

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARK J SCHUELKE**  
Claimant

**CITY OF ANKENY**  
Employer

**APPEAL 16A-UI-08420-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/19/16**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.19-18A(2) – Definition of Employment  
Iowa Admin. Code § 871-23.19(1-7) – Independent Contractor

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 7, 2016, (reference 01) unemployment insurance decision that found he was not an employed by the City of Ankeny. The parties were properly notified about the hearing. The U.S. Census Bureau was also notified of the hearing, but did not register to participate. A telephone hearing was held on August 19, 2016. Claimant participated. Employer participated through human resources director Dawn Gean. Employer's Exhibit 1 was received. Claimant's Exhibit A was received. Official notice was taken of the administrative record.

**ISSUE:**

Did the claimant work for the employer as an employee?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked as a temporary employee conducting a Special Census in the City of Ankeny on behalf of the U.S. Census Bureau during 2015. The City of Ankeny paid claimant \$2,068.51 in wages and issued him a W-2 tax form. The City of Ankeny did not pay unemployment taxes on these wages. The wages do not appear in claimant's base period as reported by the City of Ankeny or the U.S. Census Bureau.

On April 15, 2016, IWD field auditor Tim Hedrick informed the City of Ankeny that the wages paid by the City of Ankeny would not be considered insured wages.

During 2015 claimant also worked as a temporary employee conducting a Special Census for the City of Urbandale and the City of West Des Moines on behalf of the U.S. Census Bureau. Both the City of Urbandale and City of West Des Moines paid unemployment taxes on these wages and they appear in claimant's base period as insured wages.

Claimant's supervisor at the U.S. Census Bureau, Ronnie Watkins, informed claimant that the City of Ankeny was his employer for purposes of unemployment taxes.

The contract between the City of Ankeny and the U.S. Census bureau states that temporary employees conducting the Special Census should be considered employees of the U.S. Census Bureau. However, the contract also states that the City of Ankeny should pay the temporary employees wages, including all applicable taxes. The contract states the City of Ankeny should reimburse the Census Bureau for all funds expended by the Census Bureau resulting from payments to the Department of Labor under applicable unemployment benefits laws.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was not an employee of the City of Ankeny, unless an investigation and determination reveals otherwise.

Iowa Code § 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.

Iowa Admin. Code r. 871-23.19 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 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. An 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. Professional employees who perform services for another individual or legal entity are covered 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) Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

(4) 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.

(5) 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.

(6) Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

(7) 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

(8) 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.

Here, claimant was not an independent contractor. The contract in question explicitly identifies claimant as an "employee." Claimant was working under the direction and supervision of the U.S. Census Bureau. No evidence indicates claimant worked as an independent contractor in this position. The tax department did not find claimant was an independent contractor in his essentially identical employment with the City of Urbandale and the City of West Des Moines. So, claimant was an employee. It is unclear why no employer has been required to report the wages paid to claimant by the City of Ankeny during 2015 or why these insured wages do not appear on claimant's monetary record.

Since the tax department has determined claimant is not an employee of the City of Ankeny, the decision is affirmed. However, the issue of whether these payments have been properly

reported as insured wages and who they should be reported by is remanded for a resolution with notice to all parties involved. That decision may result in a monetary redetermination.

**DECISION:**

The July 7, 2016, (reference 01) is affirmed pending an investigation and determination by the tax section of the Iowa Workforce Development.

**REMAND:**

The issue regarding the proper reporting of insured wages delineated in the findings of fact is remanded to the tax section of Iowa Workforce Development for investigation and determination of whether payments to claimant were properly reported as insured wages, and whether additional insured wages should be added to claimant's monetary record.

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Christine A. Louis  
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Decision Dated and Mailed

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