

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

Timothy Sparks/Sparks Drywall)	
402 1 st Avenue E)	
Oskaloosa, IA 52577,)	Case No. 21IWD0002
)	
Appellant,)	
)	
v.)	
)	ADMINISTRATIVE LAW JUDGE
Iowa Workforce Development,)	DECISION
)	
Respondent.)	
)	

STATEMENT OF THE CASE

Timothy Sparks, the appellant, appealed from a decision by Iowa Workforce Development (IWD) that an employer-employee relationship existed between Sparks' business, Sparks Drywall, and Jacyn Cranson and others. The matter was transmitted by IWD to the Administrative Hearings Division to schedule a contested case hearing. A telephone hearing was held on June 29, 2021. IWD was represented by its attorney, Jeffrey Koncsol. Field auditor Lisa Gaeta appeared and testified for IWD. Sparks appeared and testified. He was represented by attorney Andrew Aelits.

IWD submitted its 30-page Appendix, which includes the decision letter, the appeal letter, IWD's synopsis, and other evidence; and its Exhibit B, a questionnaire provided by Cranson.

ISSUE

Whether IWD properly determined that an employer-employee relationship existed between Sparks Drywall, Jacyn Cranson, and all other workers performing services for Sparks Drywall.

FINDINGS OF FACT

In March 2020, IWD began an audit of Sparks Drywall's payroll records. Lisa Gaeta conducted the audit for IWD. Gaeta concluded several workers were misclassified as independent contractors

and should have been classified as employees. In October 2020, Gaeta sent Sparks Drywall a letter detailing her conclusions. Sparks appealed from that determination.

Specifically, Gaeta found three of five workers should have been classified as employees: Jacyn Cranston, Eric Brummer, and Ramon Barajas. Gaeta was unable to locate a contractor’s registration, unemployment insurance account, or registration with the Secretary of State for any of these workers. These workers did not possess business insurance. Gaeta surveyed Google and social media and could not find any evidence of these workers advertising their services. Gaeta did not find evidence of these workers advertising themselves to the public or holding their services out to the public.

Gaeta also found that Cranston and Brummer were paid weekly: Cranston [REDACTED] and Brummer [REDACTED] per week. Sparks reported that they are paid by the square foot of drywall installed: Cranston 25 cents per square foot and Brummer 24 cents per square foot. Sparks reported Cranston consistently installs 5200 square feet per week ([REDACTED]) and Brummer does as well ([REDACTED]). Sparks provided figures showing he paid Cranston and Brummer the following per quarter:

Quarter	Cranston	Brummer
1 st	[REDACTED]	[REDACTED]
2 nd	[REDACTED]	[REDACTED]
3 rd	[REDACTED]	[REDACTED]
4 th	[REDACTED]	[REDACTED]

Barajas is a different case. Sparks has consistently maintained that Barajas performed work for him on only two jobs several years ago. Sparks was dissatisfied with the quality of Barajas’ work. Sparks also states that Barajas’ limited English—and, presumably, Sparks’ monolingualism—made it difficult to communicate with Barajas.

Sparks disagrees that these three workers are employees. His argument on Barajas is stated above. For Cranston and Brummer, Sparks argues that both carry their own insurance, that both come and go as they please, and that Cranston, at least, has a second job as the owner of a farm.

Cranston returned a questionnaire. On the questionnaire, he reported that he was a self-employed independent contractor. He reported he performed services under his own name. He is engaged for specific jobs—not permanently. He performs services himself. Sparks provides supervision. The firm has the right to control and direct the manner in which his services are performed. The firm decides how work assignments are completed and can make him redo services if the services are not performed adequately. The firm does not carry worker’s

compensation insurance. Cranston does not or cannot employ assistants. The firm provides equipment, supplies, materials, and some tools. Cranston provides other tools and transportation. Cranston does not pay for expenses in performing services for the firm. The customer pays the firm. Either the firm or worker can end the relationship at any time. The firm can discharge the worker at any time without incurring liability for damages. Cranston did not perform services for other firms during the relevant time period. Cranston and Sparks do not have an agreement about competition. Advertising is placed under the firm's name. The firm does not require attendance at meetings, fixed hours of work, or reports, among other listed responsibilities typical of salespersons or service providers.

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 Sparks had control of these workers. The workers operated under the firm's name. The firm decided how the work assignments were completed. The firm supplied equipment, materials, and some tools. Cranston reported the firm had the right to control and direct individuals performing services. Cranston reported the firm could discharge workers without being liable for damages.

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 workers received steady pay weekly. This suggests 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).

It does not seem as though these workers could make a profit or loss. Cranston did not incur expenses. The record suggests the workers did purchase some of their own tools. Overall, this factor points toward a finding these 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 seem to have been paid weekly. This suggests the workers were employees. Notably, the workers were paid consistent amounts on a weekly and quarterly basis. 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).

The workers 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 July 21, 2021.



Joseph Ferrentino
Administrative Law Judge

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