

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA MCDERMOTT
Claimant

APPEAL NO: 12A-UI-04019-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN INCOME LIFE
Employer

OC: 08/14/12
Claimant: Respondent (4)

871 IAC 23.19(1) - Independent Contractor

STATEMENT OF THE CASE:

American Income Life (employer) appealed an unemployment insurance decision dated April 6, 2012, reference 02, which held that Tina McDermott (claimant) was eligible for unemployment insurance benefits. Due notice was issued scheduling the matter for a telephone hearing to be held May 2, 2012. Because there is no dispute of material facts and a decision fully favorable to the parties could be made based on the record as it stood, a hearing was deemed unnecessary. Based on the evidence and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was an independent contractor or an employee.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds: The claimant worked for American Income Life as an independent contractor. She has wages in her base period for work performed for other employers.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence establishes the claimant was an independent contractor. This is not an employer-employee relationship.

Iowa Code section 96.19-18-a(2) provides:

18. "Employment".

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection

prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by:

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

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 Iowa Employment Security Law deals only with employment relationships. If the claimant is found to be an independent contractor and not an employee, the circumstances surrounding the severance of the business relationship with that company is immaterial to the claim for unemployment insurance benefits. The claimant was an independent contractor. There is no disqualification and the employer's account cannot be charged, as no wages were paid to the claimant for insured work.

DECISION:

The unemployment insurance decision dated April 6, 2012, reference 02, is modified in favor of the appellant. The claimant worked as an independent contractor and, as such, the termination of the contract agreement is not a disqualifiable event. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged, as no wages were paid for insured work.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw