

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

GLENN EASTER DBA EASTER ASSEMBLY,	:	
	:	
Appellant,	:	CASE NO. 13CVF-12025
	:	
vs.	:	JUDGE BEATTY
	:	
DIRECTOR, OHIO DEPARTMENT OF JOB	:	
AND FAMILY SERVICES,	:	
	:	
Appellee.	:	

DECISION AND JUDGMENT ENTRY
DENYING APPELLANT’S MOTION FOR ALTERNATIVE RELIEF AND
AFFIRMING THE DECISION OF
THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION
AND
NOTICE OF FINAL APPEALABLE ORDER

BEATTY, JUDGE

This is an appeal pursuant to R.C. 4141.26 from a Decision of the Unemployment Compensation Review Commission (the “Commission”). The issue in this case is whether the individuals working for Appellant were properly determined to be covered employees as opposed to independent contractors.

I. FACTS

On December 7, 2011, the Ohio Department of Job and Family Services (“ODJFS”) notified Appellant of a determination that it was a liable employer for unemployment compensation purposes. Appellant applied to the Director of ODJFS for reconsideration of the determination. On August 31, 2012, the Director affirmed the determination.

Appellant then applied to the Commission for a review of the Director’s reconsidered decision. On August 14, 2013, the Commission conducted a hearing.

ODJS presented the testimony of Randy Bechtel, an Unemployment Compliance Auditor. Appellant presented the testimony of Glenn Easter, Josephine Hartley, Clorene Davis, and Cinda Miller. The evidence at the hearing was as follows.

Mr. Bechtel testified that in February, 2011, he conducted an audit of whether Appellant was a liable employer for unemployment compensation purposes. (T. 11). Mr. Bechtel visited Appellant's place of business, reviewed business records, reviewed a questionnaire completed by Appellant, and met with Mr. Easter, the owner of the business. (*Id.*). Mr. Bechtel determined that the workers at issue should have been classified as employees rather than independent contractors. (T. 12).

Mr. Bechtel testified that individuals working for Appellant assembled molded plastic parts into a final product. (T. 13). He stated that Appellant provided instructions and training for the workers, basic tools, and a location for the work to take place. (*Id.*). He stated that the services were integral to the business and the workers believed they would have a job as long as they came in to work every day. (*Id.*). The facility was an open building, and the workers assembled parts at benches or worktables. (*Id.*). The workers at issue performed the same service, and were paid on a per-piece basis for completed assemblies. (T. 14.) The workers were permitted to work during the hours that the building was open, and were permitted to have other jobs. (T. 15).

Mr. Bechtel also testified regarding the questionnaire completed by Mr. Easter. He stated that Mr. Easter indicated that he showed the workers what needed to be done and how to put the assemblies together. (T. 21). The questionnaire indicated that Mr. Easter was responsible for hiring, supervising, and paying the workers. (*Id.*). Mr. Easter answered that he supplied worktables, work space, and the materials to be put together.

(T. 22). He stated that the workers could come and go during the hours the building was open. (T. 25). He answered that the business had a right to discharge the workers if he was not satisfied with the work. (T. 22).

Mr. Bechtel testified that he found two other workers, who performed building repair and electrical work, to be independent contractors because they did not need instructions from the employer, used their own tools, did not have a work area, and set their own hours. (T. 15).

In his case, Mr. Easter testified that he is the operator of the business, which assembles small parts for local companies. (T. 32). He stated that the biggest job was assembly of bird feeders. (*Id.*). Workers were paid by the piece, for each final product. (T. 35). Workers were provided training for the assembly work. (T. 35-36). He stated that the workers assembled the bird feeders at Appellant's building, and did not take work home. (T. 36-37). He stated that the workers also had other jobs. (T. 37). The workers were let go if they did not perform quality work. (T. 38). Workers could not allow others to perform the work on their behalf. (T. 45).

Mr. Easter testified that he was not always present when the work was performed. (T. 40). He stated that there were no set work schedules. (T. 41). He stated that he had an independent contractor agreement with everyone who worked at the shop. (T. 42). The workers were not required to make a certain number of pieces per day. (T. 43). He stated that some of the automotive parts could be assembled at home. (T. 44-45). He gave each worker a 1099 for each year. (T. 45).

Josephine Hartley testified that she worked for Appellant starting in 2009, assembling bird feeders. (T. 51-52). She performed the work at a work table at

Appellant's building, and did not take work home. (T. 54). She was trained by another worker. (T. 55). She worked whenever she wanted during the hours the building was open. (T. 56). She also held other jobs while she worked there. (*Id.*).

Clorene Davis testified that when she worked for Appellant, she assembled auto parts. (T. 63). Another worker showed her how to assemble the parts. (T. 65). She was paid per piece and set her own hours. (T. 63). She stated that she also took some of the work home. (T. 64). Any tools needed were provided by Appellant. (T. 65).

Cinda Miller testified that she assembled auto parts for Appellant and did most of her work at home. (T. 71). Some of the jobs had to be performed at Appellant's facility. (T. 72). She stated that she was paid per piece and that another worker showed her how to do the assembly. (T. 72-73).

On October 1, 2013, the Commission rendered its Decision, finding that the workers at issue were employees rather than independent contractors. The Commission stated that: "The essential and determining factor is the right to direct or control the performance of services. ...A thorough review of the twenty factors considered in totality establishes that these individuals were subject to sufficient direction and control of Easter Assembly and therefore the services that they performed were deemed to be in covered employment." (Decision, p. 7).

On October 31, 2013, Appellant filed this appeal from the Commission's Decision.

II. STANDARD OF REVIEW

This Court must affirm the Order of the Commission if it is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 4141.26(D)(2).

III. THE COURT'S FINDINGS AND CONCLUSIONS

On January 9, 2014, Appellant filed a Motion for Alternative Relief. Appellant seeks judgment in its favor on the basis that Appellee did not file the record until December 11, 2013. Under the original case schedule, the record was to be filed by November 28, 2013, or by December 26, 2013 if an extension was granted.

Appellant has not shown any prejudice from the fact that the record was filed thirteen days late. Appellant still had 29 days from the date the record was filed until its brief was due. Appellant also could have sought an extension of the deadline for filing the brief if necessary. Justice is best served by addressing this case on its merits.

Ohio employers must pay contributions into Ohio's unemployment compensation fund. R.C. 4141.23(A). The definition of "employer" includes any individual or organization that has "in employment at least one individual." R.C. 4141.01(A)(1)(a). "Employment" means

[S]ervice performed by an individual for remuneration under any contract of hire, written or oral, express or implied * * *, unless it is shown to the satisfaction of the director that such individual has been and will continue to be free from direction or control over the performance of such service, both under a contract of service and in fact.

R.C. 4141.01(B)(1). The alleged employer bears the burden of proving that the worker is not an employee and, thus, that it need not contribute to the unemployment compensation fund. *Miracle Home Health Care, LLC, v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 12AP-318, 2012-Ohio-5669, ¶21.

Ohio Adm. Code 4141-3-05(B) sets forth 20 factors as "guides" for determining whether sufficient direction or control exists to create an employer-employee relationship. These factors are drawn from the common law, where they are used to

distinguish between employees and independent contractors. The factors, which must be considered in their totality, include:

- (1) The worker is required to comply with the instructions of the person for whom services are being performed, regarding when, where, and how the worker is to perform the services;
- (2) The person for whom services are being performed requires particular training for the worker performing services;
- (3) The services provided are part of the regular business of the person from whom services are being performed;
- (4) The person for whom services are being performed requires that services be provided by a particular worker;
- (5) The person for whom services are being performed hires, supervises or pays the wages of the worker performing services;
- (6) A continuing relationship exists between the person for whom services are being performed and the worker performing services that contemplates continuing or recurring work, even if not full time;
- (7) The person for whom services are being performed requires set hours during which services are to be performed;
- (8) The person for whom services are being performed requires the worker to devote himself or herself full time to the business of the person for whom services are being performed;
- (9) The person for whom services are being performed requires that work be performed on its premises;
- (10) The person for whom services are being performed requires that the worker follow the order of work set by the person for whom services are being performed;
- (11) The person for whom services are being performed requires the worker to make oral or written progress reports;
- (12) The person for whom services are being performed pays the worker on a regular basis such as hourly, weekly or monthly;
- (13) The person for whom services are being performed pays expenses for the worker performing services;

(14) The person for whom services are being performed furnishes tools, instrumentalities, and other materials for use by the worker in performing services;

(15) There is a lack of investment by the worker in the facilities used to perform services;

(16) There is a lack of profit or loss to the worker performing services as a result of the performance of such services;

(17) The worker performing services is not performing services for a number of persons at the same time;

(18) The worker performing services does not make such services available to the general public;

(19) The person for whom services are being performed has a right to discharge the worker performing services;

(20) The worker performing services has the right to end the relationship with the person for whom services are being performed without incurring liability pursuant to an employment contract or agreement.

The above factors are “guides” to be considered in their totality; the essential and determining factor is the right to direct or control the performance of services.

The Commission found that Appellant directed or controlled the manner or method by which instructions were given to individuals performing services and that the bulk of the work was done at Appellant’s facility using tools and materials furnished by Appellant. Mr. Bechtel testified, based on his audit and visit to the work place, that Appellant provided instructions for the workers, basic tools, worktables, work space, and the materials to be put together. (T. 13, 22). Mr. Easter testified that the bulk of the work was assembly of birdfeeders, and that workers were provided training and performed their work at Appellant’s building. (T. 32-37). While the workers could set their hours, their work generally was required to be performed when the building was open. (T. 15).

The Commission found that Appellant hired the workers and set their rate of pay and that Appellant had the right to supervise and discharge the workers. Mr. Bechtel testified that Mr. Easter was responsible for hiring, supervising, and paying the workers. (T. 21). The workers were paid by the piece, at a rate set by Mr. Easter. (T. 35). Mr. Easter testified that the workers were let go if they did not perform quality work. (T. 38). He also stated that workers could not allow others to perform the work on their behalf. (T. 45).

In *Miracle Home Health Care, LLC, supra*, the Tenth District Court of Appeals affirmed the Commission's finding that workers were employees rather than independent contractors. The Court stated that "[O]n close questions-where the Commission might reasonably decide either way-courts have no authority to upset the Commission's decision." 2012-Ohio-5669, ¶30.

As established by the above authority, the Court is not to substitute its judgment for that of the Commission. The evidence in the record is sufficient that the Commission, as the finder of fact, was entitled to find that the workers at issue were employees rather than independent contractors.

After reviewing the record, the Court finds that the Commission's Decision is supported by reliable, probative, and substantial evidence and is in accordance with law. Accordingly, the Commission's Decision is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant.

Franklin County Court of Common Pleas

Date: 04-23-2014
Case Title: GLENN EASTER -VS- OHIO STATE DEPT JOB & FAMILY SERVICES DI ET AL
Case Number: 13CV012025
Type: DECISION/ENTRY

It Is So Ordered.


The image shows a handwritten signature in black ink that reads "Laurel Beatty". The signature is written in a cursive style. To the right of the signature is a circular blue seal of the Franklin County Court of Common Pleas. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Laurel A. Beatty

Court Disposition

Case Number: 13CV012025

Case Style: GLENN EASTER -VS- OHIO STATE DEPT JOB &
FAMILY SERVICES DI ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0120252014-01-0999970000

Document Title: 01-09-2014-MOTION

Disposition: MOTION DENIED