

IN THE COURT OF APPEALS OF IOWA

No. 2-468 / 11-1699

Filed June 27, 2012

**KENNETH J. HENRY and JANE A.
JOHNSON d/b/a HENRY'S TURKEY
SERVICE and HILL COUNTRY
FARMS, INC.,**

Petitioners-Appellants,

vs.

**IOWA DEPARTMENT OF
WORKFORCE DEVELOPMENT,
DIVISION OF LABOR SERVICES,**

Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Appellants appeal from a district court ruling on judicial review affirming the Iowa Department of Workforce Development, Division of Labor Services assessment of a civil penalty for failing to pay minimum wage, failing to provide minimum wage statements, making improper wage deductions for room and board, and making improper wage deductions for "kind care." **AFFIRMED.**

David Scieszinski, Wilton, for appellants.

Thomas J. Miller, Attorney General, and September M. Lau, Assistant
Attorney General, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

MULLINS, J.

Kenneth Henry, Jane Johnson, and Hill Country Farms, Inc., jointly doing business as Henry's Turkey Service (collectively referred to as HTS), appeal the district court's ruling on judicial review affirming the Iowa Department of Workforce Development, Division of Labor Services assessment of a \$1,164,400 civil penalty for failing to pay minimum wage, failing to provide minimum wage statements, making improper wage deductions for room and board, and making improper wage deductions for "kind care" for thirty-four workers from April 7, 2007, through February 6, 2009. See Iowa Code §§ 91A.5, 91A.6(4), 91D.1 (2009). HTS argues substantial evidence does not exist to support the finding that the workers were employees of HTS, and not independent contractors or employees of West Liberty Foods, who operated the turkey processing facility where the workers performed their services.

In addressing this issue on judicial review, the district court found:

[I]t is clear that the evidence substantially and logically supports a conclusion that the workers were employees of [HTS]. The evidence presented to the commission made clear that West Liberty contracted with and paid HTS, not the workers, for services performed in the plant. West Liberty did not have the ability to hire or fire the workers, only HTS held those rights. The workers did not punch a time clock like other West Liberty employees. Rather, HTS kept track of their working hours. HTS was the party who controlled the day-to-day tasks of the workers, determined whether or not positions were being adequately fulfilled, supervised the work, and decided whether extra manpower was necessary at a given position. HTS collected pay for the work, accounted for hours worked by each worker, determined deductions from each worker's pay check, and then distributed the remaining wages to each individual. HTS existed solely for the purpose of performing specific, identifiable tasks within West Liberty's plant. Some of the workers, who were compensated identically to the rest of the group, never worked at the plant and spent their days working in the

Atalissa bunkhouse. The worker's performance most directly benefited HTS, who acted as the conduit between the workers and West Liberty. Testimony from West Liberty indicated that, after the HTS contract was terminated, West Liberty filled the positions and continued operations while HTS disintegrated entirely. HTS was the party who made the final decision to terminate both the workers and the program.

The combined evidence in this case makes it clear to the court that it was HTS, not West Liberty, who employed the workers.

Upon our review of the entire record, we affirm the district court's ruling pursuant to Iowa Court Rule 21.29(1)(b), (d), and (e).

AFFIRMED.