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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed May 31, 1983

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ERWIN WELLER CO.,	)	
Petitioner-Appellant,	)	
vs.	)	
IOWA DEPARTMENT OF JOB SERVICE,	)	3-90 2-68723
Respondent-Appellee,	)	
AND CONCERNING	)	
T. A. WALSH,	)	
Claimant-Appellee.	)	

Appeal from Woodbury District Court, Lawrence W. McCormick, Judge.

Petitioner company appeals the district court's judicial review decision affirming respondent agency's determination that claimant "homeworker" was an employee of petitioner-company and was entitled to unemployment insurance benefits. AFFIRMED.

William L. Edmonds of Carter, Sar & Edmonds, Sioux City, for petitioner-appellant.

Joseph L. Bervid and Walter F. Maley and Blair H. Dewey, Des Moines, for respondent-appellee.

Leroy J. Sturgeon, Sioux City, for claimant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

Hayden, J., takes no part.

OXBERGER, C.J.

Petitioner-company appeals the district court's judicial review decision affirming respondent-agency's determination that claimant "homeworker" was an employee of petitioner-company, rather than an independent contractor, and was therefore entitled to unemployment insurance benefits. On appeal petitioner asserts that the trial court erred as a matter of law in concluding that claimant was an employee within the definition of Iowa Code section 96.19(6) and that the trial court's decision that claimant was an employee is not supported by substantial evidence. We affirm.

The claimant, T. A. Walsh, worked for Erwin Weller Company as a homeworker from August 1978, through June 25, 1979. Before she was permitted to become a homeworker, she was required to go through a testing procedure that was designed to establish to the company's satisfaction that she could perform various tasks within a certain period of time. While she practiced for these tests and during the tests themselves, she was paid minimum wage. After filling out an employment application, she was given a work order, and was supplied with the materials necessary to accomplish the tasks assigned to her. These materials were then taken to her home, and she proceeded to assemble certain products which she returned to the Erwin Weller plant. She was permitted to produce no more than the number of products that the company calculated she could produce in 40 hours per week. The company deducted social security taxes and contributed its share of those taxes. In addition, the company furnished all tools, equipment and machines needed by the homeworker.

After she was laid off, she filed a claim with the Iowa Department of Job Service seeking wage credits for unemployment benefits from the company. The company asserted that she was not an employee, but rather an independent contractor, and was therefore not subject to the Employment Security Law, Iowa

Code chapter 96.

Walsh's claim was initially denied by a deputy on the grounds that she was not an employee. On appeal, an administrative hearing officer, after hearing considerable testimony, determined that Walsh was an employee within the provisions of the act and reversed the deputy's determination. In doing so, the hearing officer relied upon Iowa Code section 96.19(6)(a)(2), which defines "employment" as "service either performed for wages or under any contract of hire, written or oral, expressed or implied." The hearing officer also relied upon the "right to control" tests in Meredith Publishing Co. v. Iowa Employment Security Commission, 6 N.W.2d 6 (Iowa 1942).

On appeal to the agency appeal board, the hearing officer's findings and conclusions were affirmed, and the district court, following a hearing, found that the agency's decision that Walsh was an employee rather than an independent contractor was supported by substantial evidence and was not affected by errors of law. The court therefore affirmed the agency's decision and adopted the hearing officer's findings and conclusions.

I. Scope of Review

Under Iowa Code section 17A.19(8)(f)(1983), we look to the entire record to determine whether substantial evidentiary support exists for the agency decision. Cook v. Iowa Department of Job Service, 299 N.W.2d 698, 700-701(Iowa 1980). "We accord the fact findings of the Employment Security Commission the deference we give to jury verdicts. When the facts are in dispute or when reasonable minds differ on the inferences to be drawn from the evidence the commission's findings are conclusive." Walles v. Iowa Employment Security Commission, 219 N.W.2d 539, 540 (Iowa 1974).

II. Whether Claimant was an Employee or an Independent Contractor

Administrative rule 370-3.19(96) enunciates the criteria set forth by the Department for distinguishing between employees and independent contractors. Under this rule, it is necessary to determine whether the employer has the right to direct or control the manner in which the worker does his work, regardless of the employer's decision to exercise or not exercise that right, to establish whether the individual in question is an employee or an independent contractor. Similarly, the rule provides that "[t]he right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer." Ordinarily, employees and not independent contractors are furnished tools, equipment, materials, and a place to work. One of the distinguishing characteristics of independent contractors is the fact that they are "engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public." Finally, 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."

We find that the relationship between Walsh and the Erwin Weller Company corresponds in almost every particular to the definition of employer-employee embodied in this rule. Furthermore, we do not find that the conclusion of the hearing officer is in any way inconsistent with the precedents set by our cases. The "right to control" test enunciated in Meredith Publishing Company v. Iowa Employment Security Commission, 6 N.W.2d 6, 10 (Iowa 1942), is precisely what it says it is--a right-to-control test. An employer may have the right to control his employee, but for any of a variety of reasons, he may choose not to exercise that right. Those employers who permit their employees to work off the premises of their businesses have chosen, to a certain degree, not to exercise the right they possess to control the precise manner in which the employees carry out their duties. This choice in no way nullifies the ultimate right of an employer to exercise such control.

These considerations lead us to conclude that there was substantial evidence in the record to support the conclusions of the hearing officer, and that the district court was correct in affirming the hearing officer's conclusion.

AFFIRMED.