

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Wallace State Office Building
DES MOINES IOWA 50319

Appeal Number: 10IWD078

Respondent (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**T.J. MILLER DRYWALL
5485 NORTHEAST 17TH STREET #E
DES MOINES, IA 50313-1604**

**IOWA WORKFORCE DEVELOPMENT
MATT MARDESEN, INVESTIGATOR
1000 EAST GRAND AVENUE
DES MOINES, IA 50319**

JOSEPH WALSH, IWD
JOSEPH BERVID, IWD
JASON TRYON, IWD
RYAN DOSTAL, IWD
JAMES MONROE, ATTY

This Decision Shall Become Final, as of the date of mailing stated below unless:

1. Either party files a WRITTEN application for a rehearing WITHIN TWENTY (20) DAYS AFTER the date below. The written application must state the specific reasons for the rehearing and the relief sought. If the request for a rehearing is denied or if the rehearing decision is not satisfactory, either party may petition the District Court WITHIN THIRTY (30) DAYS of either action;

OR

2. Either party may petition the District Court WITHIN THIRTY (30) DAYS after the date below.

YOU DO HAVE THE RIGHT TO HIRE A LAWYER at your own expense to represent you in these proceedings.

(Administrative Law Judge)

May 12, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

As the result of an investigation, Iowa Workforce Development (the Department) issued a Notice of Employer Status and Liability dated May 26, 2010 finding that an employer-employee relationship existed between T.J. Miller Drywall ("TMD") and the individuals performing services for the business from 2006 through 2009. Because T.J. Miller, the owner of T.J. Miller Drywall, converted his business to an LLC in 2008, the Department also issued decisions that established a new employer account for T.J. Miller Drywall, then transferred the experience from that account to T.J. Miller Drywall LLC.¹ The appellant stipulated at hearing that its dispute is with the decision establishing an employer-employee relationship between TMD and its workers, not with any of the ancillary decisions establishing the account and transferring the experience.

¹ Because the distinction between Mr. Miller's pre-2008 sole proprietorship and T.J. Miller Drywall LLC is not significant for purposes of the appeal, I will refer to the business as TMD throughout the opinion, regardless of whether the events discussed occurred before or after 2008.

An in-person hearing was held at the Wallace State Office Building in Des Moines, Iowa on October 29, 2010 and December 10, 2010. The Department was represented by attorney Joseph Walsh. The appellant was represented by attorney James Monroe. The following witnesses testified for the Department: investigator Ryan Dostal and field auditor Russ Munsinger. The following witnesses testified for the appellant: Cathy Rinard; Melissa Ovalle; Hector Moreno Castillo; Randy Miller; Erin Ruiz; T.J. Miller; and Nicole Gutierrez.

Exhibits A through C were submitted by the Department and admitted into the record as evidence. Exhibits TJ1 through TJ3 were submitted by the appellant and admitted into the record as evidence.

At hearing, arrangements were made by the parties to submit post-hearing briefs. Upon request by the Department, the briefing schedule was modified by order issued February 28, 2011. Both parties timely submitted post-hearing briefs.²

ISSUE

Whether the Department correctly determined that an employer-employee relationship existed between T.J. Miller Drywall and its workers.

FINDINGS OF FACT

A. T.J. Miller Drywall Business Operation

T.J. Miller has been involved in the drywall business for approximately 10 to 12 years. He began working as an independent contractor doing drywall work for Quality Drywall, then started his own business, T.J. Miller Drywall, in 2002. In 2008, he established T.J. Miller Drywall LLC. (Miller testimony).

TMD bids on jobs from general contractors and builders on a square foot basis. Once it gets a job, it pays workers on a square foot basis to hang the drywall, clean up the job site after the drywall is hung, and tape the drywall. Once the drywall is hung and taped, Mr. Miller personally takes charge of spraying the drywall. He has a spray truck that he uses to do this and hires several workers on an hourly basis to assist him with spraying. He directs and controls the work of the workers who assist with the spraying. (Miller testimony).

TMD uses various crews for the drywall hanging and taping. When it has work to be done, Mr. Miller calls around to various crews he knows to see if they have availability. Additionally, if a crew is looking for work, they will often call him to see if he has work available. Once a hanging or taping crew is engaged for a job, TMD does not set the schedule upon which work is to be completed. TMD lets workers know when a job is ready and informs workers about any limitations on work (i.e. if it is an occupied residential job, when the work can be done according to the residents' preference).

² The appellant requested and was granted permission to submit both an initial brief and a reply brief. The Department submitted one brief.

(Gutierrez; Miller; Ovalle; Ruiz testimony).

TMD does not direct the hangers and tapers regarding how to complete the job, unless special instructions are communicated by the builder or general contractor to TMD. Neither Mr. Miller nor anyone else in TMD's employ supervises the hanging and taping crews on the job. Mr. Miller occasionally comes to a job site to check on a job's progress or to estimate the completion time, but he does not supervise workers on the site, unless they are hourly workers assisting with spraying. (Gutierrez; Miller; Ovalle; Ruiz; Castillo testimony).

TMD has never paid hangers or tapers on an hourly basis; they are always paid by the square foot. TMD does not reimburse hangers and tapers for expenses. TMD provides the materials for the work, including the drywall, screws, and corner bead. Occasionally, TMD will provide scaffolding for hangers and tapers, if necessary for the job. Occasionally a general contractor for the project will provide scaffolding. Only about 1 in 80 jobs that TMD does requires the use of scaffolding. (Miller; Ruiz testimony).

The hangers that TMD uses typically supply their own benches, tape measures, roto zips, air compressors, screw guns, T-squares, nail guns, and stilts. The tapers supply their own tape tech tools, which cost between \$2,500 to \$3,500 for a set, and stilts. While TMD does own tape tech tools and hanging tools, the tools are not available for use by the hanging and taping crews that TMD hires. The hanging and taping crews that TMD uses typically work for other drywall contractors also. (Ovalle; Marino; Ruiz; Miller testimony).

Many of the individuals that TMD pays for hanging and taping work either hire other workers to do the work exclusively or work with a crew that does the work. TMD has no authority to hire or fire the individuals who work under or with the workers who it pays.

If TMD is unsatisfied with a worker or crew it has engaged to complete a job, its recourse is to not offer that worker or crew jobs in the future. If a worker or crew doing hanging or taping work for TMD completes the job incorrectly, the worker or crew is responsible for fixing the job. The pay for the job does not increase if the crew has to do the job more than once; they are still paid by the square foot only. (Ovalle; Marino; Ruiz; Miller testimony).

TMD will only hire hanging and taping crews if the workers or crew leader have their own general liability insurance. (Miller; Ruiz; Ovalle testimony).

TMD pays a worker or crew for a job only after the job has been completed. No payment is made for partial work prior to the completion of a job. TMD issues checks every Friday for work that has been completed by the Wednesday prior. (Miller; Ruiz; Ovalle testimony).

A review of TMD's records regarding payments to workers from 2006 through 2009 shows that, while some workers were paid fairly even amounts over the four quarters of each year, a large number of workers received sporadic payments from TMD. Many workers listed in the records received payments in only one or two quarters of each

year.³

1. List of Drywall Hangers

The following individuals were identified as hangers or individuals who have crews of hangers that have worked for TMD:

Jack Carr
Maria Cruz
Jose Lugo
Jaime Rosalez Lopez
Ernesto Rojas
Jose Lopez
Juan Rodriguez
Ramos Santiago Flores
Tim Cinert
Terrie Munoz Vegar
Miguel Mirales
Luis Saul Viera
Deana Cruz
Dianna Pliego
Efrain Garcia-Rodriguez
Omar Villa
Oscar Villegas
Sergio Escareno Mendez
Juan Ramos
Marcelina Osorio
Jorge Chavez Lopez
Caesar Favela
Gerardo Chavez
Rosalba Hernandez
Luis Avalos
Luis Manuel Ortiz
Eduardo Benitez Nava
Juan Villegas Orozco
Salvadore Serrano
Sara Lynn Santiago
Antonio Martinez

(Ruiz; Miller; Ovalle testimony).

3 Pages 64 through 75 of Exhibit A contain logs of TMD's Quick Books records, which show payments actually made to workers in each quarter of the years 2006 through 2009. These documents are denoted at the top of the page with a year, followed by "QB." Interspersed with the Quick Books records are documents the Department created using only the 1099s that TMD provided for 2006 through 2009. In the documents the Department created, the Department took the total amount listed on the 1099 and divided by four to estimate a quarterly payment for each worker.

2. List of Drywall Tapers

The following individuals were identified as tapers or individuals who have crews of tapers who have worked for TMD:

Jorge Guzman
Carlos Mendoza
Jose Vasquez
Gerardo Chavez
Richard Cinert
Martin Chavarria
Luis Perez
Jose Efrain Padilla
Ernesto Rojas
Jose Raul Cepeda
Luis Avalos
Noel Carlos Medrano
Roberto Gutierrez-Martinez
Conrado Marquez
Rodolfo Balderas
Rodolfo Villa
Armando Avalos
David Lagunas Beltran
Jesus Reyes
Jose Alfredo Carbajai
Jose Sanchez
Nicole Gutierrez⁴
Sergio Escareno Mendez
Aldo Brandine Cancino-Hernandez
Trevor Terry
Ricardo Malegon
Victor Cruz
Ricardo Castellanos
Osbaldo Bostillos
Dionicio Ruiz
Dustie Pauline Havranek
Marrio Calleja
Noel Ceballos
Rodolfo Ramirez
Juan Garcia Cordero
Juan Rellez
Eric Rocha
Aaron Castillo

⁴ While Ms. Gutierrez's testimony established that she did not do taping work herself and that her role primarily consisted of being paid on behalf of her brother-in-law and his crew, since TMD was paying Ms. Gutierrez for taping work she is listed in this category.

(Ruiz; Miller testimony).

3. Other Workers

At hearing, Mr. Miller identified other workers who received payments from TMD during the relevant time period and provided information about the work those individuals performed. The following is a summary of that information:

- Todd Labus performed plumbing work at TMD's office and was paid a flat fee.
- Lisa Calvert was described as TMD's CPA.
- Aaron Wiley performed electrical work in TMD's office. He was paid a flat rate of \$1,591 for that work.
- Mark Steil took care of the business at various times while Mr. Miller was out of town. He was paid \$2,600. His pay was not calculated on an hourly basis.
- Kevin Lyman performed mechanical work on TMD's truck. Mr. Lyman was later hired as an hourly worker for TMD.
- Mike Reed performed framing work in TMD's shop for a flat fee.
- Ken Scarpino was paid a commission, which was a percentage of what TMD made on the job, for finding jobs for TMD. No other information was provided about his work.
- Cathy Rinard does part-time bookkeeping work for TMD. She has a full-time job with Countryside RV Sales. She works at home and TMD does not set her hours. She has also done part-time bookkeeping work for other businesses. Ms. Rinard is paid on an hourly basis for the work she does for TMD.
- Randy Miller is T.J. Miller's father. Randy Miller has no formal interest in TMD. Randy allows T.J. to place advertising on his vehicles and TMD has paid for the stenciling. TMD made a payment of \$19,739 to Randy Miller in 2008. This was repayment for a loan that Randy made to TMD for purchase of a vehicle. Randy occasionally helps T.J. out with the business, but he has never been paid for any work he has done with the business.
- Corey Hildreth performed some work as a drywall taper in 2007. He was also paid by TMD in 2007 to cover for Mr. Miller while Mr. Miller was out of town. He was paid a total of \$35,336.98 in 2007 by TMD. Mr. Miller could not identify precisely how much of that total was for taping and how much was for running the business.

(T.J. Miller; Randy Miller; Rinard testimony).

B. Department's Investigation

The Department initiated an investigation regarding TMD in January, 2010 after discovering that TMD was not registered as a contractor with the state of Iowa's Division of Labor. As part of the investigation, investigator Ryan Dostal contacted Mr. Miller to inquire about the business's non-registration. Mr. Dostal sent TMD the appropriate paperwork to become a registered contractor. During their conversation, Mr. Dostal asked Mr. Miller how many employees TMD employed. Mr. Miller indicated he had no employees and used only subcontractors. Mr. Dostal informed Mr. Miller he was going

to send him paperwork related to this issue, including a Questionnaire for Determining the Status of Workers. (Exh. A, p. 16; Dostal testimony). Mr. Dostal sent TMD a Questionnaire for Determining the Status of Workers by mail in both January and February, 2010. TMD never returned the questionnaire. (Dostal testimony).

On January 26, 2010, Mr. Dostal conducted a telephone fact-finding interview with Mr. Miller. During that interview, Mr. Miller reiterated that he only uses subcontractors and does not pay any employees. Mr. Miller indicated he has a regular crew of subcontractors who also perform work elsewhere. Mr. Miller indicated that he classifies his secretary as a subcontractor as well as she comes into the office whenever she wants. Mr. Miller also stated that he provides all the drywall and materials to his workers. He stated that he occasionally provides scaffolding or a lift to workers when needed. (Exh. A, p. 16).

The Department obtained the 2009 1099 forms that TMD issued. The Department sent a Questionnaire to Determine the Status of Workers to all individuals who were issued a 1099 in 2009 by TMD. The Department received responses from approximately four individuals. (Dostal testimony).

Nicole Gutierrez did not return the Department's questionnaire, but called Mr. Dostal in response to receiving it. Ms. Gutierrez told Mr. Dostal that she worked for Mr. Miller for approximately two or three months in the summer of 2009 doing bookkeeping and data entry. Ms. Gutierrez stated that she came into the office two times per week for four or five hours at a time. She stated that while Mr. Miller did not set her hours, she could only come to the office when he was there. Ms. Gutierrez stated she was paid \$5.65 per hour by cash or check. (Dostal testimony; Exh. A, p. 17). Ms. Gutierrez provided the Department with what appears to be an invoice or receipt with the name TJ Miller Drywall written at the top and a date of may 8, 2009. It reads, "To whom it may concern Nicole Gutierrez work [illegible] hours weekly, and is a bookkeeper. She gets paid cash. Any questions please call (515) 979-4439." There is no signature on the statement. (Exh. A, p. 61).

At hearing, Ms. Gutierrez conceded that she initially lied to the Department about her working relationship with TMD. Ms. Gutierrez indicated that she asked Mr. Miller whether she could say she worked for him for purposes of her food stamp benefits and Mr. Miller said she could. Ms. Gutierrez admitted that she was never paid on an hourly basis by TMD; rather, she was paid by TMD for work that her brother-in-law's drywall taping crew did.

Like Ms. Gutierrez, Thomas Warnock received the Department's questionnaire and contacted Mr. Dostal in response. Mr. Warnock reported that he worked as a driver for TMD. Mr. Warnock indicated that he was paid \$15 per hour to drive Mr. Miller around, as Mr. Miller no longer had a valid driver's license. (Exh. A, p. 17). At hearing, TMD conceded that Mr. Warnock was an employee.

Brad Langfitt returned one of the Department's questionnaires. In an interview, Mr. Langfitt explained that he was hired at \$10 per hour by TMD as a driver. Mr. Langfitt had a commercial driver's license – which he stated Mr. Miller did not – so he drove

TMD's spray truck. Mr. Langfitt also delivered supplies to TMD's job sites as necessary and ran errands around the Des Moines metro area for TMD. Occasionally, Mr. Langfitt did errands for Mr. Miller that were unrelated to the drywall business, such as cleaning up Mr. Miller's father's yard. (Dostal testimony; Exh. A, p. 17). At hearing, TMD conceded that Mr. Langfitt was an employee.

On May 26, 2010, the Department issued a Notice of Employer Status and Liability to T.J. Miller Drywall finding that an employer-employee relationship existed between TMD and the individuals performing services for that business during 2006, 2007, 2008, and 2009. The decision informed TMD that the compensation of the individuals who performed services during those years was being reported for unemployment purposes. (Exh. A, p. 31). TMD filed a timely appeal of the decision. (Exh. A, p. 3).

On October 8, 2010, the Department conducted a random worksite audit at 10200 Windsor Parkway in Johnston, IA. There were two vehicles bearing advertising for TMD parked in the driveway in a new residential construction home. Two workers, David Sarmiento and Byron Contreras, were present at the job site. Both men indicated to the Department's investigators that they were treated by TMD as subcontractors rather than employees. The men reported that they were called by Mr. Miller for jobs and he would instruct them as to the date and time they were required to report to TMD's office to pick up the spray truck. (Dostal testimony; Exh. C, p. 23). At hearing, TMD conceded that Mr. Contreras and Mr. Sarmiento were employees.

During the course of the investigation, the Department did not have contact with anyone who worked as a drywall hanger or taper for TMD. (Dostal testimony).

C. Parties' Stipulations

The Department did not submit any listing of individuals who it classified as employees in this case. Pages 287 to 348 of the Department's Exhibit A contain a separate Employer's Contribution & Payroll Report for each worker in each quarter that the Department determined was an employee. During the course of the hearing, the parties agreed about the status of certain individuals.

The Department stipulated that the following individuals or businesses were independent contractors rather than employees:

Ruiz Drywall
M&B Drywall
Aspen Metal Drywall

The appellant stipulated that the following individuals were employees for the time periods indicated:

Brad Langfitt (all)
David Sarmiento (all)
Brian Contreras (all)

Mary Kay Schmid (all)⁵
Thomas Warnock (all)
Troy Martin (2005, 2006)
Mike Pittman (2005)
Dennis Pittman (2005)
Zach Mohr (2005)
Mike Murphy (2005)
Jeff Manley (2005)
Ricky Pittman (2005)
Dan Pittman (2005)
Steve Wetzel (2005)
Shawn Gracey (2005)
David Walker (2006)
Lance Meiver (2006)
Torry Denson (2006)
Cory Hildreth (2006)
Jorge Rascon (2006)
Kevin Lyman (2006)
Gregory Smith (2007)
Scott Lucas (2007)
Chad Frantum (2008)
Dana Baker (2008, 2009)
John Herman (2008)
Douglas Esslinger (2009)

(Exh. TJ3).

REASONING AND CONCLUSIONS OF LAW

For purposes of unemployment compensation, an “employer” is defined as an employing unit that, in any calendar quarter in the current or preceding calendar year, paid wages of \$1,500 or more, or employed at least one individual for some portion of a day in each of twenty different calendar weeks during the current or preceding calendar year.⁶ “Employment” is defined as service performed for wages or under any contract of hire, written or oral, express or implied.⁷ When an employer claims that any employment is not employment under the Iowa Employment Security Law, the burden is on the employer to prove the exemption claimed.⁸

In the unemployment compensation context, it is well-settled that “the right to control the manner and means of performance is the principal test in determining whether a

⁵ Ms. Schmid is alternately listed in the appellant’s 1099-MISC forms as Mary Schmid and Kay Schmid. Based on a review of the social security numbers provided, the two names refer to the same person.

⁶ Iowa Code § 96.19(16)(a) (2009).

⁷ Iowa Code § 96.19(18)(a) (2009).

⁸ 871 Iowa Administrative Code (IAC) 22.7(3), 23.55(2).

worker is an employee or independent contractor.”⁹

The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.¹⁰

The Department’s regulations set out in some detail the factors to be considered in determining whether a worker is an employee or an independent contractor.¹¹ Factors that support the existence of an employer-employee relationship include:

- Right to discharge an employee without being held liable for damages for breach of contract;
- Furnishing of tools, equipment, material, and a place to work;
- Continuous performance of work for the employer;
- Payment of a fixed wage on a weekly or hourly basis.

Factors that support an independent contractor relationship include:

- Performance of a specific job at a fixed price;
- Following a distinct trade, occupation, business, or profession in which an individual offers services to the public to be performed without the control of those seeking the benefit of his or her training or experience;
- Unreimbursed expenses and fixed, ongoing costs regardless of whether work is currently being performed;
- Significant investment in real or personal property that is used in performing services for someone else;
- Right to employ assistants with the exclusive right to supervise their activity and completely delegate the work.¹²

The regulations also provide that if, upon examination of the facts of a case, an employer-employee relationship exists, the designation or description by the parties of their relationship as anything other than an employer and employee is immaterial.¹³

⁹ *Gaffney v. Department of Employment Services*, 540 N.W.2d 430, 434 (Iowa 1995).

¹⁰ 871 IAC 23.19(1).

¹¹ See generally 871 IAC 23.19.

¹² 871 IAC 23.19.

¹³ 871 IAC 23.19(7).

A. Drywall Hangers and Tapers

TMD has met its burden of proving by a preponderance of the evidence that the drywall hangers and tapers it engaged were independent contractors and not employees. An examination of the evidence as a whole reflects that TMD did not have the right to control the manner and means of the hangers' and tapers' performance.

TMD did not control the hours that the hanging and taping crews worked and did not supervise the hanging and taping crews at the job site. The hangers and tapers were paid a fixed, square footage rate for jobs and were responsible for correcting errors without additional compensation. The hangers and tapers provided the majority of their own specialized tools, with the exception of scaffolding and stilts, which were occasionally provided by TMD when necessary.

Many of the individuals TMD engaged to do hanging and taping work hired others to work with or under them to complete the jobs. TMD had no authority to supervise these assistants and understood that, if desired, work could be completely delegated to these assistants. TMD could not fire a hanging or taping crew from a particular job once it was engaged to do the job without compensating it at the agreed-upon rate. TMD's recourse, if the work was unsatisfactory, was to not engage the crew again on a subsequent job.

The hanging and taping crews that TMD utilized also did work for other drywall contractors. There was a great deal of testimony on this point at hearing and TMD's payment records corroborate that testimony. Many workers were only paid during one or two quarters of any one year. Although the Department, for purposes of estimating unemployment taxes owed, averaged each individual's total yearly payment evenly over four quarters, the actual pattern of payments to some workers was much more uneven. The uneven pattern of payments reflects the fact that the amount of work the hanging and taping crews did would fluctuate based on the number of jobs TMD had, the workers' skill, and the workers' availability.

A large part of the Department's focus was on whether or not the hangers and tapers TMD used had what it termed a legitimate business presence. With respect to several hanging crews that had a business name (Ruiz Drywall, Aspen Metal Drywall, and M&B Drywall), the Department determined that these were correctly classified as independent contractors. The weight of the testimony at hearing demonstrated that it is standard practice in the drywall contracting business for crews of hangers and tapers to become known to businesses like TMD even if they do not have a business name and do not hold themselves out in the yellow pages or other formal advertising as such. There was no indication that TMD conducted its dealings with Ruiz Drywall, Aspen Metal Drywall, or M&B Drywall any differently than it conducted its dealings with other hanging and taping crews.

B. Other Workers

TMD sufficiently demonstrated that Todd Labus, Lisa Calvert, and Aaron Wiley were not employees of TMD. The types of services they provided for TMD – plumbing, electrical,

and CPA services – was specialized work of a type that TMD did not engage in.

The work that Mark Steil and Corey Hildreth did for TMD – taking care of the business while T.J. Miller was out of town – is employment for purposes of calculating unemployment insurance taxes. While Mr. Miller did not provide a great deal of detail with respect to what their duties were, a reasonable assumption is that Mr. Miller generally had the right to direct and control their management of the business. As such, Mr. Steil and Mr. Hildreth should be classified as employees for the management work they undertook for TMD. Mr. Miller testified that Mr. Hildreth also performed some work as a drywall tapper in 2007, the same year when he occasionally helped out with management of the business. Mr. Miller did not present any evidence to identify how much of the \$35,336.98 Mr. Hildreth was paid in 2007 reflected taping work and how much reflected management work. Because there is no reliable evidence on which to base a division of Mr. Hildreth's payment between his taping and management work, Mr. Hildreth is properly classified as an employee in 2007 for purposes of calculating unemployment insurance taxes. It is TMD's burden to prove the exemption claimed, which it did not do in the case of Mr. Hildreth.

Kevin Lyman performed mechanical work on a truck owned by TMD, then was later hired as an hourly worker for TMD. As with Mr. Hildreth, there is no reliable evidence in the record that segregates the mechanical work Mr. Lyman did from the hourly work he did. Consequently, Mr. Lyman should be classified as an employee for all of the work done.

With respect to Randy Miller, the evidence in the record demonstrates that the payment TMD made to Randy in 2008 was to repay a loan that Randy made to TMD for purchase of a vehicle. Randy was not an employee of TMD and his classification as such is erroneous.

There was minimal testimony regarding the work that Mike Reed and Ken Scarpino engaged in for TMD. TMD did not meet its burden of proving that their work should be exempt from unemployment insurance taxes under Iowa law.

There was testimony at hearing regarding Cathy Rinard's status as an employee or independent contractor with TMD. Ms. Rinard did not begin doing work for TMD until 2010, therefore her employment is not covered under the decision at issue here. I need not decide whether Ms. Rinard is an independent contractor or employee.

C. Summary

The parties stipulated regarding the status of certain individuals and businesses as independent contractors and employees. The stipulations are outlined in the Findings of Fact section. The Department shall classify those entities that it stipulated are independent contractors as such. The Department shall classify the individuals that TMD stipulated are employees as such.

The individuals who are identified in the Findings of Fact section as drywall hangers and drywall tapers shall be classified as independent contractors. Todd Labus, Lisa Calvert,

and Aaron Wiley shall be classified as independent contractors. Mark Steil, Kevin Lyman, Mike Reed, and Ken Scarpino shall be classified as employees. Corey Hildreth shall be classified as an employee for earnings received in 2007. Randy Miller shall not be classified as an employee of TMD.

Any individual not identified by the parties in their stipulations and not specifically listed as a hanger or taper or listed in the previous paragraph shall be classified as an employee for purposes of assessing unemployment insurance taxes against TMD.

DECISION

The Department's May 26, 2010 decision is modified to reflect the classifications outlined above. The Department shall take any action necessary to implement this decision.

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