

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Wallace State Office Building
DES MOINES IOWA 50319

Appeal Number: 16IWD009

Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**TROY SCHROEDER
SCHROEDER PLUMBING & HEATING**

**IOWA WORKFORCE DEVELOPMENT
KATHY WAMPLER, FIELD AUDITOR**

BEN HUMPHREY, IWD
NICHOLAS OLIVENCIA, IWD
JUSTIN KNUDSON, IWD
TERRY GREENSLIT, PARTY

**This Decision Shall Become Final, as of the date of
mailing stated below unless:**

1. Either party files a WRITTEN application for a rehearing WITHIN TWENTY (20) DAYS AFTER the date below. The written application must state the specific reasons for the rehearing and the relief sought. If the request for a rehearing is denied or if the rehearing decision is not satisfactory, either party may petition the District Court WITHIN THIRTY (30) DAYS of either action;
OR
2. Either party may petition the District Court WITHIN THIRTY (30) DAYS after the date below.

YOU DO HAVE THE RIGHT TO HIRE A LAWYER at your own expense to represent you in these proceedings.

(Administrative Law Judge)

September 12, 2016

(Decision Dated & Mailed)

Iowa Code section 96.7-4 – Employer Liability Determination

STATEMENT OF THE CASE

After receiving a “missing wages report,” IWD completed an investigation and determined that an employer-employee relationship existed between Schroeder Plumbing & Heating and Terry Greenslit. As a consequence, all of the remuneration paid to Greenslit was determined to be reportable for unemployment insurance contribution purposes. Troy Schroeder, on behalf of Schroeder Plumbing and Heating, appealed the determination.

IWD transferred the case to the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, to schedule a contested case hearing. A contested case hearing was held on August 25, 2016. Schroeder appeared and testified. He was represented by attorney Patrick Smith. Field Auditor Kathy Wampler appeared and testified on behalf of IWD. IWD exhibits 1-58 were admitted into the record. Schroeder’s exhibits 1-37 were also admitted. Terry Greenslit also testified.

ISSUE

Whether an employer-employee relationship existed between Schroeder and Terry Greenslit.

FINDINGS OF FACT

Following an investigation by Field Auditor Kathy Wampler, Iowa Workforce Development (IWD) determined that an employer-employee relationship existed between Schroeder Plumbing & Heating (Schroeder) and Terry Greenslit. According to Wampler, questionnaires submitted by Schroeder and Greenslit had disagreed on several points, which had prompted the investigation. As a consequence of her decision, all of the remuneration paid to Greenslit was determined to be reportable for unemployment insurance contribution purposes. An appeal hearing was held on August 25, 2016.

Schroeder is a sole proprietorship that engages in plumbing, electrical, and HVAC repair. Schroeder has been in business for about 16 year. Most of its work is done within 30 miles of Creston. Terry Greenslit started performing work for Schroeder in 2007 as a “helper” for Don Scott doing electrical work. At the time, Greenslit was a carpentry student at SWCC and had contacted Schroeder looking for work. Greenslit does not have his own electrical or plumbing license; rather, he works under the license of Schroeder.

Greenslit has never had to “bid” to get a job. Typically he would show up at the shop sometime around 8:00 a.m. and gather with the other workers until Schroeder arrived. They would then be assigned to a particular job or jobs for that day. Alternatively, Schroeder and Greenslit might communicate via text about jobs and locations. If he finished a job during the day, he would communicate by text about what job he should go do next. Greenslit generally uses his own tools and drives his own vehicle. However, if during a particular job Greenslit needs a tool that he does not own, he is able purchase or rent them at a hardware store on Schroeder’s account. Schroeder also supplied all equipment, supplies, and other materials for the jobs. Greenslit did not have to foot the bills for these items.

Following any particular job, Greenslit would create an invoice that included the time he had worked there. At the end of the week on Friday he would submit these invoices to Schroeder. Any parts that were purchased for the jobs would be charged to Schroeder. After submission of the invoices Schroeder would compile Greenslit’s total hours for the week and pay him by the hour. He would be paid \$17.50 per hour, a figure that was agreed to because that is essentially what Greenslit had informed Schroeder he needed to earn in order to remain on the job. There was no possibility that Greenslit could lose money on any of the jobs he performed for Schroeder. He simply did the work and was paid by the hour.

If Greenslit wanted time off, he had to request it, write it on a calendar in advance, and work around Schroeder's own time off. On occasion, when he has been on vacation Schroeder has had Greenslit handle incoming phone calls for the business. The calls were forwarded to Greenslit's cell phone. He would take the call, write it down, and then take the job. Greenslit was paid extra to take these calls.

For a time around 2014 or 2015, Greenslit attempted to perform work under the title "Terry's Handyman Services." However, according to Greenslit this concern was unprofitable and he generally only did work for friends who needed help. These friends would pay him directly. This work was done not on time he would be working for Schroeder. Schroeder did not approve of this work. For example, Greenslit sold an air conditioner to one friend. Greenslit had purchased this unit through Schroeder. Greenslit did also on occasion purchase other parts from Schroeder. He used some of these parts at his own home and some for the friends.

Currently, Schroeder has two workers, Cory Marquardt and Kyle Holmes, whom he considers to be "employees." These individuals assist in plumbing, electrical, heating and cooling. During the summer they work full time and during the school year they are part time. Schroeder pays them wages, withholds employment taxes, and issues a W2 to them. He has had a number of such employees over the years. However, he still believes Greenslit is an independent contractor.

Greenslit and Schroeder both agreed that Greenslit could not "sub out" or hire another person to do the work Schroeder offered to him. In other words, Greenslit was required to personally do the work. However, they disagreed on whether Schroeder had the right to direct and control the manner in which the services are performed. They also disagree on whether Greenslit himself was authorized to employ an assistant. However, I conclude the best evidence is that if Greenslit had a helper on a particular job, that person was authorized and paid by Schroeder. That helper could also be terminated by Schroeder.

CONCLUSIONS OF LAW

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96.¹ IWD's Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.² IWD has adopted rules found at 871 IAC chapter 23.

IWD initially determines all issues related to liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship.³ Services performed by an individual for remuneration are presumed to be employment, unless proven otherwise.⁴ An individual or business bears the burden of proving the

¹ Iowa Code § 96.9(1).

² *Id.* § 96.11(1).

³ *Id.* § 96.7(4).

⁴ 871 IAC 23.19(6).

individual or business is exempt from coverage under Iowa Code chapter 96.⁵ If an employer-employee relationship exists, the designation or description of the relationship by the parties as anything other than an employer-employee relationship is immaterial.⁶

An employer is defined as “any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more.”⁷ An employing unit includes any individual or organization that has in its employ one or more individuals performing services for it in Iowa.⁸ The term “employment” is defined as service “performed for wages or under any contract of hire, written or oral, express or implied.”⁹ Employment includes service performed by “[a]ny individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.”¹⁰

Whether a person is an independent contractor or an employee is a “factual determination based on the nature of the working relationship and many other circumstances, not necessarily on any label used to identify the parties in the contract.”¹¹ In other words, if the relationship of employer and employee exists, the parties' designation or description of the worker as an independent contractor is immaterial and of no consequence.

The right of control, as developed through the common law, is the principal test for determining whether a worker is an employee or independent contractor in the unemployment context.¹² Whether an employer-employee relationship exists under the usual common law rules is determined based upon an analysis of the individual facts in each case.¹³ IWD has also adopted a number of rules with factors to consider in determining whether a worker is an independent contractor or employee.¹⁴

Under IWD's rules,

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.

⁵ Iowa Code § 96.19(18)*f*; *Id.* 22.7(3).

⁶ 871 IAC 22.19(7).

⁷ Iowa Code § 96.19(16)*a*.

⁸ *Id.* § 96.19(17).

⁹ *Id.* § 96.19(18)*a*.

¹⁰ *Id.* § 96.19(18)*a*(2).

¹¹ *Pennsylvania Life Ins. Co. v. Simoni*, 641 N.W.2d 807, 813 (Iowa 2002) (quoting *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 684 n. 2 (Iowa 2001)).

¹² *Gaffney v. Dep't of Employ. Servs.*, 540 N.W.2d 430, 434 (Iowa 1995).

¹³ 871 IAC 23.19(6).

¹⁴ *Id.* 23.19.

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.¹⁵

The right to discharge or terminate a relationship is “an important factor indicating that the person possessing that right is an employer.”¹⁶ If the discharging party may be liable for damages for breach of contract, the circumstances are indicative of an independent contractor relationship.¹⁷

The furnishing of tools, equipment, materials, and place to work to the individual who performs the service are characteristic of an employer.¹⁸ “In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor.”¹⁹

Another factor includes the nature of the worker’s contract for the performance of a certain type, kind or piece of work at a fixed price.²⁰ Generally an employee performs the work continuously and his or her labor is primarily purchased, whereas an independent contractor undertakes the performance of a specific job.²¹ An employee is typically paid a fixed wage on a weekly or hourly basis, whereas an independent contractor is typically paid one sum for the entire work, whether it is paid in a lump sum or installments.²²

Independent contractors can make a profit or loss and are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed.²³ Independent contractors often have significant investment in real or personal property that they use in performing services for others.²⁴ Independent contractors have the right to employ assistants with the exclusive right to supervise their activity and completely delegate work.²⁵

An independent contractor follows a distinct trade, occupation, business or profession in which the worker offers his or her services to the public to be performed without the control of those seeking the benefit of the worker’s training or experience.²⁶ Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade,

¹⁵ *Id.* 23.19(1).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* 23.19(2).

²¹ *Id.*

²² *Id.* 23.19(4).

²³ *Id.* 23.19(3).

²⁴ *Id.*

²⁵ *Id.* 23.19(5).

²⁶ *Id.* 23.19(2).

occupation, business, or profession, in which they offer services to the public, are independent contractors and not employees.²⁷ Professional employees who perform services for another individual or business are covered employees.²⁸

ANALYSIS

As noted above, services performed by an individual for remuneration are presumed to be employment, unless proven otherwise and the business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96. In this case, Schroeder simply has not met its burden to rebut the presumption that Terry Greenslit is an employee. The department's decision should be affirmed.

Greenslit was paid an hourly wage. In other words, his labor was purchased. He was not paid one sum for an entire piece of work and he did not bid jobs. Greenslit could not sustain any loss in the work he performed for Schroeder. He would also have no unreimbursed expenses from his work. If he needed supplies or other materials for a particular job, they would be provided and paid by Schroeder. If a particular job required a larger tool of some sort that he did not personally own, Greenslit was authorized to rent or purchase that tool under Schroeder's account at a hardware store. An example of such a tool might be a jackhammer. He reported to work in the morning to receive his daily assignments.

While Greenslit performed plumbing, electrical, and HVAC services, he did not personally hold a license for any of these services. Rather, he worked under the license of Schroeder. If Greenslit needed assistance, that helper would be authorized and paid by Schroeder. Greenslit could not hire such an assistant on his own. There appears to be no way that had Schroeder ended his relationship with Greenslit that Schroeder would have been liable for damages for breach of contract.

When Greenslit was directed to take calls for Schroeder when Troy Schroeder was unavailable, he was performing duties more akin to that of an employee. This also shows unmistakably that Schroeder had the ability to direct and control the work done by Greenslit. Moreover, when Greenslit performed plumbing and electrical work, he was doing the principal job that Schroeder performed as a business. These services were not "side" or related services. As Ms. Wampler explained, typically, a contractor does work that is outside of the main job of the employer. This was not the case with Greenslit.

DECISION

Iowa Workforce Development correctly determined that an employer-employee relationship existed between Schroeder Plumbing and Heating and Terry Greenslit at all

²⁷ *Id.* 23.19(1).

²⁸ *Id.*

relevant times, and its decision is **AFFIRMED**. Iowa Workforce Development shall take any steps necessary to implement this decision.

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