

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL L NEILSON
Claimant

APPEAL NO. 12A-UI-01215-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON HOFFMANN CORPORATION
Employer

OC: 12/11/11
Claimant: Appellant (4)

Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation
of Wage Credits)
871IAC23.19 – Employer Employee Relationship

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 20, 2012, reference 01, which held claimant ineligible for business closing benefits pursuant to Iowa Code section 96.3-5 insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 27, 2010. Claimant participated personally. Employer participated by Richard Castleberry, regional human resource manager.

ISSUE:

The issues presented in this appeal are whether claimant was laid off due to the employer going out of business and, therefore, is whether claimant entitled to have the wage credits re-computed and whether claimant was an employee.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant did not work for this employer nor any of its affiliates.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was never employed by this employer nor its affiliates. No employer employee relationship ever existed.

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.

DECISION:

The decision of the representative dated January 20, 2012, reference 01, is modified. The claimant is not a former employee and, as such, this decision is moot.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw