

IN THE COURT OF APPEALS OF IOWA

No. 8-079 / 07-0927
Filed February 27, 2008

FRANKIE L. BAUDER,
Petitioner-Appellant,

vs.

**EMPLOYMENT APPEAL BOARD and
FARM BUREAU MUTUAL INSURANCE COMPANY,**
Respondent-Appellees.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

Petitioner appeals the district court's decision affirming the Employment
Appeal Board's denial of unemployment insurance benefits. **AFFIRMED.**

Chad R. Frese of Kaplan & Frese, LLP, Marshalltown, for appellant.

Rick Autry of Iowa Employment Appeal Board, Des Moines, for appellees.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

MILLER, J.

Frankie Bauder appeals the district court's decision affirming the Employment Appeal Board's denial of unemployment insurance benefits. We affirm the judgment of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

Bauder is a licensed insurance agent. In March 2003, she entered into two separate "Career Agent" contracts, one with Farm Bureau Mutual Insurance Company and one with Farm Bureau Life Insurance Company (collectively Farm Bureau), authorizing her to exclusively sell insurance policies for Farm Bureau.¹ Her contracts with Farm Bureau stated she was an independent contractor with the

right to control the activities and means by which the provisions of this agreement are carried out, the right to exercise independent judgment as to the persons from whom applications for insurance policies will be solicited, and the right to determine the time, place, and manner of soliciting and servicing policyholders of [Farm Bureau].

Farm Bureau paid her on a commission basis and reported her income as "nonemployee compensation" on 1099 miscellaneous income tax forms. No sums were withheld from her checks for taxes, insurance, or benefits.

Bauder's sale of Farm Bureau's products was regulated by the state and federal government. Farm Bureau accordingly provided her with policy forms, letterhead, business cards, computer equipment, and training in order to ensure compliance with government regulations. Bauder paid a monthly fee to Farm Bureau for the use of its "Computer Services Program," and she rented an office

¹ Bauder later entered into additional contracts with different Farm Bureau entities for "consulting" and "specialist" work.

from Farm Bureau in a building it owned in Marshalltown. Although the Farm Bureau office itself was open during normal business hours, she was able to set her own schedule for the most part.

At Farm Bureau's request, Bauder formed her own business known as Bauder & Associates and hired assistants pursuant to Farm Bureau protocol to help her with her insurance sales and consulting work. She was responsible for the "[h]iring, firing, management, supervision, compensation, and insurance" for these employees. She also shared the cost of two general office assistants hired by Farm Bureau to work in the office she rented.

Farm Bureau terminated its business relationship with Bauder on June 28, 2005. She filed a claim for unemployment insurance benefits in July 2005, but she was advised that Farm Bureau had not contributed to the unemployment compensation fund on her behalf. Iowa Workforce Development denied her subsequent claim for omitted wage credits, finding she was an independent contractor. Bauder appealed, and following a hearing, an administrative law judge (ALJ) affirmed the decision of the department. The decision of the ALJ was affirmed and adopted by the Employment Appeal Board. The district court affirmed the board's decision on judicial review. Bauder appeals, claiming the board erred in finding she was an independent contractor.

II. SCOPE AND STANDARDS OF REVIEW.

The Iowa Administrative Procedure Act, chapter 17A of the 2005 Iowa Code, governs the scope of our review in this case. Iowa Code § 96.6(3); *Connolly Bros. Masonry v. Dep't of Employment Serv.*, 507 N.W.2d 709, 710

(Iowa Ct. App. 1993). “On appeal from judgment entered on judicial review of agency action, our review is limited to the correction of errors at law.” *Gaffney v. Dep’t of Employment Serv.*, 540 N.W.2d 430, 433 (Iowa 1995). In reviewing the district court’s decision, we apply the standards of chapter 17A to determine whether our conclusions are the same as those reached by the district court. *Sioux City Brick & Tile Co. v. Employment Appeal Bd.*, 449 N.W.2d 634, 637-38 (Iowa 1989).

“If the claim of error lies with the agency’s findings of *fact*, the proper question on review is whether substantial evidence supports those findings of fact” when the record is viewed as a whole. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). We are bound by the agency’s fact findings that are supported by substantial evidence in the record. *Gaffney*, 540 N.W.2d at 433. If, on the other hand, “the claim of error lies with the *ultimate conclusion* reached, then the challenge is to the agency’s application of the law to the facts,” which may be reversed if we determine its application was “irrational, illogical, or wholly unjustifiable.” *Meyer*, 710 N.W.2d at 218-19.

III. MERITS.

In order to qualify for unemployment compensation, a claimant must have earned sufficient wages performing “insured work.” Iowa Code § 96.4(4). “Insured work” is defined as “employment for employers.” Iowa Code § 96.19(27). Section 96.19(18)(a)(2) provides that “employment” means service performed by “[a]ny individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an

employee.” “Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless . . . it is shown . . . that such individual has been . . . free from control or direction over the performance of such services. . . .” Iowa Code § 96.19(18)(f).

At common law, the right to control the manner and means in which work is performed is the principal test in determining whether an individual is an employee or an independent contractor. *Gaffney*, 540 N.W.2d at 434. 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 that result, that individual is an independent contractor. Iowa Admin. Code r. 871-23.19(1); *Meredith Publ’g Co. v. Iowa Employment Sec. Comm’n*, 232 Iowa 666, 677, 6 N.W.2d 6, 12 (1942). Additional factors defining the employment relationship are set forth in the Iowa Administrative Code. See Iowa Admin. Code r. 871-23.19; see also *Gaffney*, 540 N.W.2d at 433.

If the relationship of employer and employee exists, the parties’ designation or description of the worker as an independent contractor is “immaterial” and “of no consequence.” Iowa Admin. Code r. 871-23.19(7); see also *Louismet v. Bielema*, 457 N.W.2d 10, 13 (Iowa Ct. App. 1990) (“[T]he mere act of signing such an agreement and designating a person as an independent contractor is not controlling.”). *But see Henderson v. Jennie Edmundson Hosp.*, 178 N.W.2d 429, 431 (Iowa 1970) (stating the intent of the parties is conclusive in determining whether an employment relationship exists in the workers’

compensation context). Bauder argues the board erred in relying “heavily on the independent contractor agreement signed by [her] at the onset of her relationship with Farm Bureau.” We do not agree.

The board considered the parties’ designation of Bauder as an independent contractor as one of several factors among those set forth in the administrative rules that indicated she was not an employee. It also found the manner in which she was paid, the 1099 income tax forms issued by Farm Bureau designating her income as “nonemployee compensation,” and the limited control exercised by Farm Bureau over her “work activities . . . to the extent . . . required by law” established her status as an independent contractor. See, e.g., *Meredith Publ’g*, 232 Iowa at 683, 6 N.W.2d at 15 (observing workers “who sell upon commission are uniformly held not to be within the coverage of [unemployment compensation] statutes” and noting many states, including Iowa, have “excluded insurance agents from coverage”). Thus, it is clear from our review of the record that the board did not improperly rely on “the intent of the parties” standard to the exclusion of the other factors listed in the administrative code. *Gaffney*, 540 N.W.2d at 435.

In light of the foregoing, we conclude the board’s application of law to the facts was not “irrational, illogical, or wholly unjustifiable.” *Meyer*, 710 N.W.2d at 218-19. As the district court determined, “[t]he Board relied on several facts and applied the correct rule of law when determining that Bauder was in fact an independent contractor and denied her request for compensation.” We further conclude, like the district court, that a reasonable person when looking at the

record as a whole would find the evidence relied upon by the board in its decision as adequate to reach that conclusion. See *Louismet*, 457 N.W.2d at 12 (“Evidence is substantial if a reasonable person would find it adequate for reaching a decision.”). The judgment of the district court affirming the decision of the board to deny Bauder unemployment insurance benefits based on her status as an independent contractor is accordingly affirmed.

AFFIRMED.