

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

**Appeal Number: 13IWD012**

**Appellant (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**PHAROS INNOVATIONS LLC  
RANDALL WILLIAMS, MEMBER  
TWO NORTHFIELD PLAZA SUITE 201  
NORTHFIELD, IL 60093**

**IOWA WORKFORCE DEVELOPMENT  
ROSE FISCHER, FIELD AUDITOR**

JOE BERVID, IWD  
NICHOLAS OLIVENCIA, IWD  
CARIE O'BRIEN, IWD  
SUSAN DAMERON, IWD  
BRYAN BECK, 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.

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(Administrative Law Judge)

October 8, 2013

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(Decision Dated & Mailed)

Iowa Code section 96.7-4 – Employer Liability Determination

### **STATEMENT OF THE CASE**

Bryan Beck contacted Ryan Dostal with Iowa Workforce Development (“IWD”) and reported he believed he had been misclassified by Appellant Pharos Innovations LLC (“Pharos”). IWD completed an investigation and determined an employer-employee relationship exists between Pharos and its workers. Pharos appealed.

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 September 24, 2013. Dr. Randall Williams appeared and testified on behalf of Pharos. JoAnne Peters and Robert Pierson also appeared on behalf of Pharos, but did not testify. Rose Fischer appeared and testified on behalf of IWD. Dostal and Russell Munsinger also appeared on behalf of IWD, but did not testify. Exhibits A and 1 were admitted into the record.

## **ISSUE**

Whether an employer-employee relationship existed between Pharos Innovations LLC, Bryan Beck, and all other workers performing services for Pharos Innovations LLC.

## **FINDINGS OF FACT**

Beck contacted Dostal in July 2012 concerning a possible misclassification. Beck reported he worked for Pharos for approximately four years and alternated between an employee and an independent contractor, but always performed the same work. Pharos is a technology-based, health care provider company.

Beck informed Dostal he had a supervisor who provided him with a weekly schedule. Beck told Dostal Pharos provided him with a company laptop, paid him \$20 per hour, and paid him bi-weekly. Beck stated he complained about his classification and his supervisor warned him not to contact the state of Iowa.

Dostal mailed Beck a Questionnaire for Determining Status of Workers. IWD assigned Fischer to complete the investigation.

Pharos is located in Northfield, Illinois and has an active unemployment insurance tax account, with an effective date of October 4, 2006. Pharos has workers in a number of states. This matter only pertains to workers performing services in Iowa.

Beck first started performing services for Pharos in California in May 2008. He continued to perform services for Pharos when he moved to Iowa in October 2010, through his resignation on August 27, 2012. Pharos reported wages for Beck in the third and fourth quarters of 2010. Pharos did not report any wages for Beck in 2011, or the first two quarters of 2012.

Pharos provided a timeline of Beck's history with Pharos as follows:

- 5/15/08 Engaged as Independent Contractor
- 10/1/08 Hired as FT Employee
- 6/15/09 Terminated as FT Employee, engaged as Independent Contractor
- 6/15/10 Hired as FT Employee
- 1/1/11 Terminated as FT Employee, engaged as Independent Contractor
- 8/27/12 Resigned as an Independent Contractor

(Exhibit A at 66).

Fischer conducted a telephone interview with Beck and reviewed his completed Questionnaire for Determining Status of Workers. Beck reported Christopher Munoz and Linda Langley, prior to her death, both provided similar services to Pharos.

Fischer contacted Pharos and spoke with Peters. Peters indicated the company had recently decided to change its business model and all of its workers would be classified as employees.

Fischer told Peters it appeared the workers should be classified as employees and not independent contractors. Fischer then sent Peters a letter attaching a number of documents, including a Questionnaire for Determining Status of Workers.

Peters submitted a completed Questionnaire for Determining Status of Workers and Pharos Consulting Agreement to IWD. In its response, Pharos reported Beck should be considered an independent contractor because: (1) he has the flexibility to set his own hours of work; (2) he has the flexibility to effect his assignments from any location; (3) he has performed multiple and varied tasks for Pharos; (4) he has the flexibility to determine how he works with clients and assigned tasks; (5) he receives no payment for business expenses; (6) he has the right to work for companies other than Pharos; (7) he has the right to hire, supervise and pay assistants; (8) he has to follow Pharos' guidelines and practices to ensure compliance with HIPPA; and (9) he signed an independent contractor consulting agreement. Peters submitted similar responses with respect to Munoz and Langley.

Fischer reviewed the documents and determined an employer-employee relationship existed between Pharos and its workers. Fischer contacted Peters and informed her of her determination. IWD submitted a written decision to Pharos. Pharos timely appealed.

Fischer reported the workers provided services from their homes. Pharos issued company laptops with virtual desktops allowing for monitoring of all activity. Pharos required the workers to make all calls with company cellular telephones. The workers were responsible for their own internet connections. Pharos required all correspondence be made through the worker's @pharosinnovations.com e-mail address. The workers were paid an hourly wage, as opposed to a lump sum for a service.

The workers did not have set hours, but worked approximately 30 hours per week. The workers were expected to be available between 9:00 a.m. and 5:00 p.m., Monday through Friday.

Fischer reported each Monday the workers received instruction with the details for tasks for the week. Pharos instructed the workers when to place calls to specific patients. The workers had to document all calls in a company call log.

Beck trained Langley. During Langley's training Pharos classified Beck and Langley as employees. Fischer noted while Pharos changed Beck's classification between that of an employee and independent contractor, Beck's job duties remained the same.

Fischer found the workers were reimbursed for expenses for training or meetings in Chicago.

Fischer did not find the workers were offering their services to the general public. Pharos retained the right to terminate the agreement at any time. The workers also had the right to quit. Beck resigned on August 27, 2012.

### **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 existed between Pharos and its workers by applying a multi-factor test.

The governing statute defines an employer 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."<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>

In the unemployment compensation context, 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.<sup>11</sup> In the employer liability context, IWD also applies the common law standard when deciding whether an employer-employee relationship exists by applying the common law rules to the individual facts in each case.<sup>12</sup> "Generally the relationship (that 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

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<sup>1</sup> Iowa Code § 96.9(1) (2013).

<sup>2</sup> *Id.* § 96.11(1).

<sup>3</sup> *Id.* § 96.7(4).

<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*; 871 IAC 22.7(3).

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

<sup>11</sup> *Gaffney v. Dep't of Employ. Servs.*, 540 N.W.2d 430, 434 (Iowa 1995).

<sup>12</sup> 871 IAC 23.19(6).

services, not only as to the result to be accomplished by the work but also as to details and means by which that result is accomplished. That is, 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.”<sup>13</sup>

In addition to the common law test, IWD has adopted rules with factors to consider in determining whether a worker is an independent contractor or employee.<sup>14</sup> The rules flush out the common law test and expand upon the common law test.

Some of the factors include: (1) the right to control and direct the means and details by which the result is to be accomplished; (2) the right to discharge or terminate the relationship; (3) the furnishing of tools, equipment, materials, and a place to work; (4) the nature of the worker’s contract for the performance of a certain type, kind or piece of work at a fixed price; (5) whether the worker is involved in distinct trade, occupation, business or profession; (6) payment of fixed or hourly wages; and (7) the ability of the worker to sustain a profit or loss.<sup>15</sup>

The rules recognize an independent contractor typically 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.<sup>16</sup> Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business, or profession, in which they offer services to the public, are independent contractors and not employees.<sup>17</sup>

IWD’s rules further note 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.<sup>18</sup> 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.<sup>19</sup>

The workers were not part of a distinct trade or profession. The workers worked from home and provided an internet connection. Pharos issued the workers company laptops with virtual desktops, allowing for monitoring of all activity. Fischer reported workers received instruction each Monday with the details for tasks for the week. Pharos required the workers to make all calls using company cellular telephones at times arranged by Pharos. The workers were required to use the workers’ @pharosinnovations.com e-mail addresses for all correspondence. Pharos required the workers to document all calls in a company call log.

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<sup>13</sup> *Meredith Publ’g Co. v. Iowa Employment Sec. Comm’n.*, 232 Iowa 666, 678, 6 N.W.2d 6, 13 (1942).

<sup>14</sup> 871 IAC 23.19.

<sup>15</sup> *Id.* 23.19(1)-(7).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* 23.19(1).

<sup>18</sup> *Id.* 23.19.

<sup>19</sup> *Id.*

Additional factors include expenses, the risk of loss, the furnishing of tools and equipment, payment of wages, and the purchasing of labor. 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.<sup>20</sup> Independent contractors often have significant investment in real or personal property that they use in performing services for others.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> Pharos paid the workers \$20 per hour. The workers were not paid a sum for the entire work. Both Pharos and the workers retained the right to terminate the arrangement. The workers could not make a profit by performing the work faster than expected. The workers did not risk any loss of income if they failed to complete a project because the workers were paid by the hour. While Beck could work for other businesses, he did not. Fischer did not find a separate business presence for the workers. Beck regularly worked 30 hours per week for Pharos.

The workers were not fully responsible for their own training. Beck provided training to Langley when he was classified as an employee of Pharos. At hearing Dr. Williams testified Beck's duties changed over time. Pharos classified Beck as an employee at times and as an independent contractor at other times. There was no break in Beck's service to Pharos. Dr. Williams did not fully explain how Beck's duties changed substantially over time. Pharos has not met its burden of proof in this case. IWD properly found an employer-employee relationship existed between Pharos and its workers.

## **DECISION**

An employer-employee relationship exists between Pharos and its workers. IWD's decision is AFFIRMED.

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<sup>20</sup> *Id.* 23.19(3).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* 23.19(4).

<sup>23</sup> *Id.* 23.19(2).