

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

Joel Payne)	
1400 Grand Ave)	
Muscatine, IA 52761)	Case No. 20IWD0026
)	
Appellant,)	
)	
v.)	ADMINISTRATIVE LAW JUDGE
)	DECISION
Iowa Workforce Development,)	
)	
Respondent.)	
)	

STATEMENT OF THE CASE

Joel Payne appealed from an audit conducted by Lisa Gaeta, Iowa Workforce field auditor, on January 23, 2020. A telephone hearing was held on November 2, 2020. Attorney Jim Nepple represented Joel Payne. Payne did not appear. David Steen and Jeffrey Koncsol represented Iowa Workforce Development (IWD). Lisa Gaeta appeared and testified for IWD. IWD submitted Exhibit A (pages 1 through 57), which was admitted as evidence without objection.

ISSUES

Whether an employer-employee relationship existed between Payne Construction LLC, Justin Stanton, and all other workers performing services for Payne Construction LLC.

FINDINGS OF FACT

Field auditor Lisa Gaeta conducted an audit on Payne Construction, LLC on January 23, 2020. (Ex. A, p. 9.) On March 19, 2020, IWD sent the Unemployment Insurance Tax Audit Results to Payne Construction. The audit results specified Payne Construction failed to report workers who should have been classified as employees. (Ex. A, p. 9.) Joel Payne (Payne), owner of Payne Construction, appealed IWD's tax audit results on March 23, 2020, and claimed his business had only subcontractors. (Ex. A, p. 7.)

IWFD initiated a worker misclassification investigation after receiving a tip on April 25, 2019, that Payne was paying workers "under the table." (Ex. A, p. 19.) Payne Construction began operating in 2017, and the audit examines 2017 and 2018. (Ex. A, p. 20, 9.) The investigation noted individuals working for Payne Construction received 1099 forms rather than W-2 forms. The individuals who received 1099 forms specified they received hourly wages and weekly paychecks and were required to attend meetings twice each day. Payne provided most work

materials and had control over individuals' work. (Ex. A, p. 20.) The IWD investigation determined 18 individuals were misclassified as independent contractors. (Ex. A, p. 23.)

Gaeta sent a pre-audit questionnaire to Payne Construction and requested the company's check register, federal tax returns, and 1099 forms. She never received check stubs, cancelled checks, or records of contracts or bids from Payne, but she did receive documentation showing 1099s were issued to all workers. After receiving this information, Gaeta sent questionnaires to these workers with questions based on the IRS 20-factor test used to determine the existence of an employee/employer relationship. Three workers responded to the questionnaire. All three individuals said they were paid hourly. One worker said he obtained the job through a Facebook post, rather than a bid or contract. The workers did not incur liability when they left the company, and Payne supplied the necessary tools and vehicles. Although one of the workers who responded to the questionnaire indicated he had flexibility with his work hours, he said he was classified as a laborer and was paid an hourly wage. (Gaeta testimony.)

Gaeta concluded Payne Construction failed to properly classify individuals as employees and, therefore, failed to properly report wages and pay unemployment taxes. Although she found four individual were properly classified as independent contractors, the majority of workers were misclassified. (Ex. A, p. 30.) In her investigation, Gaeta noted Payne Construction advertised for workers on social media and specified individuals would receive weekly paychecks and have job security. Hourly wages, weekly paychecks, and job security are characteristic of employees. (Gaeta testimony.)

CONCLUSIONS OF LAW

For purposes of unemployment compensation, an "employer" is defined as an employing unit that, in any calendar quarter in the current or preceding calendar year, paid wages for service in employment.¹ "Employment" is defined as service performed for wages or under any contract of hire, written or oral, express or implied.² The employer has the burden of proof in all employer liability cases.³

In the unemployment compensation context, "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

¹ Iowa Code § 96.19(16)(a).

² Iowa Code § 96.19(18)(a).

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

⁴ *Gaffney v. Dep't of Emp't Servs.*, 540 N.W.2d 430, 434 (Iowa 1995).

which the services are performed; it is sufficient if the employer has the right to do so.⁵

The existence of an employer/employee relationship depends on the particular facts of each case, but the Department's regulations set out in some detail the 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.

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

The regulations also provide that if, upon examination of the facts of a case, an employer-employee relationship exists, the designation or description by the parties of their relationship as anything other than an employer and employee is immaterial.⁸

Lisa Gaeta provided credible testimony regarding the characteristics of individuals who performed work for Payne Construction. The individuals deemed misclassified were paid hourly and performed work under the direction and supervision of Payne. Payne Construction, LLC did not provide any evidence or testimony to support its claim the workers in question were properly identified as independent contractors.

Under these circumstances, Payne Construction, LLC has not met its burden of proving an employer/independent contractor relationship existed. The only evidence in the administrative file and presented at the hearing supports IWD's audit showing evidence of an employee/employer relationship.

⁵ Iowa Admin. Code r. 871-23.19(1).

⁶ Iowa Admin. Code r. 871-23.19(6); *see generally* 871-23.19.

⁷ Iowa Admin. Code r. 871-23.19.

⁸ Iowa Admin. Code r. 871-23.19(7).

DECISION

IWD's audit is affirmed. IWD's decision that an employer/employee relationship existed between Payne Construction, LLC and specified individuals was correct. IWD shall take any action necessary to implement this decision.

Dated this 12th day of November, 2020.



Laura Jontz
Administrative Law Judge

cc: Joel Payne (By Mail)
David Steen, IWD (By Email)
Jeffrey Koncsol, IWD (By Email)
Barbara Corson, IWD (By Email)
Jim Nepple/Kristina Tenboer, Nepple Law (By Email)

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.