

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENT HANSON
Claimant

US POSTAL SERVICE
Employer

APPEAL NO: 13A-UI-03140-ET

**ADMINISTRATIVE LAW JUDGE
DECISION AND REMAND FOR
DETERMINATION
OF EMPLOYEE/INDEPENDENT
CONTRACTOR STATUS**

OC: 01-13-13
Claimant: Appellant (2R)

Section 96.19(18)(g)(7)(b) – Definition of Employment
871 IAC 23.19 – Independent Contractor

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 28, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 15, 2013. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant was an employee or an independent contractor and whether he is eligible for unemployment insurance benefits if he is considered an employee for unemployment purposes.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time janitor for the United States Postal Service. The claimant established his business relationship with the United States Postal Service November 23, 2004, and was laid off, along with all janitorial employees across the country on the anniversary of his hire date, which was November 23, 2012. The employer controlled and directed the claimant's work activities, told him when to work and what to do, provided his supplies, supervised him on a day to day basis, and paid the claimant regular wages bi-weekly.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that for the purposes of this decision it will be assumed the claimant was an employee of the post office.

Iowa Code section 96.19-18-a 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: . . .

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.

Based on the factors delineated in the administrative code rule and referenced in the findings of fact, the administrative law judge concludes that the claimant was an employee, not an independent contractor, for unemployment insurance purposes.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant was permanently laid off due to a lack of work and cuts to the postal service budget nationwide. A permanent lay off must be considered as a separation from employment. The claimant did not voluntarily quit his employment. The remaining issue is whether he was discharged for misconduct. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct, without additional evidence, shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of misconduct as that term is defined by Iowa law. The employer has not met its burden of proving the claimant was an independent contractor or that his separation was due to disqualifying misconduct. Therefore, benefits are allowed.

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. Even though the administrative law judge allowed benefits on the claimant's separation, he has no wages in his base period from which to receive unemployment insurance benefits. Therefore, the matter must be remanded for such an investigation and determination. Either party may appeal the initial decision of the Tax Section concerning the claimant's relationship with the company.

ORDER:

The matter of whether the claimant is an employee or an independent contractor is remanded to the Tax Section of Iowa Workforce Development for investigation and determination. A copy of the determination and appeal rights therefrom shall be made promptly to each party.

DECISION:

The February 28, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

The matter of whether the claimant is an employee or an independent contractor is remanded to the Tax Section of Iowa Workforce Development for investigation and determination. A copy of the determination and appeal rights therefrom shall be made promptly to each party.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs