

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

**Appeal Number: 12IWD037**

**Respondent (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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

**SCOTT LANGERMAN  
EDGEWOOD COMMUNICATIONS  
408 EDGEWOOD RD, NW #200  
CEDAR RAPIDS IA 52405**

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  
JUSTIN DEMSKY, FIELD AUDITOR  
3420 UNIVERSITY AVE  
WATERLOO IA 50701**

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.

JOSEPH WALSH, IWD  
JOSEPH BERVID, IWD  
NICHOLAS OLIVENCIA, IWD  
CARIE O'BRIEN, IWD  
LOGAN NEDROW, PARTY

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(Administrative Law Judge)

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January 9, 2013

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(Decision Dated & Mailed)

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## **STATEMENT OF THE CASE**

Scott Langerman filed an appeal of a decision issued by Iowa Workforce Development (the Department) dated June 29, 2012. In that decision, the Department determined that an employer-employee relationship existed between Logan Nedrow and Mr. Langerman.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on October 31, 2012 to schedule a contested case hearing. A Notice of Hearing was mailed to the parties on November 6, 2012. On December 19, 2012, a telephone hearing was held before Administrative Law Judge John M. Priester. The Department was represented by field auditor Justin Demsky, who presented testimony. Appellant Scott Langerman was present and provided testimony. Logan Nedrow appeared and presented testimony. The Department submitted Exhibit A (pp. 1-68), which was admitted into the record as evidence.

## **ISSUE**

Whether the Department correctly determined that an employer-employee relationship existed between Edgewood Communications and Logan Nedrow.

## **FINDINGS OF FACT**

At the hearing, Field Auditor Justin Demsky testified that the Department was made aware of a possible misclassification of employees at Edgewood Communications. Edgewood Communications sells business lines for Century Link. The work is done at the office of Edgewood Communication. All of the equipment used is at the office and is owned by Edgewood Communications.

The employee in question, Mr. Nedrow, does not pay rent to Edgewood Communications for the use of the equipment or for his office space. All of Mr. Nedrow's paychecks were issued by Edgewood Communication's bank account. These checks came at a regular interval for an extended period of time-over four years.

Mr. Nedrow's hours were initially flexible, but over time Mr. Langerman began to set Mr. Nedrow's hours. Mr. Nedrow had to gain clearance for time off from Mr. Langerman. After the Department began its investigation with Edgewood Communications to determine if Mr. Nedrow was misclassified as an independent contractor Mr. Nedrow was locked out of Edgewood Communications and was not able to perform his job.

After reviewing all the information the Department determined that Mr. Nedrow was in fact an employee of Edgewood Communications and not an independent contractor. Edgewood Communications filed a timely appeal of this determination.

Mr. Langerman testified that Mr. Nedrow was in fact an independent contractor and not an employee. According to Mr. Langerman, Mr. Nedrow set his own hours, works solely on commission, could work from any location, and he could have worked at any other employment if he so chose.

## **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.<sup>1</sup> "Employment" is defined as service performed for wages or under any contract of hire, written or oral, express or implied.<sup>2</sup> When an employer claims that any employment is not employment under the Iowa Employment Security Law, the burden is on the employer to prove the exemption claimed.<sup>3</sup>

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1 Iowa Code § 96.19(16)(a) (2011).

2 Iowa Code § 96.19(18)(a) (2011).

3 871 Iowa Administrative Code (IAC) 22.7(3), 23.55(2).

In the unemployment compensation context, it 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.”<sup>4</sup>

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.<sup>5</sup>

The Department’s regulations set out in some detail the factors to be considered in determining whether a worker is an employee or an independent contractor.<sup>6</sup> Factors that support the existence of an employer-employee relationship include:

- Right to discharge an employee without being held liable for damages for breach of contract;
- Furnishing of tools, equipment, material, and a place to work;
- Continuous performance of work for the employer;
- Establishment of set hours of work and need to request time off work.

Factors that support an independent contractor relationship include:

- Performance of a specific job at a fixed price;
- Following a distinct trade, occupation, business, or profession in which an individual offers services to the public to be performed without the control of those seeking the benefit of his or her training or experience;
- Unreimbursed expenses and fixed, ongoing costs regardless of whether work is currently being performed;
- Significant investment in real or personal property that is used in performing services for someone else;
- Right to employ assistants with the exclusive right to supervise their activity and completely delegate the work.<sup>7</sup>

The regulations also provide that if, upon examination of the facts of a case, an employer-employee relationship exists, the designation or description by the parties of their relationship as anything other than an employer and employee is immaterial.<sup>8</sup>

While there are factors in this case that fall on both sides of the employee/independent

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<sup>4</sup> *Gaffney v. Department of Employment Services*, 540 N.W.2d 430, 434 (Iowa 1995).

<sup>5</sup> 871 IAC 23.19(1).

<sup>6</sup> See generally 871 IAC 23.19.

<sup>7</sup> 871 IAC 23.19.

<sup>8</sup> 871 IAC 23.19(7).

contractor line, the weight of the evidence supports the conclusion that Mr. Nedrow was an employee of Edgewood Communications and that Edgewood Communications had the right to direct and control his work. Mr. Nedrow used the equipment at Edgewood and did not pay rent for the equipment or the office. His work hours were set by Mr. Langerman and Mr. Nedrow had to seek approval for time off. Mr. Nedrow made no investment in tools or equipment for the job. Mr. Nedrow could not realize a loss because of the employment arrangement. Mr. Nedrow did not work for anyone else during his employment with Edgewood. By locking Mr. Nedrow out of the office, Mr. Langerman de facto fired Mr. Nedrow, the right to discharge is evidence of an employee-employer relationship.

Under these circumstances, the Department's determination that Mr. Nedrow was an employee of Edgewood Communications is correct and must be affirmed.

### **DECISION**

The Department's decision dated June 29, 2012 is affirmed. The Department shall take any action necessary to implement this decision.

jmp