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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2018**

Cara Haugtvedt,
Respondent,

vs.

FJF Enterprises of Ramsey, Inc.,
Relator,

Department of Employment and Economic Development,
Respondent.

**Filed July 25, 2011
Affirmed
Muehlberg, Judge***

Department of Employment and Economic Development
File No. 25373129-4

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* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

Considered and decided by Minge, Presiding Judge; Peterson, Judge; and Muehlberg, Judge.

UNPUBLISHED OPINION

MUEHLBERG, Judge

Relator FJF Enterprises of Ramsey, Inc. challenges the unemployment-law judge's decision that respondent Cara Haugtvedt was an employee, not an independent contractor, and that relator could not appeal the decision by respondent Department of Employment and Economic Development (DEED) that Haugtvedt was eligible for benefits because that decision had become final. Haugtvedt argues that relator waived certiorari review. We affirm.

FACTS

Haugtvedt worked as the only certified public accountant for FJF Enterprises, a tax preparation and accounting services firm, from 2005 until November 2009. Her relationship with FJF Enterprises was terminated when negotiations for her to buy the business from its current owner dissolved.

Haugtvedt asked to be an independent contractor when she first began working for FJF Enterprises; FJF Enterprises agreed, and she received IRS 1099 forms reflecting her pay. Haugtvedt applied for unemployment benefits in December 2009. In early 2010, DEED initiated an audit of Haugtvedt's work relationship with FJF Enterprises. On March 1, 2010, DEED informed FJF Enterprises that it determined that Haugtvedt was an employee. FJF Enterprises appealed this decision on March 16 and an unemployment-law judge (ULJ) held a hearing. In a separate letter sent to FJF Enterprises on March 15,

DEED determined that Haugtvedt was eligible for benefits. FJF Enterprises did not respond to this determination.

At the hearing on her employment status, Haugtvedt testified that she worked 35-40 hours a week for most of each year and 50-60 hours a week from February through April 15. Haugtvedt worked primarily at FJF Enterprises' office and had to be available for client meetings during office hours. Neither Haugtvedt nor FJF Enterprises had any residual contractual liability to one another when Haugtvedt stopped working for FJF Enterprises.

FJF Enterprises' clients were billed \$60 an hour for Haugtvedt's services; Haugtvedt was paid \$30 an hour, on a bi-weekly basis, for the time she spent both on client accounts and administrative tasks. Haugtvedt was required to pay back any amount she was paid for work for a client who did not pay its invoice, but she was not required to pay the full amount the client was billed. FJF employed two administrative assistants whose responsibilities included supporting Haugtvedt. Their time spent on client accounts for Haugtvedt was billed to those clients.

FJF Enterprises supplied office space, tax preparation software, and administrative support and paid the overhead associated with Haugtvedt's office. Haugtvedt submitted all of the tax documentation she prepared for clients under FJF Enterprises' name and tax identification number. Haugtvedt supplied her own desk, chair, printer, computer, and filing cabinet. She and her husband had a one-third ownership interest in the building that housed FJF Enterprises and she was negotiating with FJF Enterprises' owner to buy the FJF business when the working relationship ended.

While working for FJF Enterprises, Haugtvedt provided part-time accounting services for her husband's and her parents' businesses. She did not bill her husband's business, but the tax preparation services she performed for her parents' business were billed through FJF Enterprises. Haugtvedt did not have other clients outside of FJF Enterprises.

The ULJ concluded that Haugtvedt was an employee. FJF Enterprises requested reconsideration and stated that "the issue of whether [Haugtvedt] was voluntarily terminated was not addressed" by the ULJ's decision and "request[ed] a determination on the issue of voluntary termination." The ULJ affirmed its decision that Haugtvedt was an employee and stated that DEED issued a determination that Haugtvedt was eligible for benefits on March 15, 2010, that FJF Enterprises had not appealed, and that the eligibility determination had therefore become final. FJF Enterprises argues that it appealed the eligibility determination in its correspondence with DEED and challenges the ULJ's employment determination. Haugtvedt asserts that FJF Enterprises waived certiorari review by failing to timely submit its brief.

D E C I S I O N

I.

Haugtvedt argues that certiorari review is improper because FJF Enterprises failed to file its brief by the deadline set forth in Minnesota's Rules of Civil Appellate Procedure. Haugtvedt cites Minn. R. Civ. App. P. 131.01, which requires the appellant's brief to be filed within 30 days after delivery of the transcript, plus three additional days if delivery was by mail. But decisions reviewable by certiorari are governed by Minn. R.

Civ. App. P. 115. Rule 115.04, subdivision 4, requires the relator to file its brief within 30 days after service of the itemized list of contents of the record and affords three additional days if delivery is by mail. Minn. R. Civ. App. P. 115.04, subd. 4 (referencing Minn. R. Civ. App. P. 131.01). The itemized list was served on January 14, 2010, and FJF Enterprises filed its brief on February 15, 2010—within the prescribed deadline.

II.

When reviewing an unemployment-benefits decision by a ULJ, we may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2010). Whether an employment relationship exists for purposes of unemployment benefits is a mixed question of fact and law. *Neve v. Austin Daily Herald*, 552 N.W.2d 45, 47 (Minn. App. 1996). We review factual findings in the light most favorable to the ULJ's decision and will not disturb those findings when they are sustained by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2010); *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review questions of law de novo. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

Haugtvedt asked to be an independent contractor. Whether an individual is an employee or an independent contractor for purposes of unemployment insurance is determined by reference to common law. Minn. Stat. § 268.035, subd. 15(a)(1) (2010). But ““The nature of the relationship of the parties is to be determined from the

consequences which the law attaches to their arrangements and conduct rather than the label they might place upon it.” *St. Croix Sensory Inc. v. Dep’t of Emp’t & Econ. Dev.*, 785 N.W.2d 796, 800 (Minn. App. 2010) (quoting *Speaks, Inc. v. Jensen*, 309 Minn. 48, 51, 243 N.W.2d 142, 145 (1976)). No general rule covers all employment-status disputes and each case will depend in large part upon its own particular facts. *Pettis v. Harken, Inc.*, 263 Minn. 289, 291, 116 N.W.2d 565, 567 (1962).

Five factors are used to determine whether a worker is an employee or an independent contractor: “(1) The right to control the means and manner of performance; (2) the mode of payment; (3) the furnishing of material or tools; (4) the control of the premises where the work is done; and (5) the right of the employer to discharge.” *Guhlke v. Roberts Truck Lines*, 268 Minn. 141, 143, 128 N.W.2d 324, 326 (1964). The two most important factors are “the right or the lack of the right to control the means and manner of performance,” and the ability “to discharge the worker without incurring liability.” Minn. R. 3315.0555, subp. 1 (2010).

Control

Minnesota’s rules on unemployment insurance list 13 criteria for determining if the employer has “control over the method of performing or executing services.” Minn. R. 3315.0555, subp. 3 (2010). The criteria include: authority over assistants, compliance with instructions, submission of oral or written reports, place of work, personal performance, existence of a continuing relationship, right to discharge, set hours of work, training, amount of time required, provision of tools and materials, expense reimbursement, and satisfying requirements of regulatory and licensing agencies. *Id.*

The record indicates that FJF Enterprises had the right to control Haugtvedt's work. Two assistants were available to support Haugtvedt but were employed and managed by FJF Enterprises. Haugtvedt, as the only certified public accountant, did not receive detailed instructions on how to perform her services. But "[s]ome individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control factor is present if the employer has the right to instruct or direct the methods for doing the work and the results achieved." *Id.*, subp. 3(B). Haugtvedt submitted tax documents for clients under FJF Enterprises' tax identification number, not her own, meaning that FJF Enterprises was the preparer of record and had ultimate authority over and responsibility for what was submitted.

A continuing relationship tends to indicate an employee-employer relationship as does full-time devotion to the activity. *Id.*, subp. 3(F), (J). Haugtvedt worked for FJF Enterprises full time for approximately four years. She also worked primarily in FJF Enterprises' office and was expected to be available for client meetings during office hours. Although Haugtvedt supplied some of her own tools and materials, FJF Enterprises provided the critical components of tax preparation software and its tax identification number for her work.

The Right to Discharge without Incurring Liability

The right to discharge is one of the five principle factors to consider and a criterion indicating control. *Id.*, subps. 1, 3. "An independent worker generally cannot be terminated without the firm being liable for damages if he or she is producing according to his or her contract specifications." *Id.* subp. 3(G). And control is indicated

“if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods.” *Id.* The rules also state that an “independent worker usually agrees to complete a specific job. An independent worker is responsible for its satisfactory completion and is liable for failure to complete the job.” Minn. R. 3155.0555, subp. 2(D) (2010).

Upon termination, FJF Enterprises was liable only for Haugtvedt’s unpaid hours, not for any cancellation fee, job-based stipend, or other contractual remedies. *C.f. St. Croix Sensory*, 785 N.W.2d at 803-04 (emphasizing that company was liable to a worker for entire test session regardless of whether company terminated the worker during a session and finding that no employment relationship existed). Likewise, Haugtvedt did not incur any contractual liability if she decided to terminate her work with FJF Enterprises. Haugtvedt and FJF Enterprises did not have an agreement to perform a specific job. Instead, Haugtvedt provided a range of services as a certified public accountant for FJF Enterprises’ clients on an indefinite basis. This arrangement indicates at-will employment, not an independent-contractor relationship.

Additional Factors

The Minnesota Rules also list additional factors to be considered when determining whether an employment relationship exists, including: (1) whether the individual makes services available to the public; (2) whether the individual is compensated on a job basis or by the hour; (3) whether the individual is in a position to realize a profit or loss as a result of the services offered; (4) whether the individual may end the relationship without incurring liability; (5) whether the individual made a

substantial investment in the facilities used to perform the services; (6) whether the individual works simultaneously for multiple firms; (7) whether the individual is accountable for his or her own actions while working; and (8) whether the services performed by the individual are in the course of the employer's organization, trade or business. Minn. R. 3315.0555, subp. 2 (2010).

Again, the evidence in the record shows that FJF Enterprises employed Haugtvedt. Haugtvedt performed part-time services for her husband's business and her parents' business, but she was not compensated for all of these services and her parents' business paid FJF Enterprises for Haugtvedt's tax preparation. Haugtvedt was paid bi-weekly on an hourly basis, not by service or client. Consequently, she was unable to realize a profit from her efficiency or expertise. Haugtvedt did invest in the building that housed FJF Enterprises and some of the office equipment that she used. But she did not invest in the business itself or pay for the software necessary for her tax preparation or accounting services. FJF Enterprises was ultimately responsible for Haugtvedt's work by supplying its tax identification number. Haugtvedt performed services to carry out the purpose of FJF Enterprises' business: tax preparation and accounting. And either FJF Enterprises or Haugtvedt could terminate the relationship without incurring contractual liability.

Because the record supports the ULJ's factual findings, indicates that FJF Enterprises could control the performance of Haugtvedt's work and discharge her without incurring liability, and demonstrates an employer-employee relationship, the ULJ did not err in concluding that Haugtvedt was an employee and not an independent contractor.

III.

FJF Enterprises asserts that even if Haugtvedt is an employee, she quit her employment and is ineligible for benefits. The ULJ concluded that FJF Enterprises failed to appeal DEED's March 15 determination that Haugtvedt was eligible for unemployment benefits because she was discharged from employment and did not commit employment misconduct. FJF Enterprises argues that it timely appealed. We disagree.

An agency decision to dismiss an appeal as untimely is a question of law that we review de novo. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006). The statutory time limit for appealing unemployment-insurance decisions is absolute and precludes jurisdiction to review the decision. *Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 429-30, 244 N.W.2d 663, 666 (1976); *Kennedy*, 714 N.W.2d at 739-40. There are no exceptions to the statutory time limit for appeal. *Cole v. Holiday Inns, Inc.*, 347 N.W.2d 72, 73 (Minn. App. 1984).

DEED sent FJF Enterprises its employment determination on March 1 and stated that the employment determination would become final if not appealed by March 22, 2010. No issue identification number was included in the letter. DEED sent FJF Enterprises its separate "Determination of Eligibility" on March 15, 2010 with issue identification number 24168981-1, stating that "[t]he employer discharged the applicant during the week beginning 11/08/2009" and that the applicant was eligible for unemployment benefits if all other requirements were met. FJF Enterprises was informed that the eligibility determination would become final if not appealed by April 5, 2010.

On March 16, 2010, FJF Enterprises' owner submitted a letter to DEED beginning, "In response to your letter dated 3-01-2010, I am appealing your determination . . . classifying Cara Haugtvedt as an employee of my firm." The letter detailed FJF Enterprises' arguments as to why Haugtvedt was an independent contractor. At the end of the letter, FJF Enterprises' owner stated that "Cara Haugtvedt terminated our working contract[] when she came to me and demanded a 50% increase in pay or she was going to sever[] our relationship and go elsewhere."

Correspondence between FJF Enterprises and DEED after the April 5 deadline identified the issue on appeal as number 25373129. At the start of the hearing, the ULJ stated that the "issue in today's hearing appears to be whether Ms. Haugtvedt was an employee or an independent contractor." Neither party disputed this. In its request for reconsideration, FJF Enterprises stated that "the issue of whether [Haugtvedt] was voluntarily terminated was not addressed" by the ULJ's August 18 decision and "request[ed] a determination on the issue of voluntary termination."

FJF Enterprises' only correspondence before the appeal time ran was its March 16 letter that clearly identified the employment determination as the subject of appeal. Although the letter referenced the circumstances of Haugtvedt's termination, it was in the context of the existence of a contract and the letter does not identify Haugtvedt's eligibility for benefits as the subject of appeal. Also, DEED's eligibility determination was sent on March 15 and it is unclear if FJF Enterprises was even aware of this decision when sending the March 16 appeal. In its request for reconsideration, FJF Enterprises stated that the question of termination had not been determined by the ULJ but does not

reference any previous appeal of this issue. Because the record supports the ULJ's conclusion that DEED's eligibility determination had become final, the ULJ did not err in dismissing FJF Enterprises' appeal of this issue.

Affirmed.