

Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

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|--------------------------------------|---|---------------------------------|
| Corridor Network Construction, Inc., |) | DIA Case No. 18IWD0022 |
| |) | Account Number 00562165 |
| Appellant, |) | |
| |) | |
| v. |) | ADMINISTRATIVE LAW JUDGE |
| |) | DECISION |
| Iowa Workforce Development, |) | |
| |) | |
| Respondent. |) | Claimant: Appellant (1) |
| |) | |
| |) | |

[Iowa Code §96.19]
[871 Iowa Administrative Code 23 and 26]

STATEMENT OF THE CASE

Corridor Network Construction, Inc. the employer, filed a timely appeal from an April 23, 2018 decision issued by Iowa Workforce Development (IWD), in which IWD determined that a review revealed that two officers, Alan and Donna Meyer, received wages totaling \$95,599.92 for calendar year 2016 that were not classified as wages or reported to IWD, and that therefore, adjustments were owed to the account in the amount of \$3,511.99. (Decision, 4/23/18)

The case was transmitted to the Department of Inspections and Appeals on June 25, 2018, to schedule a contested case hearing. On July 31, 2018, hearing was held before Administrative Law Judge Tricia Johnston. Appellant Corridor Network Construction, Inc. was represented at hearing by Donna Meyer, who presented testimony on behalf of Appellant. Attorney David Steen and IWD Employer Liability Specialist Carla Loverink appeared on behalf of Respondent Iowa Workforce Development. Appellant submitted a 111-page memorandum that was admitted as evidence in this case without objection. Loverink presented testimony on behalf of Respondent.

ISSUE

Whether IWD correctly determined that Corridor Network Construction, Inc. owes additional unemployment insurance contributions (tax) because Corridor Network Construction, Inc. failed to report wages of two of its officers on its quarterly unemployment reports for calendar year 2016.

FINDINGS OF FACT

Alan and Donna Meyer established Corridor Network Construction, Inc. in April of 2015. (Articles of Incorporation at p. 24) At that time, Donna Meyer contacted Field Auditor Justin Demsky of IWD, asking “whether the wages of the owners who are husband and wife will need to be included in [their] quarterly unemployment reports.” Meyer was told “no” because the term, “employment” did not include wages paid to an officer of a corporation if such officer is a majority stockholder, per 871 Iowa Administrative Code (IAC) 23.3(2)f. (Appeal at p. 7)

Meyer acknowledges the company is taxed as an S corporation for federal tax purposes. (Appeal at p. 7; Report to Determine Liability at p. 13; Meyer testimony) Appellant registered with the Secretary of State in Iowa as a corporation effective February 17, 2015. (Audit Result at p. 8; Synopsis of Investigation at p. 17; Secretary of State Business Entity Summary at p. 23; Loverink testimony)

The two executive officers, Donna and Alan Meyer, received payments from the company in 2016 in the amount of \$95,599.92 and were issued W-2s for those payments. The wages were included in the total wages reported on the 940 Federal Unemployment Tax (FUTA) report and were included in the company payroll records and the W3 totals, however, the wages were not reported to IWD for state unemployment insurance purposes. A review and investigation was completed by IWD during which the unreported wages were discovered. (Audit Result at p. 8; Synopsis of investigation at p. 17; FUTA at pp. 20-21; W-2’s at p. 25; payroll register at pp. 29-32; profit & loss statement for 2016 at pp. 33-34; 2016 Tax return at pp. 35-103; Employer’s contribution and payroll report at pp. 104-111; Loverink testimony)

Appellant did not report these payments as wages for unemployment insurance purposes. The Department issued a decision letter on April 23, 2018, informing Appellant that the discrepancy had been discovered and assessing remuneration due from Appellant in the amount of \$3,511.99. (Audit Result at pp. 8-9; Loverink testimony)

Appellant responded to the investigation on April 25, 2018, stating that IWD Field Auditor Justin Demsky told them in 2015, and Field Auditor James Riepe also told them in 2013, that they would be able to exclude the wages of Alan and Donna on two levels; one that they were a family partnership; and two that they fell under 871 Iowa Administrative Code 23.3(f). Appellant stated Demsky told them they would still have to pay into FUTA for Alan and Donna, and they did so. (Synopsis at p. 17; emails dated 4/25/18 at p. 22)

The Department countered that this would have been correct advice if they had been a partnership, however the company was an S corporation and therefore wages reported to FUTA also had to be reported to Iowa Unemployment. (Synopsis at p. 18; Loverink testimony)

Appellant timely appealed, indicating they were essentially a partnership and indicating that they sought advice twice from IWD regarding how to report the payments and were told that payments to the officers under the partnership would not need to be reported. (Appeal at p. 7; Meyer testimony)

The case proceeded to hearing during which time, Donna Meyer on behalf of the Appellant acknowledged that they are in fact an S corporation but they had received bad advice from IWD and it would be a hardship for them to pay this amount back as they are a relatively new company. (Meyer testimony)

The Department argued that if they paid wages to the officers and reported the wages under FUTA, they must also report those wages to IWD per 871 IAC 23.3(2)(f). Loverink stated that if Appellant kept referring to the business as a partnership, they received the correct advice from IWD; however it was an S corporation and not a partnership. (Loverink testimony)

In summary, the following facts are not disputed. Appellant is registered as an S corporation doing business as such in the State of Iowa. In 2016, Alan and Donna Meyer received wages from the corporation in the collective amount of \$95,599.92. W-2s were issued to them for these wages, which were reported on federal income tax and federal unemployment tax filings for 2016. Appellant did not report the payments made to Alan and Donna Meyer as wages for state unemployment tax purposes.

Appellant did not question whether the resulting remuneration of \$3,511.99 was correctly calculated. Appellant's position is that they were given bad advice by IWD and should not have to repay that amount as it would be a hardship on them to do so.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, an employer must contribute to the unemployment compensation fund in accordance with rules adopted by IWD. IWD maintains a separate account for each employer and each employer has a contribution rate that is based upon the employer's experience with respect to unemployment or unemployment risk.¹ Newly covered employers who have never contributed to the unemployment compensation fund are assigned a contribution rate that is determined by the Department until such time as the

¹ Iowa Code § 96.7(2) (2017); 871 Iowa Administrative Code (IAC) 23.1(10).

employer qualifies for an experience rating that is based on its history of unemployment claims.²

Unemployment insurance contributions accrue and are payable, in accordance with rules adopted by the Department, on all taxable wages paid by an employer for insured work.³ The term wages includes remuneration paid to officers of S corporations for services performed in Iowa. In contrast, corporate dividends paid to officers of S corporations are not considered wages.⁴

There is no factual dispute here regarding how Alan and Donna Meyer were compensated by the corporation. They were compensated based on services performed; their compensation was not in the form of corporate dividends. Their wages were reported as such on federal unemployment tax forms. Consequently, the compensation they received is properly categorized as wages and is taxable for state unemployment insurance contribution purposes. While the undersigned appreciates that the Meyers believed they were following the advice of IWD field auditors, it appears clear that they did not properly inform the auditors that they were in fact an S corporation and not a partnership.

In any event, based upon their status as an S corporation, and the fact that the wages earned by the Meyers were federally reported under FUTA, the 2016 wages of Alan and Donna Meyer should have been reported to the Department. The Department correctly determined the Appellant owes remuneration for the additional unemployment insurance contributions.

DECISION

The decision of the IWD dated April 23, 2018 is AFFIRMED. The Department shall take any action necessary to implement this decision.

Dated and mailed this August 17, 2018.



Tricia A. Johnston
Administrative Law Judge

cc: Alan & Donna Meyer, Corridor Network Construction, Inc., (By Email & Mail)
David Steen, IWD (By Email)
Carla Loverink, IWD (By Email)
Nicholas Olivencia, IWD (By Email)

² 871 IAC 23.7.

³ Iowa Code § 96.7(1) (2017).

⁴ 871 IAC 23.3(3)(2)(f); 871 IAC 23.3(18)(2); Iowa Code 96.19(18)(a) (2017)

Justin Knudson, IWD (By Email)
Ben Humphrey, IWD (By Email)

APPEAL RIGHTS

This decision constitutes final agency action per 871 Iowa Administrative Code 26.17(5). Any party may file a written application for rehearing within 20 days after issuance of the decision. A Petition for Judicial Review may be filed in the Iowa District Court within 30 days after the issuance of this decision or within 30 days after the denial of the request for hearing.