

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

ARBITRATION DECISION

Head Note Nos.: 2000, 2001, 2003

STATEMENT OF THE CASE

Claimant, Pamela Richardson, filed a petition for arbitration seeking workers' compensation benefits against The Respite Connection, Inc., employer, and Wesco Insurance Company, insurance carrier.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on September 23, 2022, via Zoom. The case was considered fully submitted on October 14, 2022, upon the simultaneous filing of briefs.

The record consists of Claimant's Exhibits 1-2, Defendants' Exhibits A-E, and the testimony of claimant.

ISSUES

1. Whether the claimant was an employee of Defendant, The Respite Connection, at the time of the alleged injury.
2. Whether the claimant sustained an injury arising out of and in the course of employment on 9/22/2019.
3. Whether the claim is barred due to the Willful Act of a Third Party per §85.16.
4. Whether the claimant sustained a permanent disability as a result of the injury alleged on 9/22/2019.

5. If so, the extent of such permanent disability;

6. Costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The parties agree claimant's benefits, if any are awarded, should be based upon the statutory minimum which is \$318 or 35 percent of the statewide average weekly wage. At the time of the alleged injury, claimant was single and entitled to one exemption. Based on the foregoing the parties believe the weekly benefit rate to be \$215.32.

Defendants waive all affirmative defenses but for the defense of a willful act of a third party under Iowa Code section 85.16. There are no medical benefits in dispute and no credits being sought.

FINDINGS OF FACT

Claimant, Pamela Richardson, is a 44-year-old person. She has a GED and undertook two semesters of coursework at DMACC. Her past work history includes administrative work for Iowa Ready Mix, manager of a Dairy Queen, office manager for JP Morgan Chase, and waitressing.

Claimant is currently not working. She recently filed for social security disability for ADHD and PTSD and is awaiting a decision. (Hearing Testimony p. 14) A previous application for SSD for various ailments including PTSD, ADHD diagnosed in 2013, anxiety diagnosed in 2015 and borderline personality disorder, conditions she has suffered since her teen years, had been declined. (Defendants' Exhibit D:26) She served approximately two years in prison from 2013-2015 for drug charges. (Tr. 16) Since then, she has received treatment for substance abuse. (Tr. 17) She currently takes Adderall and Xanax. (DE D:26) In the past medications have helped to lessen the severity of her anxiety and panic attacks. (DE D:27)

She experiences panic attacks from time to time, particularly in public spaces like a store. (DE D:28) These symptoms manifest physically by making the claimant sweat, feel nauseous, and lightheaded. (DE D:28) She testified that prior to the September 21, 2019, incident, which is the subject of this claim, her mental health was improving. (DE D:28) She was receiving treatment at Mosaic and prior to that at Broadlawns and Prelude. (DE D:28) Her long-time care provider is Melissa D. Larsen, ARNP, and the sole medical record in evidence is for an October 23, 2019, medical visit. (DE E)

Richardson has a history of domestic abuse, including being badly beaten by a man at age 18 and sustaining multiple jaw fractures requiring surgery. (Tr. 32) She has

a history of being a victim of rape and kidnapping. (Tr. 33) She has pre-existing diagnoses of PTSD, ADHD, borderline personality disorder, and anxiety with panic attacks. (Id.) Richardson takes alprazolam as directed by her doctor. (Tr. 33)

The core of this dispute is the employment status of claimant vis-à-vis Defendant The Respite Connection.

On or about May of 2019, Claimant was introduced to Brian Ringgenberg through her boyfriend, Travis Ramsey. (DE D:39) According to the testimony of claimant, Ramsey was contacted by Brian Ringgenberg to assist in a remodeling project for Mr. Ringgenberg's company, Down to Earth Construction, through which Brian Ringgenberg bought, renovated, and sold homes. (Id. at 39).

At all times relevant hereto, Brian Ringgenberg was married to Michaila Ringgenberg (a/k/a "Missy"). Missy Ringgenberg is the director and owner of The Respite Connection. (Claimant's Exhibit 1, Ms. Ringgenberg Depo Tr. 6) The company was founded in 2002, and up until April 2021, Ms. Ringgenberg owned 100 percent. (CE 1, Ms. Ringgenberg Depo Tr. 6) Brian Ringgenberg was awarded 19 percent in the divorce decree, reducing Missy's current ownership to 81 percent. Ms. Ringgenberg also is the general partner of an LLC called Glass Half Full which owns a building where The Respite Connection is headquartered. (CE 1, Ms. Ringgenberg Depo Tr. 8)

The Respite Connection employs approximately 1,000 workers. (CE 1, Ms. Ringgenberg Depo Tr. 9) The Respite Connection provides respite care and supports community living for people who are on Medicaid waiver programs because of a mental or physical disability. (CE 1, Ms. Ringgenberg Depo Tr. 10) Defendant employer's hiring process requires every employee to have two references, a background check run through the Division of Criminal Investigation and through the Department of Human Services for any sex offense, child abuse or dependent adult abuse allegations. (CE 1, Ms. Ringgenberg Depo Tr. 21) Claimant did not undergo this process.

The main function of The Respite Connection is to allow for their clients (who are caregivers of disabled people) to have some "respite" from their duties of caring for their disabled person (presumably a family member) by putting an employee of The Respite Connection in charge of the caregiving duties for a temporary period of time. (CE 1, Ms. Ringgenberg Depo Tr. 11) The Respite Connection employees can stay overnight in their client's residence. (Id.)

At all times material hereto, Mr. Ringgenberg was an employee of The Respite Connection. (CE 1, Ms. Ringgenberg Depo Tr. 17) Brian was a remote worker for defendant employer. Ms. Ringgenberg testified that he worked from their home because he did not always get along well with others, and as an accountant, there was no need to interact with other people. (CE 1, Ms. Ringgenberg Depo Tr. 13)

Claimant testified at hearing she was hired to do administrative work for defendant employer as well as Down to Earth. (Tr. 24; DE D:39) It was claimant's belief that Down to Earth Construction was a subsidiary of defendant employer. (DE D:35) Claimant believed that it was the intent of Brian Ringgenberg to build and/or convert homes for customers of the defendant employer and that ultimately Down to Earth and

The Respite Connection would be merged. (DE D:39) In her deposition, she stated that she was hired to help with accounting, filing, office work, care for livestock, cleaning and general upkeep of a cabin. (DE D:34, 35) Claimant testified that she would get money from Ms. Ringgenberg in the form of a check or cash. (Tr. 24; DE D:36) She also stated she was to watch over Brian Ringgenberg's mental health and report to Missy Ringgenberg. (DE D:39). At hearing, she testified that she was asked to clean, wash, cook, take care of animals, and watch over Brian, and in exchange was paid \$600 per week along with the ability to live rent free in a cabin co-owned by the Ringgenberg's and located in Thayer Iowa. (Tr. 24)

In the deposition, claimant stated that in regard to the payment of \$600 per week, she would receive money from Missy Ringgenberg and actually filled out a W-2 in June 2019. (DE D:36) Claimant also testified that Missy would direct her duties either by phone or text which is consistent with the text messages. (DE D:36; DE A) Claimant consistently asserted in testimony at hearing and via the deposition that defendant employer was her employer. (See DE D:39, 40) However, she acknowledged in her deposition that she did not have any connection with other workers at The Respite Connection. (Tr. 54)

Ms. Ringgenberg testified via deposition that she did not hire claimant to provide care for Brian. (CE 1, Ms. Ringgenberg Depo Tr. 13) Instead, Brian had hired Travis to remodel a cabin that was jointly owned by Ms. Ringgenberg and Brian. (CE 1, Ms. Ringgenberg Depo Tr. 14) In September 2019, Brian and Missy Ringgenberg were separated. The cabin was located an hour from Des Moines and Ms. Ringgenberg testified that she rarely visited the cabin. (CE 1, Ms. Ringgenberg Depo Tr. 16) Ms. Ringgenberg characterized claimant as working for Brian's company, Down to Earth. This is somewhat contradictory as Ms. Ringgenberg testified that she believed claimant was "doing housework and helping Travis with some kind of remodeling projects around the house and just kind of miscellaneous housework." (CE 1, Ms. Ringgenberg Depo Tr. 16)

However, claimant stated she was "asked by Missy to take care of Brian." (Tr. 21) When asked what specifically, she testified, "cooking, cleaning, driving, because he was—he drank, just like his finances, helping him give his brother money. His brother was incarcerated. So I would go give his brother money from—from, you know, from Missy and helped out that way." (Tr. 22) She went on to state that she was to report to Missy about how he was doing from time to time which is supported by the text messages. (See Tr. 22; DE A)

In a message dated September 29, 2021, claimant texted Ms. Ringgenberg asking for her paycheck. (DE A:17) Ms. Ringgenberg replied that she had already given cash to Travis on Wednesday. (DE A:18) In another message, Ms. Ringgenberg texted, "I left \$400 for your last payment for hours worked." (DE A:18)

Ms. Ringgenberg acknowledged giving money to claimant which Ms. Ringgenberg characterized as repayment for "what she said Brian owed her," with her being claimant. (CE1, Ms. Ringgenberg Depo Tr. 15) When asked how many times the exchange of money happened, Ms. Ringgenberg replied that "I mean, it's been three

years ago. I don't remember exactly. I want to say twice that I recall." (CE 1, Ms. Ringgenberg Depo Tr. 15) Ms. Ringgenberg said that she gave money to Travis at one time but did not give claimant money weekly as she did not visit the cabin once Ms. Ringgenberg and Brian had separated. (CE 1, Ms. Ringgenberg Depo Tr. 16) September 14, 2019, Ms. Ringgenberg texts, "Hi Pam, thank you for helping out. Just confirming I gave you \$1000 for Brian, plus \$200 cash to go to Doug today. Thanks!" (DE A:3) In another exchange, claimant asks Ms. Ringgenberg for her "paycheck" and Ms. Ringgenberg responds, "I gave \$1000 cash to Travis Wednesday."

Missy's testimony gives the impression that she had little contact with claimant and was unaware of the activities going on in the cabin. This is not consistent with the text messages that are part of the defendants' exhibits.

On September 4, 2019, Ms. Ringgenberg sent a screenshot of ATV vehicles she owned with renewal information. (DE A:1) On September 10, 2019, Ms. Ringgenberg acknowledges a request by claimant for the tax ID of Down to Earth. "I'll find it as soon as I get home," Ms. Ringgenberg texts. (DE A:2) On September 13, 2019, Ms. Ringgenberg texts claimant asking if money got dropped off at Osceola jail. (DE A:3) On September 14, 2019, claimant texts Ms. Ringgenberg "I am calling on behalf of Brian he's very upset and has said things to me and I know he don't mean them he says he's sorry for anything he said out of distress. I think until he gets better maybe you can talk through me so I can monitor him on what he says I'm sorry that he disrespected you like that and I will try to remind him of this every day." (DE A:2)

These text messages portray claimant was reporting to Ms. Ringgenberg regularly and deferring to her. (DE A:2) Later on September 14, 2019, claimant texts Ms. Ringgenberg "No problem and I told him you asked about him and told me to tell you good night." (DE A:2) Ms. Ringgenberg replies with a thumbs up emoji. (Id.)

Ms. Ringgenberg testified that she did not consider Brian to be disabled but someone who suffered from a mental health diagnosis. (CE 1, Ms. Ringgenberg Depo Tr. 11) Brian was involuntarily committed by a court 3-4 times over the past 25 years. (CE 1, Ms. Ringgenberg Depo Tr. 19) Ms. Ringgenberg found Brian's mental illness "hard to deal with." (CE 1, Ms. Ringgenberg Depo Tr. 20) After Brian's arrest following the assault on Richardson, Ms. Ringgenberg told Richardson that Brian was in "deep psychosis," and was throwing his feces around his jail cell. (Tr. 30)

Overall, Ms. Ringgenberg's testimony was found to have low credibility. She claimed that Brian had no drug abuse issues until 2019 and intimated that it was claimant and Mr. Ramsey that were abusing drugs. (CE 1, Ms. Ringgenberg Depo Tr. 7) Ms. Ringgenberg's deposition testimony was not consistent with the text messages nor with the criminal report. Her characterization of Brian's psychosis was downplayed as not serious despite texting claimant that Brian was throwing his own feces around his jail cell. As someone who was in charge of a company that employed over a thousand people to provide in-home care to individuals, including those who suffered from mental illnesses, Ms. Ringgenberg's assessment of her husband was not credible.

She testified that she never visited the cabin but also stated she *rarely* visited the cabin. (emphasis added). Rarely and never are two different things. Rarely implies at

least an occasional visit whereas “never” intimates no visit at all. Ms. Ringgenberg’s “never” statement was part of an attempt to distance herself from the cabin and the events that took place there. She testified that claimant was only doing work for her husband’s business but then admitted claimant was doing “light housework.” She stated that she did not give money to claimant but that is not consistent with the text messages. She stated that she did not know claimant, but her text messages give a far different impression. In summary, Ms. Ringgenberg’s testimony is given low weight.

While there are some inconsistencies within claimant’s testimony from the deposition to the hearing, particularly regarding the positioning of Down to Earth as it related to The Respite Connection and the detail of the tasks she performed at the Thayer cabin, most of the testimony was consistent. It is credible that claimant did not fully understand her technical, legal status as an employee. Ms. Ringgenberg as the CEO of a 1,000-person company and Mr. Ringgenberg, the CFO of said company, would be more sophisticated business people than an individual with a 10th grade education, GED, and a couple of classes from DMACC.

Based on the foregoing, it is found that claimant was hired by Ms. Ringgenberg to engage in care for Brian Ringgenberg. Claimant reported to Missy. Ms. Ringgenberg paid claimant on more than one occasion and claimant reported to Missy, acting as a conduit between Ms. Ringgenberg and Brian. Claimant did tasks according to Missy’s direction. Ms. Ringgenberg was aware Brian was in need of mental health care. The care that claimant provided to Brian Ringgenberg benefited Ms. Ringgenberg.

On or about September 21, 2019, claimant left the cabin due to the conduct of Brian Ringgenberg and went to a hotel. (DE D:40-41) The following day, Missy Ringgenberg directed claimant to go and check on Brian Ringgenberg. (DE D:41, Tr. 27) When claimant arrived at the Thayer cabin, Brian became physically aggressive. (CE 2:16) He placed his hands around her throat, restricted her breathing, digitally penetrated her sexually, and struck her on the head with a paint sprayer. (CE 2:16) Claimant was able to escape to a bedroom on the second floor.

On October 23, 2019, claimant was seen by her long-time psychiatric provider, Melissa Larsen, ARNP. (DE E:44) Claimant reported “significant anxiety and difficulties with concentration and focus.” (DE E:47) She mentioned that in the past year she lost her mother and both maternal grandparents. (*Id.*) She was not sleeping well but attributed that to staying with her girlfriend. (DE E:47) She was not currently taking medications but was adamant that she needed a prescription for alprazolam and Adderall. (*Id.*) There was no mention of the attack on September 22, 2019, although there were references to “current nightmares and flashbacks” and a “history of trauma.” (DE E:46) Ms. Larsen diagnosed claimant with post-traumatic stress disorder, chronic; generalized anxiety disorder; major depressive disorder, recurrent episode, moderate; and ADHD, predominately inattentive type. (DE E:48) Ms. Larsen prescribed Trintellix, Zofran and Xanax. (DE E:49)

Since the incident in question, claimant attempted to work for Hormel, but she testified at deposition and at hearing that she was not able to continue with the job due to her PTSD. She testified that her co-workers were Hispanic and she would not

understand their directions and that they often yelled at her which felt jarring. (DE D:43) Claimant has not been able to hold regular employment since the assault.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The threshold issue is whether claimant was an employee of the defendant employer. Claimant asserts she was hired by the owner and CEO of the defendant employer to do the work that the defendant employer was in the business of providing. Defendants argue claimant was not an employee and that no employer-employee relationship existed between claimant and defendant employer.

To answer the question of whether an injured worker is an employee, Iowa employs a five-factor employment test set out by the Iowa Supreme Court in Henderson v. Jennie Edmundson Hospital, 178 N.W.2d 429, 431 (1970). See Parson, 514 N.W.2d at 895; Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503, 505 (Iowa 1981).

Henderson holds:

The factors by which to determine whether an employer-employee relationship exists are: (1) the right of selection, or to employ at will (2) responsibility for the payment of wages by the employer (3) the right to discharge or terminate the relationship (4) the right to control the work, and (5) is the party sought to be held as the employer the responsible authority in charge of the work or for whose benefit the work is performed.

178 N.W.2d at 431.

Defendants assert claimant was under the impression that Down to Earth Construction was a subsidiary of The Respite Connection. Claimant did appear to be confused about the relationship between the companies owned by the Ringgenbergs. The credible evidence supports a finding that claimant believed she had been hired to take care of Brian Ringgenberg as well as Ringgenberg's company, Down to Earth, and another unnamed lawn service company.

In the deposition testimony, claimant stated she had been hired by Brian and Missy Ringgenberg and that the money given to her for her salary was from Missy Ringgenberg. She received instructions from Missy both via text messages and in person about what tasks claimant should perform.

Defendants state that the theory that claimant was hired to provide services for Brian Ringgenberg was birthed at the hearing and not discussed during the claimant's deposition and the money claimant received as income from Down to Earth Construction. Claimant testified that she received both cash and checks from Missy Ringgenberg and that the checks were "company checks" from Down to Earth Construction.

Missy Ringgenberg had the right to select employees. There was no evidence that claimant could hire and fire people to work on behalf of Missy Ringgenberg, The Respite Connection or Down to Earth Construction. Missy Ringgenberg was responsible for the payment of wages. She issued checks or cash to claimant who would then keep money for herself as well as distribute it to others including an incarcerated relative of Brian Ringgenberg. Missy Ringgenberg had the right to terminate the work relationship. In a text message, she told claimant that claimant needed to be "gone in the morning." (DE A:18) Missy Ringgenberg controlled the work. She directed where claimant should be, what people should be paid, and the work of watching over Brian, distributing money, and feeding animals, was performed for Missy Ringgenberg's benefit.

However, Missy Ringgenberg is not the defendant employer in this case. The named employer is The Respite Connection. While some of the duties that claimant undertook on behalf of Missy Ringgenberg were of the type that were offered through The Respite Connection, The Respite Connection was not involved in the hiring of the claimant, nor the payment of the claimant nor the control of claimant's work.

Based on the foregoing, it is found claimant did not carry her burden to prove she was an employee of Defendant The Respite Connection, Inc.

The remaining issues are moot.

ORDER

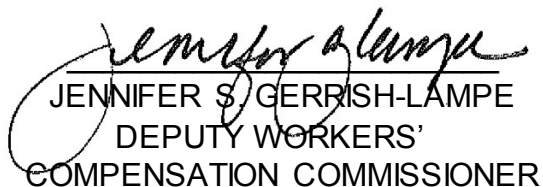
THEREFORE IT IS ORDERED:

Claimant shall take nothing.

Each party is responsible for their own costs.

Defendants shall remain responsible for the cost of the transcript.

Signed and filed this 10th day of January, 2023.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Brian Keit (via WCES)

Bryan Brooks (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.