

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID DICUS,

Claimant,

vs.

WINDOWS AMERICA,

Employer,

and

IOWA MUTUAL INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

JAN 17 2018

WORKERS' COMPENSATION

File No. 5042736

REHEARING

DECISION

Head Note Nos.: 1402.10, 1504

Claimant filed an application for rehearing (application). Defendants resist the application. The application is considered.

As noted in the remand decision, the District Court remanded this case back to this agency to make a finding if the parties had a mutual agreement of employment. The District Court ordered this agency that if it was found the parties lacked a mutual intent of employment, then claimant was not considered an employee under Iowa Code section 85.61(11).

Claimant requests a new hearing be held so claimant can further develop the record to address the law, concerning a mutual intent of the parties.

876 IAC 4.31 indicates that "no evidence shall be taken after the hearing". See also, Riesselan v. Pella, File No. 5013454 (Appeal Decision May 14, 2007); Mathis v. Iowa Department of Transportation, 89-90 IAWC 252 (Appeal 1989) (876 IAC 4.31 strictly applied).

Iowa Code section 17A.19(7) provides:

In proceedings for judicial review of agency action a court may hear and consider such evidence as it deems appropriate. In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

Given the rules of this agency, and the requirements of Iowa Code section 17A.19(7), it would appear that only the District Court can allow claimant to submit additional evidence regarding the mutual intent of the parties regarding employment.

I am empathetic to claimant's position. As noted in the remand decision in this case, the law found in Nelson v. Cities Service Oil Co., 259 Iowa 1209, 146 N.W.2d 261 (1967); Gaffney v. Dept. of Employment Serv., 540 N.W.2d 430, 434 (Iowa 1995); and Stark Const. v. Lauterwasser, No. 13-0609. (unpublished) (Iowa Ct. App., April 16, 2014) (Table) 847 N.W.2d 612 suggests that intent is but one factor, not the deciding factor, in determining the existence of an employer/employee relationship. However, as noted in the remand decision, the agency is bound by the order contained in the judicial review decision.

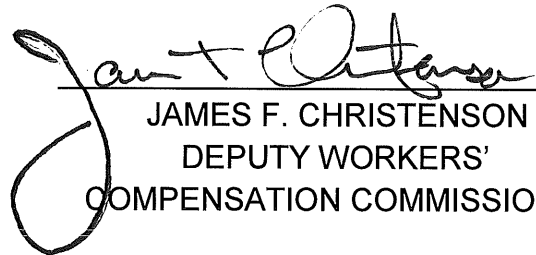
The claimant may move for the District Court to take additional evidence in this case. However, for the reasons detailed above, the agency lacks the authority to allow a rehearing to take additional evidence as requested by claimant. For this reason, claimant's application is denied.

Upon written delegation of authority by the Workers' Compensation Commissioner under Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa Workers' Compensation Commissioner

ORDER

Claimant's application for rehearing is denied.

Signed and filed this 17th day of January, 2018.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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