

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

Randy Randall)	
Randall Brothers Construction, LLC)	
1705 265 th Street)	Case No. 22IWDMM0005
Melbourne, IA 50162)	
)	
Appellant,)	
)	ADMINISTRATIVE LAW
v.)	JUDGE DECISION
)	
Iowa Workforce Development,)	
)	
Respondent.)	

STATEMENT OF THE CAS

Randy Randall appealed from a January 4, 2022 decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between his business, Randall Brothers Construction, LLC., (Randall Brothers) and Ben McDonald and other workers performing services for the entity. The matter was transmitted by IWD to the Administrative Hearings Division to schedule a contested case hearing. A telephone hearing was conducted on May 16, 2022. Randall appeared for the hearing and testified. Attorney Jeffrey Koncsol represented IWD. IWD Field Auditor Lisa Gaeta and Employer Liability Specialist Daniel Noonan also appeared and testified.

Prior to the hearing, IWD submitted its 39-page Appendix, which includes the decision letter; the appeal letter and attachments; IWD’s synopsis, and the findings letter. Following the hearing, IWD also submitted file notes drafted in 2016 by Noonan and IWD employee Kim Davis, regarding telephone conversations held with Randall. All documents were admitted into evidence without objection.

ISSUE

Whether an employer-employee relationship existed between Randall Brothers Construction, LLC and Ben McDonald and other workers performing services for Randall Brothers Construction, LLC.

FINDINGS OF FACT

General Background

In November 2020, as part of a routine review, Gaeta discovered that the unemployment insurance registration on file for Randall Brothers was incomplete. She therefore opened an investigation of Randall Brothers' payroll records to verify the entity's compliance with the Iowa Employment Security Law. *See Iowa Code Chapter 96 (2021)*. Randall was and continues to be the sole owner/member of the limited liability company. Central to Gaeta's review was whether persons who performed services for Randall Brothers were properly classified as independent contractors, rather than employees. (Gaeta Testimony; IWD App. at 15-16).

Gaeta began her investigation by submitting an audit notification letter and pre-audit questionnaire to Randall. In January 2021, she received an email from Mike Hamilton of Ameritax indicating he was asked by Randall to collect the necessary documents, but needed additional time to do so. Gaeta asked Hamilton to send the documents to her when completed. (Gaeta Testimony; IWD App at 25).

On September 9, 2021, in response to a second audit notification letter, Gaeta received Randall Constructions' 2017-2019 tax returns, copies of Internal Revenue Service (IRS) 1099 Forms issued by the business during that time period, and bank statements. Randall indicated his business offered home remodeling and new construction services. (Gaeta Testimony; IWD App. at 25).

Gaeta next mailed to Randall a "services provided" questionnaire listing the names of each worker at issue. The questionnaire asked how each worker was paid, whether he or she submitted invoices, and whether he or she carried liability insurance. In addition, Gaeta requested copies of the business' 2020 tax returns and 1099s. All information was due back to Gaeta on September 27, 2021 (Gaeta Testimony; IWD App. at 25).

Gaeta also mailed three "questionnaires to determine status of worker" to the workers listed on the 1099s previously received. None of these questionnaires was returned. (Gaeta Testimony; IWD App. at 25).

On September 20, 2021, Randall emailed Gaeta requesting additional time to submit the requested documents. Gaeta extended the deadline to October 6, 2021. On October 1, 2021, Mike Hamilton from Ameritax submitted copies of Randall Brothers' 2020 tax returns and 1099s. Neither Randall nor Hamilton submitted a completed services provided questionnaire.

Based on the documents received, along with her own search of state databases and the internet, Gaeta learned the following facts regarding the primary individuals who had provided services to Randall Brothers between 2016 and 2020:

Jeraziah (Ben) McDonald:

- provided labor services between 2018-2020; may also have provided services in 2017, but no information for this year was available;
- paid weekly in continuous payments, with no invoices;
- received 46 payments in 2018 and 40 payments in 2019; 2020 checks not provided;
- no evidence of independent business;
- no contractor's registration; UI account or business insurance;
- no evidence of advertising or offering services to public.

David King:

- provided labor services in 2019 and 2020;
- paid weekly in continuous payments, with no invoices;
- no evidence of independent business;
- no contractor's registration; UI account or business insurance;
- no evidence of advertising or offering services to public.

Khris Gull:

- provided labor services in 2019 and 2020;
- paid weekly in continuous payments, with no invoices;
- no evidence of independent business;
- no contractor's registration; UI account or business insurance;
- no evidence of advertising or offering services to public.

Jess Wignall, Kathy Randall, Rick Walker, Terry Tarbell, Jovanna Avala, Austin Grove, Jeffrey Harman, Ross Randall and Eric Voss:

- provided labor services in 2019 and/or 2020;
- no invoices or evidence of independent business;
- no contractor's registrations; UI accounts or business insurance;
- no evidence of advertising or offering services to public.

(Gaeta Testimony; IWD App. at 26; 31-39).

Although Randall Brothers issued each of the above individuals a 1099, rather than a W-2, for tax purposes, IWD considers the issuance of a 1099 to be of marginal relevance in evaluating the existence of an employer/employee relationship. According to Gaeta, many employers issue a 1099 with the mistaken belief it will insulate them from the need to pay unemployment taxes. (Gaeta Testimony).

Based on the information gathered during her investigation, Gaeta determined all of the above individuals were employees of Randall Brothers, rather than independent contractors. Notably, however, Gaeta determined several *other* individuals and entities paid by Randall Brothers during the same time period were independent contractors. For these individuals/entities, Gaeta was able to find evidence of public advertising and/or contractor registrations. (Gaeta Testimony; Exh. 26).

On October 11, 2021, Gaeta mailed a letter to Randall informing him of her findings. The letter requested that Randall Brothers submit any additional evidence by November 2, 2021. (Gaeta Testimony; App. at 29-30).

On October 28, 2021, Randall emailed Gaeta and requested an extension of time to submit additional information. Gaeta granted an extension until November 23, 2021. (Gaeta Testimony).

On November 2, 2021, Hamilton of Ameritax emailed Gaeta and indicated Randall had told him he spoke with an individual from IWD when he was setting up his business in 2016. This individual allegedly told Randall he could identify the individuals who worked for him as independent contractors. (Gaeta Testimony).

On January 4, 2022, IWD mailed to Randall Brothers the results of its unemployment insurance tax audit, formally concluding that Randall Brothers failed to report certain workers that should have been classified as employees, and that additional tax was owed. Randall has appealed IWD's decision. (Gaeta Testimony; IWD App. 15-16).

Randall does not dispute the evidence gathered by Gaeta during her investigation with regard to the majority of individuals at issue. He noted, however, that Kathy Randall was his wife, and did not in fact perform any services for the business. Rather, he issued Ms. Randall a business check to purchase a vehicle. (Randall Testimony).

Randall's primary argument is that he sought advice from an IWD employee in 2016, and relied on that individual's statements that Randall should classify seasonal, part-time workers as independent contractors. Based on a search of IWD records, IWD determined that Daniel Noonan *may* have been the employee with whom Randall spoke in 2016. Noonan testified that he had no independent recollection of his conversations with Randall, but has been trained by IWD never to give advice regarding such issues as worker classification. (Randall Testimony; Noonan 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 of \$1,500 or more, or employed at least one individual for some portion of a day in each of twenty different calendar weeks during the current or preceding calendar year.¹ "Employment" is defined as service performed for wages or under any contract of hire, written or oral, express or implied.² An employer claiming that any employment is not "employment" under the Iowa Employment Security Law, bears the burden to prove the exemption claimed.³

¹ Iowa Code § 96.1A(16)(a) (2021). An employing unit paying wages exclusively for domestic service is excluded from this definition. *Id.*

² Iowa Code § 96.1A(18)(a) (2021).

³ Iowa Admin. Code r. 871-22.7(3), 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.”⁴

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.⁵

The Department’s regulations outline several factors to be considered in determining whether a worker is an employee or an independent contractor.⁶ Factors that support the existence of an employer-employee relationship include:

- Right to discharge an employee without being held liable for damages for breach of contract;
- Furnishing of tools, equipment, material, and a place to work;
- Continuous performance of work for the employer;
- Payment of a fixed wage on a weekly or hourly basis.

Factors that support an independent contractor relationship include:

- Performance of a specific job at a fixed price;
- Following a distinct trade, occupation, business, or profession in which an individual offers services to the public to be performed without the control of those seeking the benefit of his or her training or experience;
- Unreimbursed expenses and fixed, ongoing costs regardless of whether work is currently being performed;
- Significant investment in real or personal property that is used in performing services for someone else;
- Right to employ assistants with the exclusive right to supervise their activity and completely delegate the work.⁷

⁴ *Gaffney v. Department of Employment Services*, 540 N.W.2d 430, 434 (Iowa 1995) (citations omitted).

⁵ 871-23.19(1).

⁶ *See gen.* 871-23.19.

⁷ *Id.*

The regulations also provide that if, upon examination of the facts of a case, an employer-employee relationship is found to exist, the parties' own designation or description of the relationship is immaterial.⁸

In the present case, Randall has failed to meet his burden to prove that any of the individuals at issue were in fact independent contractors during the relevant time period. Despite being given ample opportunity by Gaeta to do so, he provided no information while the audit was pending regarding the services provided by each individual. Rather, he simply noted "labor" on the cancelled checks. Nor did Randall ever dispute that each person performed services under the name of Randall Construction, that each performed tasks in the manner he directed, and that each was paid on an hourly, rather than project, basis. This pattern more closely resembles the regulatory description of an employer/employee relationship than that between a business and an independent contractor.⁹ There likewise is no evidence that any of these individuals advertised his or her services to other entities, which often is the case with independent contractors.¹⁰ Last, none of the individuals submitted invoices for his or her services, a fact which also weighs in favor of employee status.¹¹ That certain individuals worked seasonally, and none worked a traditional "full-time" schedule does not prevent them from being classified as employees. ¹²

It is unfortunate Randall may have received incorrect information from a public employee. Regardless, inaccurate advice or a misunderstanding of the law does not change the outcome of this appeal.

⁸ 871-23.19(7).

⁹ See *Gaffney*, 540 N.W.2d at 434 (right to control "manner and means of performance" is principal test to determine whether worker is an employee); see also 871-23.19(1) (with employer/employee relationship employer has the right to control and direct "details and means by which that result is accomplished.")

¹⁰ *Id.* at 23.19(1), (2).

¹¹ *Id.* at 23-19(2), (4).

¹² See e.g. Iowa Code § 96.1A (comparing "partial unemployment" with "temporary unemployment, addressing part-time and seasonal employment.")

ORDER

IWD's January 4, 2022 decision that an employer-employee relationship existed between the individuals identified during the audit is **AFFIRMED**.

Dated this 27th day of May, 2022.



Carla J. Hamborg
Administrative Law Judge

cc:

Randy Randall, Appellant (By mail)
Jeffrey Koncsol, IWD (By AEDMS)
Lisa Gaeta, IWD (By AEDMS)
Barbara Corson, 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. *See* Iowa Admin. Code r. 871-26.17(5).

Case Title: RANDY RANDALL, RANDALL BROTHERS CONSTRUCTION,
LLC V. IOWA WORKFORCE DEVELOPMENT
Case Number: 22IWDM0005
Type: Order

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Carla Hamborg". The signature is written in a cursive style with a large, looping initial "C".

Carla Hamborg, Administrative Law Judge