidence exists tends to show the workers were independent contractors.

*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).

The tribunal finds the workers worked for this employer continuously. Nothing in the record supports a finding that these workers offered their services to the public. Instead, they appear to have offered their labor to Contreras Roofing. The tribunal does not find the workers’ testimony on their pay structure credible: it defies explanation that independent contractors would participate in jobs without knowing how much they stood to make at the end of the job. These facts support a conclusion that these workers are 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).

There was no showing that these workers risked a loss. Indeed, they made steady wages each year in question. This factor tends to show they 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).

Again we return to the evidence about pay, and again the tribunal finds the workers’ testimony incredible. The 1099 wages show these workers were paid consistently. They tended to receive steady pay increases, like employees do. They were often paid in round numbers, which one would expect of employees. It would be quite odd for independent contractors to consistently be paid the same amounts and to end the year at an exact figure like “\$75,000” or “\$90,000.” This factor tends to show these 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).

While the workers testified they *could* employ assistants, the record shows they never did. The tribunal concludes they could not actually employ assistants. This factor tends to show they were employees.

*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).

The only factor here that tends to suggest these workers were independent contractors is the “control” factor. Undoubtedly, that factor takes on increased importance as the “principal” factor. However, the evidence relating to that factor is minimal, and the tribunal is unwilling to credit it against the overwhelming weight of evidence in the other direction. 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 October 20, 2022.



Joseph Ferrentino  
Administrative Law Judge

cc: Contreras Roofing, c/o Leonel Contreras (by mail)

Valerie Cramer, 8345 University Blvd., Ste. E1, Clive, IA 50325; [cramerlaw@halousa.com](mailto:cramerlaw@halousa.com) (by mail and email)

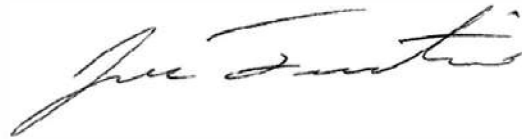
Jeffrey Koncsol, IWD (by AEDMS)

Barbara Corson, IWD (by AEDMS)

Lisa Gaeta, IWD (by AEDMS)

**Case Title:** LEONEL CONTRERAS V. IOWA WORKFORCE DEVELOPMENT  
**Case Number:** 23IWDM0010  
**Type:** Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

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Joseph Ferrentino, Administrative Law Judge