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PRINCIPAL ADMINISTRATIVE LAW JUDGE

**DECISION OF THE BOARD**  
**DECISIÓN DE LA JUNTA**

**IN THE MATTER OF:**

**Mailed and Filed:**

**Appeal Board No. 589029**

**A.S.O. - Appeals Section**  
**Department of Labor Office: LND**

**A.L.J. Case No. 015-22526**  
**ER#: 52-13887**

**PLEASE TAKE NOTICE** that the commissioner, or any other party affected by this decision who appeared before the Appeal Board, may appeal questions of law involved in such decision to the Appellate Division of the Supreme Court, Third Department, by written notice mailed to the Unemployment Insurance Appeal Board, PO Box 15126, Albany, New York 12212-5126 within **THIRTY DAYS** from the date this decision was mailed.

**POR FAVOR TOME NOTA** que el comisionado o cualquier otra parte afectada por esta decision que haya comparecido ante la Junta de Apelaciones puede apelar aspectos legales de dicha decision a Appellate Division of the Supreme Court, Third Department, enviando un aviso escrito a Unemployment Insurance Appeal Board, PO Box 15126, Albany, New York 12212-5126 dentro de los **TREINTA DIAS** a partir de la fecha en que esta decision fue enviada por correo.

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**COMBINED APPEAL BOARD NOS. 589029 & 589030**

**PRESENT: RANDALL T. DOUGLAS, MEMBER**

The Department of Labor issued the initial determination holding **TASKRABBIT INC.** (herein the "employer" or "TaskRabbit") liable for tax contributions effective 2<sup>nd</sup> quarter 2014 based on employee remuneration paid to **SW** (herein the "claimant") and to any other individual similarly employed as a **casual laborer** ("Tasker") who were deemed misclassified as independent contractors.  
(Appeal Board No. 589029 and A.L.J. Case No. 015-22526)

The Department of Labor deemed the claimant to be an employee and credited the claimant with remuneration from the employer regarding the claim for benefits filed effective April 6, 2015.  
(Appeal Board No. 589030 and A.L.J. Case No. 015-23752)

The employer requested a hearing, contending that the claimant and all other individuals similarly employed performed services as independent contractors.

The Administrative Law Judge held combined telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the employer and of the Commissioner of Labor. By combined decisions filed December 28, 2015, the Administrative Law Judge sustained the employer's objection and overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner and of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** TaskRabbit, headquartered in California with no offices in New York, operates a computerized communications platform to provide a medium, for individual TaskRabbit's clients ("TaskPosters") to post certain jobs to be performed for a fee ("Tasks"), and to be matched with individual laborers seeking work ("Taskers") to complete such Tasks. Common examples of Tasks include: assembling furniture; making minor home repairs; moving and rearranging furniture; and cleaning of various items and places. The vast majority of Taskers provide many types of services.

Both TaskPosters and Taskers (collectively "Users") register on TaskRabbit website. Users must read and agree to TaskRabbit's "Terms of Use" and "Privacy Policy" (collectively as the "Agreement"), as well as to comply with TaskRabbit's "Marketplace Policies", which stated, that a Tasker "must":

- Reach out to your TaskPoster within an appropriate timeframe (within one hour of assignment when possible) to confirm the nature and details of the Task.
- Respond within 24 hours to communication from any TaskRabbit Department.
- Communicate and behave in a professional and respectful manner at all times when interacting with anyone within the TaskRabbit community.
- Perform all Tasks yourself. (If you require help from someone who is not an approved Tasker, you must seek express written consent from the TaskPoster prior to the commencement of any work.)
- Ensure all payments are made through the TaskRabbit platform.
- Be on time for all Tasks.
- Mark a Task complete only when all the work has been done.
- Complete the Task in a manner consistent with the TaskPoster's expectations.
- Use your real name and photo on your profile.
- Adhere to TaskRabbit's Terms of Use.

The Marketplace Policies further stated that Users (TaskPosters and Taskers alike) "must not":

- Create and operate more than one user account without good reason.
- Attempt to engineer the system in any way to avoid TaskRabbit's service fee.
- Post or complete Tasks which involve any of the following:
  - Data scraping;
  - The purchase of goods in the US for shipment overseas;
  - Providing favorable reviews of books or other services on another site or in person;
  - Completion of academic work;
  - Pyramid Schemes or "Sales Opportunities";
  - Recruitment of Taskers for a competing service; and
  - Online driving courses or other courses involving court order or academic credentials.

- Defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as, but not limited to, rights of privacy and publicity) of others.
- Publish, post, upload, distribute, or disseminate any profane, defamatory, infringing, obscene or unlawful topic, name, material, or information.
- Use the Service for any purpose, including, but not limited to posting or completing a Task, in violation of local, state, national, or international law.
- Upload files that contain software or other material that violates the intellectual property rights (or rights of privacy or publicity) of any third party.
- Upload files that contain viruses, Trojan horses, corrupted files, or any other similar software that may damage the operation of another's computer.
- Advertise or offer to sell any goods or services for any commercial purpose through the Service which are not relevant to the services offered through the Service.
- Conduct or forward surveys, contests, pyramid schemes, or chain letters.
- Impersonate another person or allow any other person or entity to use your identification for any activity within the TaskRabbit marketplace.
- Post the same note repeatedly (referred to as 'spamming'). Spamming is strictly prohibited.
- Download any file posted by another User that a User knows, or reasonably should know, cannot be legally distributed through the Service.
- Restrict or inhibit any other User from using and enjoying the Public Areas.
- Imply or state that any statements you make are endorsed by TaskRabbit.com, without the prior written consent of TaskRabbit.com.
- Use a robot, spider, manual, and/or automatic processes or devices to data-mine, data-crawl, scrape or index the Service in any manner.
- Hack or interfere with the Service, its servers or any connected networks.
- Adapt, alter, license, sublicense, or translate the Service for your own personal or commercial use.
- Remove or alter, visually or otherwise, any copyrights, trademarks, or proprietary marks and rights owned by TaskRabbit.com.
- Upload content that is offensive and/or harmful, including, but not limited to, content that advocates, endorses, condones or promotes racism, bigotry, hatred, or physical harm of any kind against any individual or group of individuals.
- Upload content that provides materials or access to materials that exploit people under the age of 18 in an abusive, violent, or sexual manner.

Also, the Terms of Use contain, in part, requirements that:

- All TaskRabbit applicants go through an extensive application and vetting process before they can join our community, including criminal background checks via a third party service. [¶ 2]
- TaskRabbit has no obligation to provide refunds or credits, but may grant them in extenuating circumstances, as a result of specific refund guarantee promotions, or to correct any errors made by TaskRabbit. [¶ 5]
- Without limitation, TaskRabbit may terminate or suspend your right to use the platform if you breach any term of this Agreement or any policy of TaskRabbit posted through the platform. [¶ 15]
- TaskRabbit may from time to time provide certain promotional opportunities; sweepstakes and contests to Users. All such promotions will be run at the sole discretion of TaskRabbit. [¶ 24]

Applicants undergo an identity check and criminal background check. Part of the application process requires Users to provide financial information to TaskRabbit's third-party payment processing provider (herein "Braintree") – TaskPosters provide valid credit card information and the Taskers provide individual bank account information. After completing the application/registration process and obtaining the requisite security clearance, TaskRabbit invites Users to download specific mobile applications – the "Hepburn" application for TaskPosters and the "Harold" application for Taskers. Upon creating their security credentials, Users are then activated to access and use the platform. With the same credentials on a computer, Users are able to similarly access the platform.

A registered and activated Tasker is provided an online dashboard to create a personal profile that includes options to upload a photo of the Tasker's likeness, to describe prior experience and skills, to name and describe certain Tasks capable and willing to perform, to post hourly rates for each type of Task, to post one's availability, and to identify the geographic availability via a map. At any time, a Tasker may edit one's dashboard profile.

A registered and activated TaskPoster posted any number of Tasks (and description) to be performed. During the relevant period, Tasks were posted via two payment methods, namely, "bid" or "quick assign". Under the bid process, the TaskPoster requested bids from Taskers – Users chatted on the platform and negotiated the terms and conditions, including the hourly or job rate to perform the Task. Alternatively, under the quick assign process, the TaskPoster posted the hourly or job rate for a Tasker to immediately accept – Users may communicate regarding the Task's details of when, where and how without the need to negotiate the Task's rate of pay. In either process, the terms of any reimbursement for expenses and supplies may be negotiated or set. For instance, if a Tasker is requested to purchase an item, Users may negotiate the method of reimbursement – a TaskPoster may prepay or subsequently reimburse for the incurred expense. TaskPosters and Taskers alike are free to cancel respective posts and acceptance without penalty, but for any negative reviews as a result of such cancellations.

Upon completion, a Tasker must return to the platform and complete text and numeric fields on a template to generate and submit an invoice, which is posted to the TaskPoster's dashboard for approval or disapproval within a specified timeframe. Upon the TaskPoster's approval, Braintree electronically debits the TaskPoster's credit card account and electronically transfers to the bank accounts of the Tasker and TaskRabbit their respective split fee. TaskRabbit's nonnegotiable service fee for use of the platform ranged from 15% to 20% depending on the type of service provided. If reimbursement was negotiated as part of the terms and conditions of the Task, then such amounts are also transferred to the Tasker's account.

Users may contact TaskRabbit's customer service department regarding any questions, including how to use the platform, the mobile applications, and procedural inquiries, *e.g.*, Tasker's question of what to do if a TaskPoster fails to show for the accepted Task? TaskRabbit's customer service department handles all payment issues. For instance, if Braintree flags a client's credit card to have declined a payment, customer service personnel will contact the client to remedy the issue. If TaskRabbit was unable to obtain payment from its client, TaskRabbit will work with the Tasker to find an amicable solution, "up to an including TaskRabbit paying for that action, for paying for the job." The customer service department also handles all complaints and disputes by Users on a case-by-case basis. For example, if a Tasker damaged a client's property, TaskRabbit initially requests the Users to negotiate the dispute between them to seek an amicable outcome. If they are unable to resolve the dispute, customer service personnel will hear both sides and "make an appropriate evaluation of the situation" depending "on the type of damage, the source of the damage, et cetera".

Additionally, the customer service department will contact Users if TaskRabbit's algorithms detect unusual activity. For example, if a Tasker cancelled accepted Tasks too often, customer service personnel may inquire with the Tasker. Significantly, TaskRabbit is policing for potential fraudulent activity, some of which are itemized prohibitions in the Marketplace Policies. Furthermore, TaskRabbit's platform provides Users with an opportunity to write a review of each other. Along with all the platform communication between Users, TaskRabbit monitors all reviews. On a case-by-case basis, TaskRabbit could terminate or suspend a User's access to the platform based on safety or security concerns determined by TaskRabbit.

TaskRabbit did not require a Tasker to submit a résumé and did not interview a Tasker. TaskRabbit did not review a Tasker's work, require attendance at meetings, impose quotas, or restrict a Tasker's territory. TaskRabbit provided no training or tools. TaskRabbit provided no uniforms, but Users could purchase a TaskRabbit T-shirt. Also, TaskRabbit provided no identification cards, but Taskers could purchase TaskRabbit business cards. TaskRabbit did not prohibit Taskers from working with its competitors, but its Marketplace

Policies prohibited Taskers from soliciting other Taskers for purposes of competing with TaskRabbit. In TaskRabbit's national database across 18 US cities, about 10% of about 30,000 registered Taskers were actively bidding on posted Tasks at any given moment during the relevant period.

In April 2014, the claimant completed TaskRabbit's online application/registration process and passed the requisite security clearance. She downloaded the current mobile application to work as a Tasker and created a profile with her uploaded photo, the desired work and requested hourly rates, her availability, etc. Pursuant to the foregoing circumstances, the claimant accepted and completed 10 Tasks at differing fees for different TaskPosters and earned a total of \$408 from about May through June 2014. Thereafter, the claimant has not bid on any posted Tasks for over a year. She is still deemed a registered Tasker and could resume bidding on posted Tasks at any time. Meanwhile, the claimant filed a claim for unemployment insurance benefits effective April 6, 2015.

OPINION: The evidence establishes that the employer exercised, or reserved the right to exercise, sufficient supervision, direction, or control over the claimant's services to hold an employment relationship under the Unemployment Insurance Law. Here, TaskRabbit imposed written mandates to communicate with the TaskPoster within a set time after accepting an assignment; respond within 24 hours to any communication from TaskRabbit; communicate and behave in a professional and respectful manner; perform all tasks personally; ensure all payments are made through the TaskRabbit platform; be on time for all tasks; mark a task complete only when all the work has been done; complete the task in a manner consistent with TaskPoster's expectations; use the Tasker's real name and photo on the Tasker's profile; and adhere to TaskRabbit's Terms of Use. The Marketplace Policies also imposed numerous prohibitions, including the prohibition to complete Tasks which may involve recruiting Taskers for a competing service; and to advertise or offer to sell any goods or services for any commercial purpose that are not relevant to TaskRabbit's platform. Significantly, to ensure TaskRabbit is not disenfranchised from collecting its fee, Users must use the platform at all times for communications and dealings with each other, including the use of the platform chat, the submission of the template invoice, and the payment and reimbursement via Braintree. Furthermore, TaskRabbit provided the electronic platform and the mobile application; provided the "bid" and "quick assign" payment methods; provided the methods of reimbursement; set the nonnegotiable 15% to 20% service fee; provided access to customer service to handle complaints; would pay the Tasker for a completed Task if unable to collect payment from the TaskPoster; contacted Taskers if unusual activity was detected; and policed for potential fraudulent activity.

The Court has held that "it is incumbent on the Board to decide like cases the same way or explain the departure". *Matter of Charles A. Field Delivery Service Inc.*, 66 NY2d 516 (1985), *rev'g* 112 AD2d 505 (3<sup>rd</sup> Dept 1985). *See, also, Matter of Casey [Larkfield Lottery]*, 140 AD2d 925 (3<sup>rd</sup> Dept 1988). Here, this case is similar to those in which employment relationships were found for various categories where written agreements, rules and/or policies inevitably controlled, directed, or supervised the work, or otherwise reserved for the employers the right to exercise such control over various aspects of the work. *See, Matter of Salamanca Nursing Home Inc.*, 68 NY2d 901 (1986), *affg* 117 AD2d 903 (3<sup>rd</sup> Dept 1986); *Matter of Lambert [Staubach Retail Services New England LLC]*, 18 AD3d 1049 (3<sup>rd</sup> Dept 2005); *Matter of Gains, Inc.*, 298 AD2d 754 (3<sup>rd</sup> Dept 2002); *Matter of Francis [West Sanitation Services Inc.]*, 246 AD2d 751 (3<sup>rd</sup> Dept 1998); *Matter of Kimberg, DBA Home Therapists Association*, 188 AD2d 781 (3<sup>rd</sup> Dept 1992); *Matter of Santoro*, 173 AD2d 1042 (3<sup>rd</sup> Dept 1991); *Matter of Educaid Inc.*, 176 AD2d 420 (3<sup>rd</sup> Dept 1991); and *Matter of Pepsi Cola Buffalo Bottling Corp.*, 144 AD2d 220 (3<sup>rd</sup> Dept 1988).

Although the employer relies on numerous cases holding an independent relationship, they are distinguishable from the instant case. Significantly, TaskRabbit imposed mandatory written policies regarding the work (e.g., to communicate with the TaskPoster within one hour of accepting an assignment). Also, the employer's reliance on *Matter of Pavan [UTOG 2-Way Radio Association Inc.]*, 173 AD2d 1036 (3<sup>rd</sup> Dept 1991), *lv denied* 78 NY2d 857 (1991) is misplaced. Significantly, the *Pavan* claimant was an association member-owner and was deemed to be complying with the association's self-imposed rules.

Under the totality of the circumstances, the claimant and any other casual laborers ("Taskers") similarly situated were employees in covered employment for purposes of unemployment insurance. Accordingly, the employer's objection should be overruled and the initial determination of liability for unemployment insurance tax contributions should be sustained.

DECISION: The combined decisions of the Administrative Law Judge are reversed.

The initial determination, holding **TASKRABBIT INC.** liable for tax contributions effective 2<sup>nd</sup> quarter 2014 based on employee remuneration paid to the claimant and to any other individual similarly employed as a **casual laborer** ("Tasker"), is sustained. (Appeal Board No. 589029 and A.L.J. Case No. 015-22526)

The claimant is deemed an employee of and is credited with remuneration from this employer. (Appeal Board No. 589030 and A.L.J. Case No. 015-23752)

The employer's objection is overruled.

The employer is liable with respect to the issues decided herein.

BI:DK

RANDALL T. DOUGLAS, MEMBER