

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MICHAEL D FINCH  
3545 E AVE NW APT 13  
CEDAR RAPIDS IA 52405-3538

DHL WORLDWIDE EXPRESS INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07680-H2T  
OC: 06-11-06 R: 03  
Claimant: Respondent (4R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code section 96.19-18-g(7) – Employment

STATEMENT OF THE CASE:

The alleged employer filed a timely appeal from the July 18, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 16, 2006. The claimant did not participate. The alleged employer did participate through Alex Wolfert, District Field Service Manager.

ISSUE:

Was the claimant an employee of DHL Worldwide Express?

## FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: At the commencement of the hearing Mr. Wolfert denied that Michael D. Finch, the claimant, was ever an employee of DHL Worldwide Express. Mr. Wolfert contends that all drivers, while they wear DHL Uniforms and drive trucks with the DHL logo on them, are in fact employees of Fastrax Enterprises out of Euless, Texas. There are no wage records in the administrative file to indicate that DHL ever paid wages to the claimant. It appears as though DHL Worldwide Express was not the claimant's employer. The last actual employer is thought to be: Fastrax Enterprises, 12649 Black Cherry Lane, Euless, Texas 76040-3413. Telephone number: (469) 867-2452. Cedar Rapids local dispatch number (319) 366-1476. Contact person in Cedar Rapids is: Kamal Anwar, Director.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not engaged in employment with DHL Worldwide Express.

Iowa Code section 96.19-18-g(7) provides:

18. "Employment".

g. The term "employment" shall not include:

(7) Services performed by an individual, who is not treated as an employee, for a person who is not treated as an employer, under either of the following conditions:

(a) The services are performed by the individual as a salesperson and as a licensed real estate agent; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(b) The services are performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis, for resale by the buyer or another person in the home or in a place other than a permanent retail establishment, or engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in a place other than a permanent retail establishment; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes

There is no evidence by way of either testimony or wage records to indicate that the claimant ever was an employee of DHL Worldwide Express. Based on the uncontroverted testimony of Mr. Wolfert, it appears as though the claimant may have been employed by Fastrax Enterprises. Since the claimant did not work for DHL Worldwide Express, as an employee, they are not liable for any unemployment insurance benefits due to him. The claim must be remanded for a determination as to who was the claimant's last actual employer.

DECISION:

The July 18, 2006, reference 01, decision is modified in favor of the appellant. The claimant was not an employee of DHL Express Worldwide. Benefits are allowed, provided the claimant is otherwise eligible. The account of DHL Worldwide Express, Inc., shall not be charged as they were not the employer of the claimant.

REMAND:

The issue as to who was the claimant's last actual employer is remanded to the Unemployment Insurance Service Division for an initial review and determination. The last actual employer is thought to be: Fastrax Enterprises, 12649 Black Cherry Lane, Euless, Texas 76040-3413. Telephone number: (469) 867-2452. Cedar Rapids local dispatch number (319) 366-1476. Contact person in Cedar Rapids is: Kamal Anwar, Director.

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