

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAMELA RICHARDSON,

Claimant,

vs.

THE RESPITE CONNECTION, INC.,

Employer,

and

WESCO INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 21700726.01

A P P E A L

D E C I S I O N

Head Notes: 2000; 2001; 2003; 5-9999

Claimant Pamela Richardson appeals from an arbitration decision filed on January 10, 2023. Defendants The Respite Connection, Inc. (Respite), employer, and its insurer, Wesco Insurance Co., respond to the appeal. The case was heard on September 23, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 14, 2022.

In the arbitration decision, the deputy commissioner found claimant did not carry her burden of proof to establish she was an employee of Respite, and the deputy commissioner found the other issues raised in this matter are moot.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant is not an employee of Respite and asserts she is entitled to permanent partial disability benefits and reimbursement for costs.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on January 10, 2023, is affirmed with my additional analysis.

Michaila Ringgenberg started Respite in 2002. (Ex. 1, pp. 3, 6) At the time of the alleged work injury in September 2019, Michaila Ringgenberg was the 100 percent owner of Respite. (Ex. 1, p. 3) Respite provides in-home care and support to persons with physical or mental disabilities under the Iowa Medicaid Home and Community Based Waiver Services Program through the Iowa Department of Human Services. (Ex. 1, pp. 4, 6) Respite provides caregivers of individuals receiving waiver benefits with an opportunity to have a break from caregiving to decrease abuse and neglect. (Ex. 1, p. 4)

Respite has approximately 1,000 employees. (Ex. 1, p. 3) Before an individual can perform waiver services for Respite, the Iowa Medicaid Program requires the individual to complete an application for employment and successfully undergo a background check with the Iowa Division of Criminal Investigation, and another background check with the Iowa Department of Human Services to ensure the individual does not have a history of engaging in child abuse or dependent adult abuse, and to ensure the individual is not listed on the state sex offender registry. (Ex. 1, p. 6)

Michaila Ringgenberg testified that all individuals who work for Respite are employees. (Ex. 1, p. 4) Respite does not have any independent contractors. (Ex. 1, p. 4) Because Respite pays its employee with Iowa Medicaid funds it must have a paper trail and has never withdrawn cash from the operating account. (Ex. 1, p. 6) Michaila Ringgenberg testified that since she started the business in 2002, no employee has ever been paid in cash by Respite. (Ex. 1, p. 7)

At hearing, claimant did not enter into evidence any checks or other documents showing payment to her from Respite. Claimant did not present a W2 showing she worked for Respite. Claimant reported she did work at a cabin owned by Michaila and Brian Ringgenberg. The cabin was owned by the Ringgenbergs, not Respite. Claimant never went to Respite. (Tr. p. 52) Respite does not own any property. (Ex. 1, p. 3) Claimant never submitted the required application for employment to Respite, nor did claimant undergo the required background checks with the Iowa Department of Criminal Investigation or the Iowa Department of Human Services as required by the Iowa Medicaid Program. (Tr. p. 70)

With my additional analysis, I find the deputy commissioner correctly concluded claimant did not meet her burden of proof to establish she was an employee of Respite.

ORDER

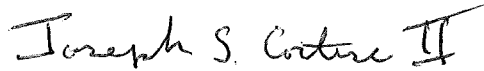
IT IS THEREFORE ORDERED that the arbitration decision filed on January 10, 2023, is affirmed with my additional analysis.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 18th day of May, 2023.

Handwritten signature of Joseph S. Cortese II in black ink.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Brian Keit (via WCES)

Bryan Brooks (via WCES)