

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TRENT B CRABS
Claimant

APPEAL NO. 11A-UI-12090-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EATON CORPORATION
Employer

OC: 04-03-11
Claimant: Respondent (2-R)

Iowa Code § 96.8(5) – Liability of Certain Employers (Department Error)
871 IAC 23.19 – Employer/Employee Relationship

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 8, 2011, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on October 7, 2011. The claimant did not participate. The employer did participate through Gary Grimes, Bartech Workforce Management and Katie Van Den Berg, Human Resource Generalist.

ISSUE:

Was the claimant ever an employee of Eaton Corporation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was never employed by Eaton Corporation. He was an employee of Manpower (Employer Acct. No. 265624) who was assigned to work at the Eaton location. There has been no fact-finding decision issued on his separation from Manpower.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the decision should be reversed as the claimant was never an employee of Eaton Corporation.

871 IAC 23.19 provides:

Employer-employee and independent contractor relationship.

(1) 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. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and the furnishing of a place to work, to the individual who performs the services. 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. A individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. 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.

(2) The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

(3) Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

(4) The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

(5) Whether the relationship of employer and employee exists under the usual common law rules will in doubtful cases be determined upon an examination of the particular facts of each case.

(6) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(7) All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

The claimant never worked for Eaton Corporation, thus there was no employer-employee relationship. The account of Eaton Corporation shall not be charged for any benefits paid to the claimant.

REMAND:

The separation issue from Manpower is remanded to the claims section for an initial review and decision.

DECISION:

The September 8, 2011, reference 04, representative's decision is reversed. Claimant shall not be denied benefits based upon this decision and Eaton Corporation (account number 018193) shall not be responsible for benefit charges.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs