

FILED

OCT 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**SAMMONS TRUCKING, FEDERAL INSURANCE)
CO., and VIGILANT INSURANCE CO.,)**

Petitioners-Appellees,)

vs.)

SHARON ANDERSON,)

Respondent-Appellant,)

and)

IOWA INDUSTRIAL COMMISSIONER,)

Respondent.)

**Filed October 29,
1985**

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5-380
84-1637

Appeal from the Iowa District Court for Pottawattamie County, E. F.
Hanson, Judge.

Respondent appeals from the district court's reversal of the Industrial
Commissioner's decision that she is entitled to benefits because her deceased
spouse was an employee and not an independent contractor. **REVERSED.**

James A. Pratt of Heithöff, Pratt & Heithoff, Council Bluffs, for
respondent-appellant.

Brian D. Nolan of Hanson, Engles & Locher, P.C., Omaha, and Charles
L. Smith of Telpner, Smith & Sawatzke, Council Bluffs, for petitioners-appellees.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

OXBERGER, C.J.

The appellant here disputes the district court's reversal of a decision allowing worker's compensation benefits made by the Industrial Commissioner. We find the Commissioner's determination supported by substantial evidence and reverse the court.

The appellant, Sharon Anderson, is the wife of deceased, Fred Anderson. He was killed in an accident while hauling cargo for the appellee, Sammons Trucking. The issue is whether Anderson was an independent contractor, or an employee and his spouse entitled to benefits of the worker's compensation law.

The Industrial Commissioner determined that Anderson was an employee of Sammons Trucking. The district court concluded that a prima facie case had been established that the decedent was an employee, noting "Sammons was responsible for paying decedent's wages, Sammons had the right to terminate the agreement, Sammons controlled the work to the extent of scheduling jobs, and Sammons would be considered the authority in charge to those businesses having goods hauled." The court nevertheless found an independent contractor relationship existed.

We agree with the appellee's statements regarding our scope of review. As with the review allowed the district court, we are to uphold the Commissioner's fact findings if they are supported by substantial evidence. Iowa Code § 17A.19(8)(f)(1985). We may also overturn the agency's decision if the law was not properly applied to the facts. Id. at § 17A.19(8)(e). If there is a conflict of evidence, or if reasonable minds may disagree as to the conclusions to be drawn from the evidence, then we may not overturn the Commissioner's decision. Langford v. Kellar Excavating and Grading, Inc., 191 N.W.2d 667, 668 (Iowa 1971). The appellant complains that once the trial court found there was

prima facie evidence of an employee relationship, the inquiry should have ended there. However, as appellee points out, if the employer could have rebutted this prima facie showing, and if the commissioner's decision that it was not rebutted is unsupported by substantial evidence, then it is the court's duty to reverse.

We find that the commissioner's decision is supported by substantial evidence, when viewing the entire record. Among the factors to be used in deciding if the worker is an employee or independent contractor are: (1) the existence of a contract for work by certain piece or kind of work at a fixed price; (2) the independent nature of the business or of his distinct calling; (3) his employment of assistants with the right to supervise their activities; (4) his obligation to furnish necessary tools, supplies, and material; (5) his right to control the progress of the work, except as to final results; (6) the time for which the workman is employed; (7) the method of payment, whether by time or by job; and (8) whether the work is part of the regular business of the employer. Swain v. Monona County, 163 N.W.2d 918, 921 (Iowa 1969). An important element is whether the person is free to decide the manner in which the specific result should be accomplished. Nelson v. Cities Service Oil Company, 259 Iowa 1209, 1215-16, 146 N.W.2d 261, 265 (1966).

The evidence shows that the service provided by Anderson was that provided by Sammons Trucking to its customers. Anderson was paid based on a percentage of revenue obtained by the load, and was paid every two weeks. Anderson worked exclusively and continuously for Sammons from January of 1981 until his death in August 1982. According to authorities in worker's compensation law, there is a growing tendency to classify owners-drivers of the trucks as employees when they perform continuous service that is an integral part of the employer's business. Larson, Worker's Compensation Law, § 44.34 (1982).

The appellee points to evidence indicating the payment was made every two weeks, but based on a fixed percentage. Anderson was free to engage in other trucking activities and had the right to employ his own drivers. He could choose which routes to use and decided whether he would accept a particular job. Sammons Trucking also claims it operates more in the nature of a clearing house for independent haulers of freight rather than as an employer of truckers.

Appellant responds by pointing to evidence that Anderson could not arrange to haul a load for another company under the written agreement unless he met the requirements of Sammons. Additional loads could not be hauled unless Sammons did not have a load for him to haul and he received permission from Sammons. Sammons would take Anderson's payment from the other company, subtracted ten percent off the top, and then pay him. Although Anderson could hire assistants, he had to notify Sammons first, and the new drivers were required to attend an orientation session at the company office in Missoula, Montana. The vice president of the company further characterized his company's business as "an irregular route long haul common carrier which utilizes tractors and flatbed trailer equipment on haul commodities." He further stated the work Anderson did was an integral part of the business.

We find that the evidence presented could be subject to different interpretations. The conclusion which the Industrial Commissioner chose to reach is supported by substantial evidence. Therefore, we find the commissioner's decision should not be disturbed and reverse the district court.

REVERSED.