

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

**Appeal Number: 15IWD013**

**Respondent (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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

**ALAN SPENCER DRYWALL  
ATTN. ALAN SPENCER**

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

**IOWA WORKFORCE DEVELOPMENT  
STEVE HEINLE, FIELD AUDITOR**

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.

JOE BERVID, IWD  
NICHOLAS OLIVENCIA, IWD  
CARIE O'BRIEN, IWD  
RICHARD ARTHUR, ACCOUNTANT

\_\_\_\_\_  
(Administrative Law Judge)

6/5/2015

\_\_\_\_\_  
(Decision Dated & Mailed)

---

### **STATEMENT OF THE CASE**

Iowa Workforce Development ("IWD") determined an employer-employee relationship existed between Appellant Alan Spencer Drywall and its workers, and found that Alan Spencer Drywall was liable for unemployment insurance contributions (tax) effective January 1, 2007. IWD issued a decision imposing the contribution rates for 2007 through 2011 on June 16, 2011. IWD issued a decision finding an employer-employee relationship existed between Alan Spencer Drywall and its workers on July 14, 2011. Alan Spencer Drywall appealed the determinations on October 15, 2011.

On May 11, 2015, IWD transferred the case to the Iowa Department of Inspections and Appeals, Division of Administrative Hearings to schedule a contested case hearing. On June 4, 2015, a hearing was held before Administrative Law Judge Heather Palmer. Accountant Richard Arthur appeared and testified on behalf of Alan Spencer Drywall. Alan Spencer appeared, but did not testify. Steven Heinle appeared and testified on behalf of IWD. Exhibit 1 was admitted into the record.

**ISSUE**

Whether the Alan Spencer Drywall filed a timely appeal.

### **FINDINGS OF FACT**

IWD conducted an investigation of whether the individuals performing services for Alan Spencer Drywall were properly classified as independent contractors. IWD issued a decision on July 14, 2011 concluding Alan Spencer Drywall was liable for unemployment insurance contributions (tax) effective January 1, 2007 under Iowa Code chapter 96 because the individuals performing services for Alan Spencer Drywall were employees and not independent contractors. IWD had entered an earlier decision on July 16, 2011, imposing the contribution rates for 2007 through 2011.

The July 14, 2011 decision notified Alan Spencer Drywall **“THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY AUGUST 13, 2011 OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.”** (Exhibit 1 at 12). The decision dated June 16, 2011, also notified Alan Spencer Drywall it had 30 days to appeal the decision.

Alan Spencer Drywall filed an appeal on October 15, 2011 stating, in part,

I disagree with your classification of my subcontractors as employees and the subsequent preparation of the Iowa Workforce Development employer’s contribution and payroll reports for the periods beginning January 1, 2007 until December 31, 2011. I continue to believe that the individuals and or businesses which subcontract for me are not employees and that I am not subject to state unemployment taxes.

(Exhibit 1 at 7). IWD avers Alan Spencer Drywall’s appeal is untimely.

During the hearing Arthur alleged IWD improperly classified Alek Roy as an employee of Alan Spencer Drywall. Arthur contends the appeal period on the determination of whether an employee-employer relationship exists began when Heinle issued his letter of June 20, 2011 listing the amount due. That letter, Exhibit 1 at 8, does not provide any appeal language.

### **REASONING AND CONCLUSIONS OF LAW**

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96.<sup>1</sup> IWD’s Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.<sup>2</sup> IWD determines all issues related to employing units and employer liability, including the amount and rate of contribution and successorship.<sup>3</sup> IWD determined an employer-employee relationship exists between Alan Spencer Drywall and its workers.

The governing statute defines an employer as “any employing unit which in any

---

<sup>1</sup> Iowa Code § 96.9(1).

<sup>2</sup> *Id.* § 96.11(1).

<sup>3</sup> *Id.* § 96.7(4).

calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more.”<sup>4</sup> An employing unit includes any individual or organization that employs one or more individuals performing services in Iowa.<sup>5</sup> The term “employment” is defined as service “performed for wages or under any contract of hire, written or oral, express or implied.”<sup>6</sup> 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.”<sup>7</sup>

A presumption exists that an individual is an employee if the individual receives services for compensation.<sup>8</sup> An individual or business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96.<sup>9</sup> 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.<sup>10</sup>

The affected employing unit or employer may appeal from the initial determination. The governing statute provides:

“[a]n appeal shall not be entertained for any reason by the department unless the appeal is filed with the department within thirty days from the date on which the initial determination was mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.”<sup>11</sup>

The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>12</sup>

The July 14, 2011, decision states, in part, **“THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY AUGUST 13, 2011 OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.”** (Exhibit 1 at 12). Alan Spencer Drywall had until August 13, 2011 to file its appeal.<sup>13</sup> IWD did not receive an appeal from Alan Spencer Drywall until October 15, 2011.

During the hearing Alan Spencer Drywall did not allege it failed to receive the July 14, 2011 decision. Alan Spencer Drywall did not offer any evidence showing it submitted a post-marked appeal by August 13, 2011. Alan Spencer Drywall failed to file a timely appeal. Because Alan Spencer Drywall failed to file a timely appeal I do not have jurisdiction to consider whether IWD correctly an employer-employee relationship

---

<sup>4</sup> *Id.* § 96.19(16) *a.*

<sup>5</sup> *Id.* § 96.19(17).

<sup>6</sup> *Id.* § 96.19(18) *a.*

<sup>7</sup> *Id.* § 96.19(18) *a*(2).

<sup>8</sup> 871 IAC 23.19(6).

<sup>9</sup> Iowa Code § 96.19(18) *f*; *Id.* 22.7(3).

<sup>10</sup> 871 IAC 22.19(7).

<sup>11</sup> *Id.*

<sup>12</sup> *Beardslee v. Iowa Dep’t of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979).

<sup>13</sup> The appeal period for the June 16, 2011 decision expired in July 2011.

existed between Alan Spencer Drywall and the individuals performing services for the business from January 1, 2007.

**DECISION**

Alan Spencer Drywall failed to file a timely appeal. IWD's decisions dated July 14, 2011 and June 16, 2011 are affirmed.

hlp