

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

Jared Deahr)	
Hawkeye State Process Serve LLC)	
702 S Gilbert St., Suite 111)	Case No. 20IWD0006
Iowa City, IA 52240)	
)	
Appellant,)	
)	DECISION
v.)	
)	
Iowa Workforce Development,)	
)	
Respondent.)	

Iowa Code §§ 96.19(18)(a); 96.19(18)(f); 96.7(3)(b); 96.19(41)
871 Iowa Administrative Code 23.19(1)-(8); 23.52; 23.55; 26

Statement of the Case

The Appellant Hawkeye State Process Serve, LLC (HSPS) appeals a determination by Iowa Workforce Development (IWD) that Jared Mason and all other workers were employees rather than independent contractors. An in-person hearing was held on November 20, 2019 at the Wallace State Office Building. Erin Nathan appeared on behalf of owner Jared Deahr and HSPS. David Steen represented IWD.

IWD included 245 pages of documents in the administrative file submitted with this appeal as exhibits (Ex A). The Appellant submitted exhibits 1-22. The exhibits were included as part of the record without objection.

Issue

Whether Iowa Workforce Development properly determined that an employer-employee relationship existed between HSPS and Jared Mason and all other workers performing services for HSPS.

Findings of Fact

Lisa Gaeta, a field auditor with Iowa Workforce Development, testified at the hearing. She has worked as a field auditor for 11 months and has completed approximately 60 audits. On August 23, 2019 Gaeta sent HSPS and its owner Jared Deahr an "Unemployment Insurance Tax Audit Result" letter. Gaeta found that HSPS failed to report the process servers as employees in 2017 and that there would be a tax change of \$5,462.04. Gaeta also informed HSPS that based on the findings in the 2017 audit, IWD would expand the audit to the years 2014, 2015, 2016, and 2018 (Ex A pp 11-13).

Gaeta became involved in this case after she took over the work of a former auditor. The former auditor received information from Jared Mason that he believed that he was misclassified as an independent contractor with HSPS when in fact he was an employee. Gaeta testified that when IWD receives a tip like this she must investigate but that she recognizes that there are "two sides to every story" when she does the audit. An email from Mason to Gaeta is included in IWD exhibits. In the email dated April 24, 2019, Mason informed Gaeta that this was the "first of many emails" that he would be sending and that he couldn't "express enough how excited I am to help you" (Gaeta Testimony; Ex A at p. 109)

Emails between Mason and Deahr provided by Mason are included in pages 109-136 of Exhibit A. In an email titled "Affidavits" Deahr sent the following message:

"Team, we are still struggling with our affidavits, you need to have all affidavits coming back to the office in two business days. This is to help the clients as they need to move forward with their case. If you are already doing this, then thank you for all your help. If you have room to improve, please work on that."

(Ex A at p 114)

On March 13, 2019 Deahr sent a note to Mason instructing him on how to complete service:

"Try one more time, non service if no luck. Morning if possible due to shift variations."

(Ex A at p. 121)

On June 26, 2018 Deahr sent out the following directive:

"I need you all to change the note that you are using for your service attempts. We are no longer able to use the notes that I provided you with and I have attached a new version that should work for our clients. If you choose to edit this note, please get my approval for the edit prior to its use. We can not use a note that refers to "publication"

of the documents after returning to the attorney. Please use this note or get my approval for any note you wish to use before you continue.”

(Ex A at p. 136)

IWD also included emails from process server Ryan Larson. Larson emailed Gaeta:

“HSPS has given me direction and control over my work when it comes to when I work. They have many times told me that I need to make attempts at certain times or on certain days and that I cant make attempts on certain days. They have told me to make morning, day, and/or evening attempts when I have already made 4 or 5 attempts at different times on a job. When it comes to approving time off they have never fought me on it but they have given me more work while I was away and emailed me asking for jobs to be completed even though I was out of state. They have told me I have to take all the cases submitted to me and I cant choose which stuff I get sent. If I refuse to work a certain area they will limit my work until you basically cant survive off it. Their method of discipline for not competing work is to limit you work load or to basically threaten to fire you because they can do so with 0 days notice according to the contract we signed I believe. “

(Ex A at p. 138)

Larson told Gaeta: “I believe considering the money, time, and constant communication and demands from us we should be classified as employees but I believe the owner doesn’t want to pay taxes on us or provide us with benefits, 401K, etc.”

(Ex A at p. 138)

Larson also forwarded Gaeta emails in which he was given specific instruction on how to serve documents by HSPS (Ex A at pp 141-144).

Gaeta checked the unemployment account that HSPS maintained with the State. The company reported 10 employees. HSPS was registered with the Secretary of State has a limited liability corporation. Gaeta also looked at the company’s website. The websites she reviewed are on pages 234-238 of Exhibit A. Gaeta stated that the website indicates that process serving is the “bread and butter” of HSPS. The website referred to its “experienced team” process servers. This was a “red flag” for Gaeta because independent contractors would not generally be referred to as part of the “team.” The website stated that HSPS had 20 process servers even though it only listed 10 employees with the State.

Gaeta requested information from Deahr for the years 2016, 2017, and 2018 including financial statements, 1099’s, W-2s, W3’s, tax returns, and bank statements. She also

mailed him a pre-audit questionnaire. Gaeta described Deahr as "very forthcoming." She stated that she wished all of her audits were as cooperative. Deahr provided 40 1099 forms rather than W2's for the process servers. Gaeta also sent out audit questionnaires to a total of 15 of the process servers. She received 6 questionnaires back. The filled out questionnaires are on pages 35 -69 of exhibit A. Gaeta testified that overall the questionnaires indicated that some of the process servers believed that they were employees while others believed that they were independent contractors. Each of the 6 process servers answered "yes" to the question: "Are the worker's services supervised or reviewed by the firm or its representatives?" Each of the 6 process servers also answered "yes" to the question: "Does the firm have the right to direct and control the manner in which the services are performed"? (Gaeta Testimony; Ex A at pp 41, 46, 51, 56, 61, 66).

Gaeta believed that the questionnaires showed Deahr provided "control and instruction" to the process servers. Gaeta stated that an independent contractor is usually a "specialist in the field" over which the employer has little control. She saw indications that Deahr exercised control over the servers. She stated for example that he limited the territory they could cover. He told them the number of times that he expected them to attempt service. A questionnaire filled out by process server Kari Burnside in on pages 60 - 64 of Exhibit A. She described herself as an "independent contractor." Gaeta testified that this does not necessarily mean that she is an independent contractor. Burnside also stated that her work was "supervised" by the company by a recording on each delivery that was uploaded to a website. She also stated that HSPS had the right to direct and control the manner in which services were performed by the instructions listed on each job "depending on the law firm being represented." Burnside stated that when she encountered problems she would "contact supervisor in the office." Gaeta also noted that Burnside's questionnaire stated that HSPS presents her as a representative of "Hawkeye State Process Serve." She testified that this indicates "integration" of the servers as part of the business. Gaeta testified that without process servers Deahr would not have a business.

The degree of "training" is another factor in the determination of whether a person is an employee or an independent contractor. Gaeta stated that this case is the most "training" she has seen in a company claiming to employ independent contractors. There is a training program and a training manual. Additionally, Deahr "tests" the process servers throughout the year. The process servers must sign a document indicating that they have read the training material and training manual. Gaeta testified that typically an independent contractor would not complete "training" for the employer. Pages 150 -156 of Exhibit A is a "Process Server Knowledge Test" developed by Deahr for the process servers. The test states that "Jared will follow up with you on the correct explanation of the answers." Pages 179-183 of Exhibit A also contain a "Process Server Knowledge Test." Gaeta noted Deahr informed the process servers that they would "not be fired" if they performed poorly on the tests. According to Gaeta the use of the word "firing" is associated with an employee relationship. Gaeta stated that

HSPS servers were required to attend training several times a year and the training involved actual classes.

Gaeta testified that HSPS was very specific about the instructions given to process servers. They were required to go to the door and were given instruction on what to say. They were told the number of times to attempt the service and to go to the neighbors if there was not an answer at the door. Gaeta testified that HSPS servers were even instructed on the level of "knock" the process server should use on the door of the defendant. She testified that this control of how the task is completed is indicative of an employee relationship. According to Gaeta HSPS process servers were required to take a picture of the house number and fill out an affidavit before getting paid. She believed that this was a reporting requirement indicative of an employee relationship.

Gaeta cited several factors that she believed did support an independent contractor relationship. She stated that HSPS process servers did indicate that they did work for other process servers. Gaeta stated that the fact that process servers signed an "independent contractor" agreement was a factor but it was not determinative that an independent contractor relationship existed. The fact that process servers were paid when they completed "invoices" for HSPS was a factor supporting independent contractor. The fact that servers reported that they had the freedom to serve the papers whenever they wanted to was also an indication of independence (Gaeta Testimony).

IWD included documents to support its position that HSPS provided training to the process servers. Pages 157 to 170 of Exhibit A contain documents labeled "HSPS Legal." These are updates provided to process servers. Each update indicates the date it was "approved by Jared Deahr" and the effective date of the policy. For example a "Notary and Affidavit Policy" was approved by Deahr on February 9, 2019. The update sets out detailed instructions on completing the return of service, returning the affidavit, and filing the affidavit with the courts (Ex A at pages 157-159). An "HSPS Legal" policy approved by Deahr on January 17, 2018 provides instruction on "Acceptable Hours of Service and HSPS business hours policy." The policy states: "HSPS therefore has a policy that the acceptable hours of operation are between the hours of 7AM to 9pm 7 days a week." The policy states that a particular law firm has a more restrictive policy of 8AM to 8PM. The policy states: "If you need to serve outside of those hours you MUST contact the office for approval" (Ex A at pages 165-167).

Deahr approved an update for the use of firearms by process servers on January 17, 2018. The policy stated: "Your firearm MUST be concealed at all times, regardless of it is legal for it be open, it must be concealed when serving HSPS papers." The policy also states: "If you ever are forced to draw your firearm in the process of serving

papers, you are required to contact Jared Deahr on his cell phone right away and also have a police report filed right away” (Ex A at pages 168-169).

Pages 174 -178 of Exhibit A contain a “Servers guide” outlining in detail the deadlines, how to fill out worksheets, how to locate a defendant, and how to complete affidavits. The guide states that “payroll dates” are the 5th and the 20th of each month. Ex A at p 174-178).

Pages 184 – 233 of Exhibit A is labeled “HSPS Legal Services Service of Process Training Tuesday July 11, 2017.” The training brochure was compiled by “Sawyer Law Group.”

The Department included advertisements HSPS used to generate business on Exhibit A pages 234- 238. In one advertisement HSPS states: “HSPS has an experienced team of skip tracers, process servers, managers, and auditors.” The advertisement states: “On staff we have full time skip tracers devoted to tracking down the most evasive parties” (Ex A at pages 234-235). In one advertisement, HSPS touted its “staff” as the thing that set it apart from other process servers:

“Many Process Service companies out there claim to be able to ‘get service done’ state wide but there is no other company that does it with their own servers HSPS has 20 servers across the whole State of Iowa with the ability to serve in each city in Iowa, including, but not limited to Sioux City, Council Bluffs, Des Moines, Cedar Rapids, Iowa City, Waterloo, Davenport, Bettendorf, Dubuque, and any other city in the State” (Ex A at pages 236-237).

Another advertisement stated:

“HSPS not only invests in technology, but also in servers who are dedicated to getting the job done. Process servers undergo thorough training on rules of civil procedure before they are sent into the filed. Training manuals for process serving code are also provided to employees upon hiring. The auditing and quality assurance department periodically tests the servers’ knowledge of procedure with mandatory quizzes and training updates to encourage retention of serving protocol. All process servers and employees of HSPS participate in legal and regulatory policy training for both our company and our client. To circumvent mistake or error that potentially arise, regular accountability/feasibility audits of our servers’ work is also conducted. “

(Ex A at page 238).

Jared Mason testified by telephone for IWD at the hearing. He worked with HSPS from December 2016 through March 2019 as a process server. He testified that HSPS controlled his work by specifying the days he could serve and the hours he could serve the documents. He testified that HSPS also controlled his work by requiring him to take audio or video recording of each service as well as to take a picture of the house

where the documents were delivered. Mason testified that he learned how to be a process server from his Dad who was also a process server. According to Mason, HSPS required him to do additional training in the form of pamphlets and tests he was required to take and send back. Mason testified that Deahr specifically provided oversight to him through emails and telephone calls. Deahr would specify when he believed Mason should make a nighttime attempt at service. He would specify what Mason could and could not say. Deahr told Mason that as long as he was a "full-time server" he would be able to work in three counties. Mason also stated that he would announce himself as being "with HSPS Legal" if he served documents to a larger company. Mason testified that he was required to get approval from HSPS when he wanted to take time off. He was also not allowed to follow up by attempting to find a correct address if the address he had was not correct (Mason Testimony).

Jared Deahr testified at the hearing. He is the owner of HSPS. He has 13 employees who work in the office. Exhibit 1 is the independent contractor agreement he enters into with each process server. He pays for a software program for the process servers to use. All process serving jobs are in this system. Exhibit 17 is an invoice for the "Lawgical" software program he uses. Exhibits 11, 12, and 22 set out the "duties and compensation" of the process servers. Exhibits 10, 13, and 15 show the different ways the process servers bill him for their work. Deahr testified that some of the process servers he uses hire assistants but he is only aware of it when it comes up in conversations. He has no hiring or firing capabilities in the assistants they hire.

Deahr stated that most of his clients are attorneys who are collecting debts owed to retailers. This form of debt collection requires compliance with state laws. There is also a Fair Debt Collection Act that must be followed. The act has restrictions on the hours when the debtor can be contacted and where the debtor can be contacted. If the regulations are violated the creditors and attorney are subject to fines. Exhibit 2 is a "General Work Standards" policy required by one of his clients. This client requires digital photographs of the location where service is made as well as electronic notes of the service (Ex 2 at p 3). Deahr also included a vendor contract from a large debt collection law firm as Exhibit 4. The contract has detailed requirements for process servers and requires that process servers be trained on the Fair Debt Collection Act and other applicable statutes (Ex 4 at p 2).

Deahr included the test he gives to process servers as Exhibit 16. He stated that the phrase "no one will be fired for poor performance" on the test was a poor choice of words. He meant that he would not contract with them. He stated that this test was required by one of his clients. He stated that his interactions with the process servers is quite limited. Deahr stated that Mason was successful at first but later became argumentative and did not seem to be putting forth the physical effort to complete the work. He also began to suspect that Mason was doctoring affidavits. Deahr testified

that the “territory” the process servers covered were a negotiated term of the contracts they entered into with him (Deahr Testimony).

Ryan Himes testified for HSPS. He is a process server based in Urbandale. Exhibit 22 is the contract he entered into with Deahr. The jobs he does for Deahr are first uploaded on a website. The documents that must be served then come to him in the mail. Himes stated that he decides when to serve the papers. There are no restrictions on when he goes. The tools he uses to complete the work include a phone, vehicle, printer, scanner, internet, computer, and ink, paper, and pens. He supplies all of this himself. He has purchased a Prius because it is more economical and affects his profits and losses. He is able to work for other companies and do other work. He asked for some help when he first started but has not received formal instruction. When there are specific requirements for service, such as when a client wants a certain number of attempts, the instructions are noted on the field sheet (Himes Testimony).

Amanda O’Leary also testified for HSPS. She is a process server based in Ottumwa. She is the sole proprietor of a business called “ARO Deliveries.” Exhibit 7 is a LinkedIn posting for her business. O’Leary testified that when she serves documents she decides the route and the time of day to do the work. She is paid on the 5th and 20th of each month by HSPS based on the number of “serves” she has made. Exhibit 10 are examples of the field sheet she completes for the serves. Sometimes the documents will also have specific instructions when they come in the mail. Her husband sometimes helps with process serving. He had to be approved by HSPS. She gets paid by HSPS even when he does the work. She uses a printer, phone, computer, pens, paper, and a car to do her work. She recently purchased a 4-wheel drive vehicle because it is necessary for the work. She stated that she has “very minimal instruction” from HSPS and that on most days she has “none.” She stated: “I am my own boss and I set my own schedule.” She stated that HSPS “suggested” that an audio or video recording of each service be made. It was not required. She was never told that she had to do it (O’Leary Testimony).

Conclusions of Law

IWD has promulgated rules to clarify when an employer-employee relationship exists rather than an independent contractor status. The rules state:

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.¹

“[I]t 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.”²

When services are performed by an individual for remuneration, the relationship is presumed to be employer-employee.³ How the parties describe or designate the relationship is irrelevant to the determination, as is the class or grade of the worker such as management.⁴ The determination depends instead “upon an examination of the particular facts of each case.”⁵ The burden rests with the employer to show that the relationship holds independent contractor status.⁶

HSPS has failed to meet its burden to show that the process servers are independent contractors. Process servers signed independent contractor agreements with HSPS (Ex 1) Nevertheless HSPS exercised a degree of control and supervision of the process servers indicative of an employer-employee relationship. In the questionnaires filled out by process servers and returned to IWD, every server stated that HSPS had the right to control and supervise the manner in which the services were performed (Ex A at p 41, 46, 51, 56, 61, 66). HSPS provided process servers with a great deal of training material (Ex A at pp 174-233). HSPS administered tests to make sure the process servers were proficient in their work. On the test, HSPS told the servers they would not be “fired” for failing the test (Ex A at pp 150-156). This reflects an employer-employee relationship. HSPS gave process servers Jared Mason and Ryan Larson very specific instructions on how to perform their work (Ex A at pp 109-144). HSPS gave other process servers like Amanda O’Leary and Ryan Himes little to no instruction on how to perform their work. This reflects that HSPS believed that some process servers needed more supervision than other process servers rather than an “independent” approach to servers.

HSPS maintained that training materials and testing were required because debt collection is strictly regulated by federal and state laws. Even considering this, however, HSPS closely supervises its process servers. As IWD auditor Gaeta noted at the hearing, process serving is the majority of what HSPS, as a company, does. When a company uses workers to “effectuate” its business purpose it reflects an employer-employee relationship. See e.g. *Legal Process Service, Inc. v. Sally Ward, Director of Employment Security* 165 IL. App. 3d 83, 88 (Illinois App. 1988) (LPS’s process server’s

¹ 871 IAC 23.19(1).

² *Gaffney v. Dept. of Empl. Servs.*, 540 N.W.2d 430, 434 (Iowa 1995).

³ 871 IAC 23.19(6).

⁴ 871 IAC 23.19(7)-(8).

⁵ 871 IAC 23.19(6).

⁶ 871 IAC 23.19(6); 871 IAC 23.55(1).

business “includes serving writs and, in turn, the process servers are engaged by LPS to effectuate that business purpose”).

HSPS touted its process servers in advertising for the company. In advertising it referred to its “team” of process servers (Ex A at p 234). HSPS advertised that what set it apart from other process serving companies was that “there was no other company that does it with their own servers.” It referred to process servers as “our servers” intimating an employer-employment relationship (Ex A at p. 236).

HSPS was able to highlight aspects of its business that were consistent with a business that uses independent contractors as process servers. The fact that the process servers used their own vehicles and other tools of the trade such as printers and phones, and the fact that the process servers all billed HSPS for their services in different ways, support their argument that process servers are independent contractors. But just because some aspects of the business support their argument is not sufficient to reverse IWD’s decision that an employer-employee relationship existed. It is not unusual in this type of case to have some factors that support either classification. HSPS failed to show that the “Unemployment Insurance Tax Audit Results” and accompanying findings by IWD auditor Lisa Gaeta were incorrect.

Decision

Iowa Workforce Development’s determination that an employer-employee relationship existed between Hawkeye State Process Serve, LLC, Jared Mason, and all other workers performing services for Hawkeye State Process Serve LLC is affirmed.

Dated December 10, 2019.

A handwritten signature in black ink, appearing to read 'K Doland', written in a cursive style.

Karen Doland
Administrative Law Judge

cc

Jared Deahr, Hawkeye State Process Serve LLC (By Mail)
Erin Nathan, Attorney for Appellant (By Email)
David Steen, Attorney for Respondent (By Email)
Nicholas Olivencia, IWD (By Email)
Justin Knudson, IWD (By Email)
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Appeal and Rehearing 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 871 IAC 26.17(5).