

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

Appeal Number: 13IWD014

Respondent (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**SUREWAY TAXI OF IOWA, LLC
c/o KAY CLARK**

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.

**IOWA WORKFORCE DEVELOPMENT
AL LEWIS, FIELD AUDITOR
1000 EAST GRAND AVENUE
DES MOINES, IA 50319-0209**

JOE WALSH, IWD
JOSEPH BERVID, IWD
NICHOLAS OLIVENCIA, IWD
CARIE O'BRIEN, IWD
RYAN DOSTAL, IWD
DANA BARRER, IWD
CINDY WEBER-BLAIR, ATTY

(Administrative Law Judge)

June 27, 2013

(Decision Dated & Mailed)

STATEMENT OF THE CASE

As the result of an anonymous tip Iowa Workforce Development (the Department) conducted an investigation into whether the individuals working for Sureway Taxi of Iowa, LLC should be classified as independent contractors or as employees. The Department issued a Notice of Employer Status and Liability dated December 5, 2012 finding that an employer-employee relationship existed between Sureway Taxi of Iowa LLC and the workers who performed services for Sureway Taxi of Iowa, LLC. Sureway Taxi of Iowa, LLC filed an appeal from the Department's decision.

An in-person hearing was held at the Wallace State Office Building in Des Moines, Iowa on June 18, 2013. Attorney Cindy Weber-Blair appeared on behalf of Sureway Taxi of Iowa, LLC. Kay Clark testified for Sureway. The Department was represented by field auditor Al Lewis and Ryan Dostal testified on behalf of the Department. The Department submitted Exhibits A1-46 and B1-41, which were admitted into the record as evidence. The Appellant submitted Exhibit B42, which was admitted into the record as evidence.

FINDINGS OF FACT

The Department determined that Sureway Taxi LLC (Sureway 1) had employees and not independent contractors in an arbitration decision dated July 24, 2012. Sureway 1 went out of business as of August 2011.

Sureway Taxi of Iowa, LLC (Sureway 2) began doing business on January 1, 2012. The Department determined that Sureway 2 was acting similarly to Sureway 1 and it too had employees and not independent contractors.

The Department determined that Sureway 2's workers were employees using the 20 factors discussed in 871 IAC 23.19(6). The factors used to determine that the workers were employees consisted of the following.

Instruction: The duties of the drivers of the cabs involve communication between the driver and the general manager of the taxi service. The general manager advises the drivers where to pick up customers.

Training: Drivers are expected to have the proper license for cab drivers and it is the employer's responsibility to ensure that they do. The only other training is the communication between driver and general manager.

Integration: Sureway Taxi of Iowa engages in taxi services for the city of Marshalltown. The workers/drivers in question perform the services for cab customers, utilizing vehicles provided, maintained and paid for by Sureway Taxi of Iowa LLC. Their services are directly integrated into the business operations.

Services Rendered Personally: Drivers are subject to regulation and control by Sureway Taxi of Iowa LLC. Sureway owns the vehicles. Reasonable to assume drivers cannot subcontract work out as if they are legitimate subcontractors.

Hiring, Supervising, and Paying Assistants: No evidence exists that shows the drivers/workers hire assistants. No questionnaires had been returned to IWD Misclass. Since Sureway owns the vehicles, it is reasonable to assume drivers cannot subcontract out work to others.

Continuing Relationship: The drivers/workers of the currently operating Sureway Taxi of Iowa also drove the cabs for Sureway Taxi and have been with the company since the effective start date.

Set Hours of Work: All drivers perform the service for the cab company and hours of work vary for each individual driver. Section 5 of the Sureway Taxi's own I.C.A. states that they, as the employer, control hours worked.

Full Time Work: Sureway Taxi's I.C.A. with the driver states that driver reports on a daily basis are welcomed showing that the drivers perform services daily.

Work Done on Premises: The nature of the business involves transportation by drivers

for Sureway Taxi of Iowa. Therefore, services are not done on a specific worksite or location but from mobile cabs which are owned by Sureway Taxi of Iowa LLC. In addition, workers must come to Sureway's location/premises to start work.

Order of Sequence Set: The customers of the taxi service determine where they want to go on a "first come-first served" basis which is also determined by the home office general manager.

Oral or Written Reports: Drivers for Sureway collect the fare after service has been completed. The fare is then split between the driver and the company by a percentage. The percentage that goes to the driver is the driver's wages. The driver provides to the company on a weekly basis a daily report of all fares performed and reimbursable expenses incurred. Reference page B6 of appeal packet and Section 2.C of IC Agreement.

Section 8, subsection "i" even states anything conceived of by the independent contractor, work, ideas, or otherwise, is property of Sureway Taxi of Iowa LLC.

Payments by Hour, Week, Month: Drivers are paid each day by Sureway Taxi based on activity of the driver for that day as the driver reports that on a daily basis.

Payment of Business and/or Traveling Expenses: Sureway reimburses the drivers for any repairs or maintenance, fuel, business cards and phone charges. This would be consistent with the drivers being employees and not independent contractors. Reference page B6 of the appeal packet.

Furnishing Tools and Materials: The only tangible item required for the driver to have is current operator's license for the vehicles which are owned by Sureway Taxi.

Investment: The worker/driver has no investment. Just the required driver's license certification.

Realization of Profit or Loss: Sureway Taxi provides the cabs, communication equipment and advertising to its workforce to operate without any consideration in return, apart from the drivers' wages.

There is no overhead, on-going expenses, etc. of which the drivers must account for and weigh against derived fares. Therefore, there is no opportunity for profit or loss. Such risks are borne by Sureway Taxi of Iowa LLC.

Making Services Available to the General Public/Relevant Market: Sureway provides services to the general public of Marshalltown. Advertising for the business is displayed on the actual cabs. The drivers work for Sureway and get customers via communication with general manager and on their own. Without Sureway's branded vehicles, equipment and control, these drivers could not perform services to the general public.

Works for More Than One Person or Firm: No indication the drivers work for anyone else. Per the worker agreement supplied by the employer, the worker is permitted to

provide services to any party in addition to Sureway. Drivers provide services for wages.

Right to Discharge: Either party may terminate the relationship for any reason upon a 14 day written notice to either party.

Right to Quit: Either party may terminate the relationship for any reason upon a 14 day written notice to either party.

The Department's determination was summed up on page A23:

The manner in which the parties work together determines whether or not a worker is considered an employee or independent contractor. Sureway Taxi of Iowa owns all the necessary cabs and communication equipment to perform services in their service industry of cab service for the city of Marshalltown. The business is operated exactly the same as was Sureway Taxi who was found to have employees per Deputy Workers' Compensation Commission, James F. Christenson. IWD's review of provided information leads us to the same determination.

The Department also pointed out the Jenni Sanders had filed an unemployment claim against Sureway Taxi of Iowa LLC. Sureway 2 had until June 17, 2013 to file a resistance to the claim and as of the date of the hearing no resistance had been filed.

Kay Clark testified on behalf of Sureway Taxi of Iowa LLC. She is the general manager of Sureway 2 and explained that the company had nothing to do with Sureway 1. They bought their cabs from Highland Auto Supply and from a farmer. She explained that each driver would get a cell phone and a cab and would be sent out. The company pays for the cell phone. The driver would decide how long to work and where and the drivers could advertise on their own.

At the end of each shift the driver turns over either \$40 or 60% of the fares collected, whichever is more. The cab company reimburses for all gas and usual repairs. If a driver gets into an accident then the driver is responsible for the accident.

REASONING AND 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 of \$1,500 or more, or employed at least one individual for some portion of a day in each of twenty different calendar weeks during the current or preceding calendar year.¹ "Employment" is defined as service performed for wages or under any contract of hire, written or oral, express or implied.² "Wages" means all remuneration for personal services.³ When an employer claims that any employment is not employment under the

1 Iowa Code § 96.19(16)(a) (2011).

2 Iowa Code § 96.19(18)(a) (2011).

3 Iowa Code § 96.19(41) (2011).

Act, the burden is on the employer to prove the exemption claimed.⁴

The undersigned finds that the employer has failed to carry its burden of proof to establish that the workers were not employees. The employer supplied the cabs, phone, paid for fuel and maintenance of the cabs. Evidence indicated that one driver had been disciplined for not keeping her scheduled hours. Additionally, the employer did not appeal a claim of unemployment benefits. The record shows that even though works signed Independent Contractor Agreements, the workers were in fact employees and not independent contractors.

DECISION

The Department's decision is affirmed. The Department shall take any steps necessary to implement this decision.

jmp

⁴ 871 Iowa Administrative Code (IAC) 22.7(3).