

ROBERT V WILLIAMS
 [REDACTED]
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APPEAL RESULTS

Docket: 444088

Mail Date: August 15, 2006

Appellant: CLAIMANT

Local Office: 33-0



Claimant
 ROBERT V WILLIAMS
 [REDACTED]
 BERLIN, MA 01503-0000

 SSN: [REDACTED]

Date of Determination: 04/20/06
 Hearing Request Filed: 06/23/06
 Hearing Date: 07/28/06
 Location of Hearing: WORCESTER

Employer :
 FEDEX GROUND PACKAGE SYSTEM
 C/O TALX EMPLOYER SERVICES
 P.O. BOX 1160
 COLUMBUS, OH 43216-0000

 EMP# :

Original Determination :
 AFFIRMED []
 OVERTURNED [X]
 OTHER []

Appearance:

Claimant: [X] Employer: []
 Claimant's Rep/Attorney: [] Employer's Rep/Attorney: [] Interpreter: []

Commonwealth of Massachusetts

Mitt Romney, Governor
 Kerry Healey, Lt. Governor

Jane C. Edmonds, Director, Department of Workforce Development
 Edward T. Malmberg, Director, Division of Unemployment Assistance

Hearings Department
West Central Regional Office
88 Industry Avenue
Springfield, MA 01104
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DECISION

DOCKET NUMBER: 444088

I. STATUTORY PROVISION(S) AND ISSUE(S) OF LAW:

MGL Chapter 151A, Secs. 2+1(k) – Whether the individual(s) performed services as an employee and such services constitute employment.

MGL Chapter 151A Sec 24(a)+1(a)-Whether the claimant was paid sufficient wages in the base period to be eligible for benefits.

II. FINDINGS OF FACT:

1. The claimant filed his claim for benefits on 3/8/06 (eff. date Sunday 3/5/06).
2. The base period of the claim was determined to be the 52 weeks from 1/1/05 through 12/31/05.
3. The claimant reported wages from one employer (Fedex Home Delivery-division of Fedex Ground Package System Inc) during the base period. His most recent employment began in May 2004 as a delivery driver and he was permanently separated on 12/21/05.
4. The claimant estimates wages (based on a form 1099 for 2005) as follows;

Quarter ending.

3/31/05	\$	██████████
6/30/05	\$	██████████
9/30/05	\$	██████████
12/31/05	\$	██████████
Total	\$	██████████

DOCKET NUMBER: 444088

5. The claimant, however, was notified that he was ineligible for benefits based on these wages as the employing unit reported that the claimant was an independent contractor (self-employed) and was not considered an employee covered by the unemployment system within the meaning of Section 2 of the Law.
6. The claimant appealed his ineligible monetary determination in a timely manner.
7. The claimant applied for work as a delivery driver for this private nationwide mail/package delivery service from an ad in the paper. The work was based out of the company's Northboro Ma. warehouse..
8. The claimant was informed at time of application that he would have to sign an independent contractor agreement for this work. He would not be considered an employee, no taxes would be taken out of his pay, he would be issued a form 1099 for tax reporting purposes, and he would not be entitled to any benefits such as paid vacations, holidays, vacations, etc., and no insurance benefits would be available. The claimant accepted this offer.
9. The work required a regular valid driver's license.
10. The independent contractor agreement required a 30 day notice of termination by either party, but the agreement cited several instances of misconduct which would give the company the right to discharge the claimant for cause..
11. The claimant was also required to provide his own delivery vehicle for the work. However, Fedex dictated where he would lease the vehicle, what the vehicle size and specification requirements would be, and the claimant would have to have the company logo on the vehicle identifying the company.
12. The vehicle also had use limits. The claimant could not use it to deliver mail for any other entity while on duty for the company and he could not use the vehicle for personal reasons unless the company logo was covered or removed from the vehicle first.
13. The claimant was not covered by Workmen's Compensation insurance by the company. He had to purchase his own liability insurance for the work and the vehicle. The company referred him to a specific company for this (Protective Insurance).
14. The claimant was given 2 weeks of training for his duties. This training was directed through the company. However, he was paid as an employee of a temporary agency (ADECCO) during this period, and he would remain with this agency until a delivery route became available. At that point, he became independent.

DOCKET NUMBER: 444088

15. The claimant's pay was a percentage based on delivery geographical areas, frequency of deliveries, number of packages sorted, loaded, and delivered, mileage, and time for same.
16. The company established the rates and required the claimant to submit a daily work report verifying the deliveries.
17. The claimant had to rent (\$21.50 per week) an electronic scanning device provided by the company which he used to record work start and end times as well as package deliveries. He received a weekly "settlement" check for payment. .
18. The claimant had to report to the Northboro warehouse daily by 6AM to pick up and load his packages and get his assignments for the day. He had to be on the road by 8:30AM. He continued working until done with his deliveries. His supervisor at the warehouse provided the instruction for this (vehicle route plan, order of stops). The company supervisors could change the delivery locations/routes as needed despite the potential for these changes to effect the claimant's income.
19. The claimant was required to attend safety meetings as scheduled on work days (usually 7:30AM) conducted by the senior terminal manager.
20. Mail customers contacted the company for service, not the delivery drivers.
21. If absent or if he wanted to take time off, the claimant would call in and he or the company would have to provide a replacement driver for this period. The claimant received no compensation during these absences. He had to pay a fee of \$17.00 per week so he could take 2 weeks vacation per year. This fee went to the company to cover the cost of a replacement driver. .
22. The claimant had to purchase and wear company uniforms with the company logo on it. The company governed the uniform standards.
23. The claimant had to adhere to the company Code of Conduct while engaged in this work.
24. The claimant did not establish an independent business while he was a delivery driver and had no other "clients" for which he performed similar work.

III. CONCLUSIONS & REASONING:

The employer was invited to the hearing as a witness only, but did not attend. The claimant and his representative were present. The DUA Status Dept was invited but did not attend.

DOCKET NUMBER: 444088

Fedex Home Delivery, a division of Fedex Ground Package Systems Inc., is a private nationwide mail/package delivery service.

The claimant was engaged as a delivery driver to deliver packages to customers of the company in furtherance of the company's business. The claimant worked from the company's Northboro warehouse each day.

Under Section 2 of MGL Chapter 151A, services shall be deemed to be employment subject to this chapter unless all three of the following criteria are met:

- ~~(a) Such individual has been and will continue to be free from control and direction in connection with the performance of such services, both under his contract for the performance of service and in fact; and~~
- (b) Such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and
- (c) Such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the services performed.

Although the claimant was hired as an independent contractor, was issued a form 1099 for tax purposes, had no benefits, had to purchase his own vehicle for the work, and signed a written contract to this effect when he began his period of work, the company provided training for the position, directed the claimant where to purchase his vehicle and his liability insurance, directed the size and type of vehicle, directed the claimant in his daily duties, required the claimant to use company logos on the vehicle, company uniforms, company scanning equipment to record his daily work, required attendance at meetings, set the rates for his potential earnings, could change daily assignments as needed, and had the right to terminate the claimant for issues of misconduct per the company code of conduct and written contract without liability.

~~The claimant did not establish his own company during this period, and did not have any other mail clients. The company also limited the professional and personal use of the claimant's vehicle despite his vehicle lease status.~~

Therefore, the claimant's services must be considered to have been under the direction and control of the company. ~~Since the first criteria was not met, the 2nd and 3rd criteria need not be addressed, and the claimant's services do constitute employment within the meaning of Section 2 of the Law.~~

It follows that the monies paid to the claimant in the base period in the amount of \$ [REDACTED] can be used to establish a claim for benefits under Section 24(a)+1(a) of the Law.

DOCKET NUMBER: 444088

IV. DECISION:

The determination is reversed. The local office will take steps to revise the claimant's monetary determination to include the above wages.

HEARINGS DEPARTMENT

BY: Thomas Ritacco-llr

REVIEW EXAMINER

COPIES TO:

Claimant
Claimant's Attorney
Local Office