

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING , Governor
KATHLEEN KENNEDY TOWNSEND, Lt. Governor
JOHN P. O'CONNOR, Secretary

Board of Appeals
Hazel A. Warnick, Chairperson

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- DECISION -

EMPLOYER:

LANDSHARK ENTERPRISES, INC.

DATE: August 6, 1999

DECISION #02090-BH-99

DETERMINATION #9550062

EMPLOYER ACCT.

Issue: The issue in this case is whether payments to certain individuals constitute covered employment or represent payments to independent contractors and are thereby excluded from unemployment insurance covered wages.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200*.

The period for filing an appeal expires: September 6, 1999

- APPEARANCES -

FOR THE APPELLANT:
Frederic Firestone

FOR THE SECRETARY:
John T. McGucken

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.



At the hearing before the Hearing Examiner, the Agency offered into evidence the report of the field auditor. The auditor's supervisor also testified. The employer presented testimony from the president of one of the four companies involved. The employer also introduced a copy of the standard contract between the drivers and the companies.

The Board held a hearing for the purpose of taking legal argument only. The Board also has considered the Memoranda of Law filed by both parties in this case.

The primary issue is whether or not certain individuals, specifically delivery drivers, are exempt from unemployment insurance coverage, because they are "messenger service drivers" within the meaning of LE, Section 8-206(d) [formerly 8-206(c)]. That section of the law states as follows:

- (d) Messenger service drivers. - Work that a messenger service driver performs for a person who is engaged in the messenger service business is not covered employment if the Secretary is satisfied that:
 - (1) the driver and the person who is engaged in the messenger service business have entered into a written agreement that is currently in effect;
 - (2) the driver personally provides the vehicle;
 - (3) compensation is by commission only;
 - (4) the driver may set personal work hours; and
 - (5) the written agreement states expressly and prominently that the driver knows:
 - (i) of the responsibility to pay estimated Social Security taxes and State and federal income taxes;
 - (ii) that the Social Security tax the driver must pay is higher than the Social Security tax the driver would pay otherwise; and
 - (iii) that the work is not covered employment.

Secondarily, the issue of whether or not these individuals are independent contractors within the meaning of LE, Section 8-205 was also raised as a result of the audit. However, the argument before the Board was focused on the issue of exemption pursuant to LE, Section 8-206(d).