

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

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Todd Hammen	)	
2778 105 <sup>th</sup> St.	)	
Barnes City, IA 50027	)	Case No. 22IWDM0003
	)	
Appellant,	)	
	)	
v.	)	<b>ADMINISTRATIVE LAW</b>
	)	<b>JUDGE DECISION</b>
	)	
Iowa Workforce Development,	)	
	)	
Respondent.	)	

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**STATEMENT OF THE CASE**

Todd Hammen (the Appellant) appealed from a November 30, 2021 decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between Iowa Energy Alternative, LLC (Iowa Energy) and Jenni Lilly and all 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 March 24, 2022. Hammen appeared for the hearing and testified. Attorney Jeffrey Koncsol represented IWD. IWD Field Auditor Lisa Gaeta also appeared and testified.

Prior to the hearing, IWD submitted its 39-page Appendix, which includes the decision letter, the appeal letter, IWD’s synopsis, and evidence submitted by Hammen prior to IWD’s decision. Hammen and Lilly also submitted additional exhibits, which have been marked as Appellant’s Exhibits A and B. All documents were admitted into evidence without objection.

**ISSUE**

Whether an employer-employee relationship existed between Iowa Energy Alternative, LLC and Jenni Lilly and all other workers performing services for Iowa Energy Alternatives, LLC.

## FINDINGS OF FACT

### *General Background*

In January 2020, as part of a routine review, Gaeta discovered that the unemployment insurance registration on file for Iowa Energy was incomplete. She therefore opened an investigation of Iowa Energy's payroll records to verify the entity's compliance with Iowa Employment Security Law. Hammen was the sole owner/member during the relevant time period, wage years 2016 – 2020. Central to Gaeta's review was whether persons who performed services for Iowa Energy were properly classified as independent contractors, rather than employees. (Gaeta Testimony; IWD App. at 9).

Gaeta began her investigation by submitting an audit notification letter and pre-audit questionnaire to Hammen. The audit subsequently was delayed due to the Covid-19 pandemic. Gaeta ultimately re-mailed to Hammen an audit notification letter, pre-audit questionnaire and services provided questionnaire. Gaeta learned the following facts regarding all individuals who had provided services to Iowa Energy between 2016 and 2020:

#### Gabe Hammen:

- provided labor services between 2015-2020;
- paid weekly in continuous payments, with no invoices;
- no contractor's registration; UI account or business insurance;
- no evidence of advertising or offering services to public.

#### Allen Tefft:

- provided labor services;
- paid weekly in continuous payments, with no invoices;
- although Hammen provided Tefft's business name, Alacrity Trim, business not found through Google or social media searches;
- no contractor's registration; UI account or business insurance;
- no evidence of advertising or offering services to public.

#### Michael Nippe:

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

#### Jenni Lilly:

- provided bookkeeping services between 2016-2020;
- earned wages from another employer in 2015 and first quarter of 2016;
- paid weekly at first, received 34 payments in 2016; 35 payments in 2017; 32 payments in 2018; 4 payments in 2019; and 8 payments in 2020;
- paid in continuous payments with no invoices.

(Gaeta Testimony; IWD App. at 15-16; 25-29 (2019-2020 ledgers)).

Notably, Hammen issued each individual a 1099, rather than a W-2, for tax purposes. Gaeta testified, however, that 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 Iowa Energy, rather than independent contractors. Gaeta then mailed a letter to Hammen informing him of her findings. Hammen failed to provide additional evidence by October 22, 2021. (Gaeta Testimony; App. at 16).

On November 30, 2021, IWD mailed to Iowa Energy/Hammen the results of its unemployment insurance tax audit, formally concluding that Iowa Energy failed to report four workers that should have been classified as employees, and that additional tax was owed. Hammen has appealed IWD's decision. (Gaeta Testimony; IWD App. at 9).

During the hearing, Hammen disputed Gaeta's findings with regard to each individual. Hammen first argued that his son, Gabe, performed services during a break from college. Gabe was not paid weekly, and received only two checks from the business. (Hammen Testimony; IWD App. at 27).

Hammen also disputed that Allen Tefft should be classified as an employee. According to Hammen, Tefft operated his business, Alacrity Trim, out of Colorado, and had never been to Hammen's business in Iowa. Last, Tefft performed a specific service for Iowa Energy, metal bending, and was paid in two, lump-sum payments. Hammen stated he thought he had received an invoice from Tefft, but likely did not retain it. (Hammen Testimony; IWD App. at 36).

Hammen did not make a specific argument regarding Michael Nippe. Iowa Energy's ledgers show that Nippe received seven payments between January 4, and December 26, 2018, ranging in amounts between \$50.00 and \$100.00. (Hammen Testimony; IWD App. at 35).

Hammen devoted the majority of his testimony discussing Jenni Lilly, who performed bookkeeping and accounting services for Iowa Energy beginning in 2016. Hammen testified that when he first asked Lilly to perform services for his company, he indicated he could only afford to pay her for a few hours per week. He also allegedly stressed that Lilly would "be her own boss." Lilly began performing the services out of her home, but eventually moved to a small office in Hammen's own home. Hammen stated that there were times his company could not produce enough revenue for Hammen to take a salary, so Lilly voluntarily paid some of his personal expenses. She would then reimburse herself at a later date with a company check. Hammen and Lilly have since

married, and she has changed her name to Jenni Hammen. (Hammen Testimony; see also Appellant Exh. A).

Prior to the hearing, Ms. Lilly (n/k/a Hammen) submitted a letter reiterating Hammen's testimony that she performed services for Iowa Energy as an independent contractor. She also alleged that she set her own rate of pay, performed the work on her schedule, and claimed a tax deduction for mileage. (Appellant Exh. B).

### **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.<sup>1</sup> "Employment" is defined as service performed for wages or under any contract of hire, written or oral, express or implied.<sup>2</sup> An employer claiming that any employment is not "employment" under the Iowa Employment Security Law, bears the burden to prove the exemption claimed.<sup>3</sup>

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."<sup>4</sup>

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.<sup>5</sup>

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

--Right to discharge an employee without being held liable for damages for

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1 Iowa Code § 96.19(16)(a). An employing unit paying wages exclusively for domestic service is excluded from this definition. *Id.*

2 Iowa Code § 96.19(18)(a).

3 Iowa Admin. Code r. 871-22.7(3), 23.55(2).

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.

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.<sup>7</sup>

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.<sup>8</sup>

In the present case, Hammen has failed to meet his burden to prove that Gabe Hammen, Michael Nippe and Jenni Lilly n/k/a Hammen were in fact independent contractors during the relevant time period. Unfortunately, there is no evidence to describe the actual services provided by Gabe Hammen and Nippe; their services are classified simply as "labor." Significantly, however, Hammen did not dispute that both his son and Nippe performed their labor on or about his property. Nor did Hammen dispute that each performed tasks in the manner he directed, and were paid on an hourly basis. This pattern more closely resembles the regulatory description of an employer/employee relationship than that between a business and an independent contractor.<sup>9</sup>

Although Lilly began her bookkeeping work out of her own home, she later moved into an office on his property.<sup>10</sup> Hammen testified that he limited the number of hours she worked per week, and provided instruction at least weekly. Lilly also performed the work herself without assistance from her own employees, was paid per hour, and

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<sup>7</sup> *Id.*

<sup>8</sup> 871-23.19(7).

<sup>9</sup> *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.")

<sup>10</sup> Under the regulations, the fact Iowa Energy later paid for Lilly's office space and utilities also weighs in favor of an employer/employee relationship. 871-23.19(1), (3).

worked continuously for Iowa Energy over several years. There likewise is no evidence she held out her bookkeeping services to other entities. Each of these facts is suggestive of employee status.<sup>11</sup> Last, neither Gabe Hammen, Nippe nor Lilly submitted invoices for their services, a fact which also weighs in favor of employee status.<sup>12</sup>

The facts regarding Allen Tefft are distinguished from those pertaining to the other three individuals, however. Hammen testified credibly that Tefft operates a named business, Alacrity Trim, out of Colorado, presumably paying for his own worksite and materials. Iowa Energy also sought out a specific service provided by Tefft, that Tefft also offers to other individuals and entities.<sup>13</sup> In addition, Hammen stated that Tefft had sent him an invoice for his services, although the invoice is not of record.<sup>14</sup> Hammen's assertion is supported by the fact Hammen paid Tefft in two installment payments in 2017 and one, lump sum payment during 2018.<sup>15</sup> The undersigned therefore concludes Hammen has met his burden to prove Allen Tefft d/b/a Alacrity Trim did in fact share an independent contractor relationship with Iowa Energy.

### **ORDER**

IWD's November 30, 2021 decision that an employer-employee relationship existed between Iowa Energy Alternatives, LLC is **AFFIRMED** with regard to Gabe Hammen, Michael Nippe and Jenni Lilly, and **REVERSED** with regard to Allen Tefft. The matter is **REMANDED** to IWD for a redetermination of the appropriate insurance tax and penalties owed consistent with this opinion.

Dated this 7<sup>th</sup> day of April, 2022.



Carla J. Hamborg  
Administrative Law Judge

cc:

Todd Hammen, Claimant (By Mail)  
David Steen, IWD (By AEDMS)  
Jeffrey Koncsol, IWD (By AEDMS)  
Lisa Gaeta, IWD (By AEDMS)  
Barbara Corson, IWD (By AEDMS)

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<sup>11</sup> *Id.* at 23.19(1), (2).

<sup>12</sup> *Id.* at 23-19(2), (4).

<sup>13</sup> *Id.* at 23-19(1), (3).

<sup>14</sup> *Id.* at 23.19(4).

<sup>15</sup> *Id.*

**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:** TODD HAMMEN V. IOWA WORKFORCE DEVELOPMENT  
**Case Number:** 22IWDM0003  
**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, stylized initial "C".

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Carla Hamborg, Administrative Law Judge