

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

Appeal Number: 10IWD077

Respondent (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**CARPENTER CONSTRUCTION
SERVICES, LLC
ATTN: CHRIS DAWSON, OWNER
732 SE SHURFINE DRIVE
ANKENY, IA 50021-3928**

**IOWA WORKFORCE DEVELOPMENT
RYAN DOSTAL, INVESTIGATOR
1000 EAST GRAND AVENUE
DES MOINES, IA 50319**

DAN ANDERSON, IWD
JOSEPH BERVID, IWD
JOSEPH WALSH, IWD
JASON TRYON, IWD
MARTIN KENWORTHY, 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)

April 8, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

As the result of a compliance check, Iowa Workforce Development (the Department) issued a Notice of Employer Status and Liability dated March 4, 2010 finding that an employer-employee relationship existed between Carpenter Construction Services LLC (Carpenter) and the individuals performing services for the business from 2005 through 2009. Carpenter filed an appeal from the Department's decision.

A telephone hearing was originally scheduled for October 15, 2010. The hearing was continued twice at Carpenter's request. A telephone hearing was held before Administrative Law Judge Laura Lockard on December 9, 2010. The Department was represented by attorney Joseph Walsh. Investigator Ryan Dostal and field auditor Jim Madden testified for the Department. Attorney Martin Kenworthy represented Carpenter. Chris Dawson and Scott Carpenter testified for Carpenter.

The Department submitted Exhibit A (pp. 1-374), which was admitted into the record as evidence. Carpenter submitted Exhibits CCS1 through CCS16, which were admitted into

the record as evidence.

Upon consideration of the evidence after hearing, I determined that additional evidence was needed to render a decision. The record was reopened and a new hearing was scheduled for February 18, 2011 to take evidence regarding the Department's calculation of wages for Scott Carpenter. Carpenter elected not to participate in the February 18 hearing. The Department was represented by investigator Ryan Dostal. Field auditor Deb Michaels testified. No additional documents were admitted into evidence.

After the December 9, 2010 hearing, counsel for Carpenter submitted a brief on the issue of wages attributed to Scott Carpenter. Arrangements had not been made at the original hearing for briefs to be submitted. After reopening the record to allow for the February 18, 2011 hearing, however, I informed Carpenter that its brief would be considered. The Department did not submit any brief in this matter.

ISSUE

Whether the Department correctly determined that an employer-employee relationship existed between Carpenter Construction Services LLC and the individuals performing services for the business from 2005 through 2009.

FINDINGS OF FACT

A. The Department's Investigation

On October 19, 2009 investigator Ryan Dostal from the misclassification unit of the Department's tax bureau visited a residential construction site in Ankeny, Iowa. Upon arrival, Mr. Dostal observed that there were three individuals siding the house on the site; two were up on scaffolding and one was operating a saw on the ground behind the house. The individuals indicated that the person in charge of the job site was Scott Carpenter of Carpenter Construction. Jorge Paucar, one of the workers on the site, indicated that all of the equipment on the site, such as scaffolding, saws, and ladders, was provided by Carpenter construction and that Carpenter provided the materials as well. The workers provided their own hand tools. Mr. Paucar also indicated that he and one of the other workers at the site typically got most of their work from Mr. Carpenter; he indicated that the third worker on site was relatively new to the company. (Exh. A, p. 21; Dostal testimony).

While at the job site, Mr. Dostal provided to each worker a packet of information, which included a questionnaire for determining the status of workers that the workers were instructed to return and complete to the Department. The Department did not receive completed questionnaires from any of the workers present at the job site on October 19. (Dostal testimony).

None of the three workers at the job site on October 19 were registered as contractors with the Department. After conversations with Melissa Heins, a secretary for Carpenter, the Department sent contractor registration forms to her upon her request. Ms. Heins indicated that the three individuals at the job site did not speak English very well, but

that she was used to communicating with them so it would work best for her to assist them in completing the contractor registration forms. Ms. Heins ultimately sent in completed contractor registration forms for the three workers. (Dostal testimony).

During conversations with Ms. Heins and Chris Dawson, one of the members of Carpenter, Mr. Dostal requested that Carpenter fill out a Report to Determine Liability and a Questionnaire for Determining Status of Workers. Additionally, Mr. Dostal requested that Carpenter provide the Department with financial documents, including W-9 forms, 1099 forms, and disbursement ledgers, for the previous five years. (Exh. A, pp. 21-22). Carpenter ultimately provided its disbursement ledgers, 1099 forms for 2005 through 2008, and partnership income tax returns from 2005 through 2008. (Dostal testimony; Exh. A, pp. 58-317).

Mr. Dostal reviewed Carpenter's records and examined the individuals and entities that Carpenter made payments to from 2005 through 2009. Individuals that the Department determined had a "business presence" that would be accessible by the general public were excluded as employees; additionally, individuals or entities that the Department determined were "obvious businesses" were excluded as employees. (Dostal testimony). The Department ultimately determined that the following individuals were employees of Carpenter during the years indicated:

Carlos Paucar (2005-2009)
Cody Belgrade (2005)
Ian Flanagan (2005)
A. McPerson (2005)
Kyle Scheeler (2005)
Ryan Stapp (2005)
Harrison Swift (2005)
Jorge Paucar (2005-2009)
Ricardo Martinez (2005-2006)
Scott Carpenter (2005-2009)
Riumas Soto (2006-2009)
Segundo Coello (2006)
John Einetson (2006-2007)
Aaron Baird (2007-2008)
Eric Gates (2007-2008)
Darin Pendroy (2008)
Mark Pendroy (2008)
Gilbert Olsen (2008)
David Marks (2008)
Troy Wiese (2008-2009)
Joel Rodrigo (2008-2009)
Randy Caldwell (2008-2009)
Sergio Colin (2008)
Brent Wiese (2008-2009)
Todd Bolz (2009)
Alvin Swift (2009)

(Exh. A, p. 374).

The Department sent a Questionnaire for Determining Status of Workers to each of the above individuals. The Department did not receive completed questionnaires from any of the above individuals, nor did any of them contact the Department to respond in any fashion. (Dostal testimony).

The Department issued a Notice of Employer Status and Liability to Carpenter on March 4, 2010 informing it that it had determined an employer-employee relationship existed between the business and the individuals performing services for the business during the years 2005, 2006, 2007, 2008, and 2009. (Exh. A, p. 11).

B. Carpenter's Organization and Business Practices

Carpenter is a two-member limited liability company that engages in two primary business areas: siding new construction homes and snow removal. Siding new construction homes is the biggest portion of its business; in conjunction with this, the business also does limited framing, re-roofing, and siding remodel jobs. In the winter, Carpenter provides snow removal services for businesses and townhome associations. With respect to all vendors and individuals who perform services, it is Carpenter's practice to pay its bills on a two-week cycle. Carpenter does not have written agreements with the individuals it hires to do residential siding and snow removal jobs. (Exh. CCS-2; Dawson testimony).

1. Residential Construction Business

For the new construction siding jobs that Carpenter takes on, the general contractor or builder typically provides materials to Carpenter, which Carpenter passes on to the individuals who are doing the siding job. Carpenter does provide certain equipment, such as scaffolding and ladders, to the individuals it hires to do siding jobs. Carpenter does this because it saves the business money; it would have to pay more to hire individuals who own that equipment. (Dawson testimony).

a. Jorge Paucar, Carlos Paucar, and Riumas Soto

Jorge Paucar, Carlos Paucar, and Riumas Soto were the three individuals who Mr. Dostal encountered when he visited Carpenter's job site on October 19, 2009. (Dostal testimony). Both Jorge and Carlos Paucar began doing siding work for Carpenter in 2005. Mr. Soto began doing siding work for Carpenter in 2006. (Exh. A, p. 374).

Someone from Carpenter would typically contact the three of them to determine whether they were available for a project when work became available. The primary reason that the three men have been used so frequently by Carpenter is because of the excellent quality of their work. If the three men accept a job, they tell Carpenter what their schedule is and when they can work. They also determine the hours that they work and if and when they take time off from a project. They do not request permission to be away from the job site for a day or longer. (Exh. CCS1).

On a typical project, Mr. Carpenter meets with the three men at the job site on the first day to go over the job. As each job is different, this is the time when Mr. Carpenter communicates to them whether there are particular things that have to be done differently to meet the builder's specifications. Mr. Carpenter typically is not at the job site working alongside the three men during the job. If they have a question and it is necessary to observe the work to answer the question, Mr. Carpenter will go to the job site while the work is in progress. Additionally, he always goes to the job site when the job is complete and after the men have gone to review the work. He does this so that he can ensure the quality of the work. (Carpenter testimony).

Jorge and Carlos Paucar and Mr. Soto typically work as a team for Carpenter. There are occasions, however, when Carpenter has retained the services of only one of them if there is a small project where only one worker is needed. (Carpenter testimony).

Carpenter provides scaffolding and ladders when Jorge and Carlos Paucar and Mr. Soto do siding jobs. Sometimes the men come and get the equipment from Carpenter and sometimes they just move it from one job site to another. In large part, this depends on what equipment is needed; each job typically requires different equipment. Additionally, the team or individual members often do smaller jobs where none of Carpenter's equipment is needed. (Carpenter testimony).

At least Jorge Paucar and Carlos Paucar have had other employment during the same time period that they performed work for Carpenter. One of the men had a job at Pizza Hut and another had a full-time job cleaning office buildings. (Dawson testimony).

b. Randy Caldwell

Randy Caldwell performs clean up work at Carpenter's residential construction job sites. In addition to Carpenter, he also works for another company that Chris Dawson is involved with; he tries to find work wherever he is needed. He has his own truck and when he does a job for Carpenter, Carpenter includes in his pay an amount to cover gas for the truck, wear and tear on the truck, and applicable dump fees. (Dostal; Dawson testimony).

Mr. Caldwell set his own schedule with Carpenter. When he was contacted about a job, he assessed his availability. He did not schedule time off or vacations with Carpenter. He was responsible for getting the assigned work done by the assigned time if he accepted a job. Typically, there was not anyone present from Carpenter on the job site while he was working. (Exh. CCS16).

c. Sergio Colin

Sergio Colin is a roofer out of Des Moines, Iowa who also operates under the name Colin Roofing. At some point in 2008, Scott Carpenter looked at a house that Mr. Colin's crew had roofed and was very impressed with the work. Carpenter had plenty of roof work available, so Carpenter would bid the roof work and subcontract it to Mr. Colin. Typically Mr. Colin would provide the roofing materials, as he could get a better deal on the materials. At times, however, Mr. Colin did not want to bother with buying the

materials; on those jobs, Carpenter would supply the materials and pay Mr. Colin only for his labor.

Mr. Colin also did some concrete jobs for Carpenter. He provided all of his own equipment and tools for the concrete work and was not supervised by anyone from Carpenter. On occasions when Carpenter was already doing work on a house where the owner wanted some concrete work done, Carpenter would pay Mr. Colin to do the concrete work. On the concrete jobs, Mr. Colin always took care of the materials as Mr. Carpenter was not particularly knowledgeable in that regard. (Carpenter testimony).

During the year 2008, in which Mr. Colin was paid \$35,180 by Carpenter, he did three fairly large jobs: a concrete job, a retaining wall, and a new roof. Carpenter did not provide any equipment for Mr. Colin on these jobs. (Dawson testimony).

In addition to the residential construction work that Mr. Colin's business did for Carpenter, Mr. Colin also provided snow removal services for Carpenter. Mr. Dawson testified that Mr. Colin did quite a bit of Carpenter's snow removal work. Mr. Colin owns two trucks for snow removal and has six people who work for him doing shoveling and plowing. (Dawson testimony).

2. Snow Removal Business

The individuals that Carpenter hires to do snow removal all have their own trucks, snowblowers, plows, blades, shovels, and other tools of the trade. On a few occasions, various individuals borrowed an end loader owned by Carpenter. Apart from this, however, all equipment was their own. The custom in snow removal business is to pay by the hour. When Carpenter is hired by businesses to do snow removal, it is paid by the hour. Carpenter takes a percentage off the top and then pays the workers who actually do the snow removal an hourly amount. The workers are paid only if there is snow to remove; Carpenter does not pay the workers to guarantee their availability in any fashion. (Dawson testimony; Exh. CCS1).

The following individuals, who the Department classified as employees, provided only snow removal services to Carpenter during the relevant time period: Darin Pendroy; Gilbert Olson; Mark Pendroy; Brent Wiese; Troy Wiese; David Marks; John Einetsen, and Ricardo Martinez. (Exh. CCS1, CCS8-CCS13; Dawson testimony).

On most snow removal jobs, no one from Carpenter was present at the job site. The individuals removing the snow determined how the job should be completed. Additionally, most of the workers who did snow removal for Carpenter also provided similar services to other individuals or businesses during the same time period. (Exh. CCS8-CCS14).

3. Scott Carpenter

The two members of Carpenter are Scott Carpenter and Chris Dawson. Each has a 50% membership interest in the business. At hearing, Department field auditor Jim Madden testified that since Carpenter is a two-member LLC where each member holds a 50%

equity share, the Department considers that any amount one member receives in excess of a fifty-fifty split to be wages. In support of this proposition, Mr. Madden cited 871 Iowa Administrative Code 23.3(2)(j).

The Department concluded that a portion of Scott Carpenter's disbursements each year from Carpenter was taxable as wages for unemployment insurance tax purposes. In support of its finding, the Department presented evidence regarding the distributions to each partner from the fourth quarter of 2005 through the third quarter of 2009. Those figures are as follows:

	<u>Chris Dawson</u>	<u>Scott Carpenter</u>
2005:		
4th quarter	\$2,300	\$3,300
2006:		
1st quarter	\$4,950	\$9,150
2nd quarter	\$5,900	\$9,850
3rd quarter	\$5,000	\$9,600
4th quarter	\$10,000	\$13,671.63
2007:		
1st quarter	\$6,116.59	\$9,600
2nd quarter	\$5,000	\$11,850
3rd quarter	\$0	\$9,800
4th quarter	\$0	\$11,900
2008:		
1st quarter	\$0	\$11,500
2nd quarter	\$0	\$11,900
3rd quarter	\$0	\$10,300
4th quarter	\$0	\$12,750
2009:		
1st quarter	\$3,675	\$10,500
2nd quarter:	\$7,350	\$12,250
3rd quarter:	\$2,100	\$10,500

(Michaels testimony).

In each year or portion of the year examined, Mr. Carpenter's distributions exceeded Mr. Dawson's. The amount by which Mr. Carpenter's distribution exceeded Mr. Dawson's is the amount that the Department classified as wages for unemployment tax purposes. The amounts the Department taxed are as follows:

2005 (4th quarter only): \$1,000
2006: \$16,422
2007: \$31,883
2008: \$46,450
2009 (1st, 2nd, and 3rd quarters): \$20,125¹

(Michaels testimony).

4. Miscellaneous

Alan Swift is Scott Carpenter's uncle. He fixed the truck that Mr. Carpenter uses for the business. (Dawson testimony). He was paid \$218.50 in 2009. (Exh. A, p. 374).

Carpenter bought a snow plow blade for a skid loader from Todd Bolz. (Dawson testimony). He was paid \$1,400 in 2009. (Exh. A, p. 374).

REASONING AND CONCLUSIONS OF LAW

A. Overview

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.² "Employment" is defined as service performed for wages or under any contract of hire, written or oral, express or implied.³ 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.⁴

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

¹ These figures are different from the figures listed by the Department on Exhibit A, p. 374. Deb Michaels, a field auditor in the misclassification unit, went through Carpenter's general ledgers from the fourth quarter of 2005 through the third quarter of 2009 and tracked each disbursement to Mr. Dawson and Mr. Carpenter, Carpenter's two members. Ms. Michaels speculated that part of the reason for the difference in the figures was that some payments made to Mr. Dawson were originally classified as distributions, but were actually reimbursements for money that Mr. Dawson had put into the business if the business needed an influx of cash. The figures cited here accord with the figures on the Schedule K-1s that Carpenter submitted for both members of the LLC. Schedule K-1s were not available for 2009 as 2009 taxes were not yet due at the time Carpenter submitted its documents to the Department. Additionally, Ms. Michaels did not include any taxable income for Mr. Carpenter from the first, second, or third quarters of 2005 as no general ledger was available for that time period. Consequently, the Schedule K-1 for tax year 2005 does not match the figure listed here as the figure listed here includes only distributions for the fourth quarter. (Michaels testimony; Exh. A, pp. 102-03, 118-19, 135-36).

² Iowa Code § 96.19(16)(a) (2009).

³ Iowa Code § 96.19(18)(a) (2009).

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

worker is an employee or independent contractor.”⁵

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.⁶

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.⁷ 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.⁸

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.⁹

⁵ *Gaffney v. Department of Employment Services*, 540 N.W.2d 430, 434 (Iowa 1995).

⁶ 871 IAC 23.19(1).

⁷ See generally 871 IAC 23.19.

⁸ 871 IAC 23.19.

⁹ 871 IAC 23.19(7).

B. Residential Construction

With respect to Jorge Paucar, Carlos Paucar, Riumas Soto, Randy Caldwell, and Sergio Colin, the majority of factors weigh in favor of finding that these workers were independent contractors. While Carpenter provided scaffolding and ladders to Jorge and Carlos Paucar and to Mr. Soto, the evidence demonstrates that the crew was not required to be at the job site at times set by Carpenter and Carpenter did not control the manner in which they did the work, except to communicate at the beginning of the job information about whether modifications had to be made to fit a builder's specifications. Their services were engaged on a project-by-project basis; they could turn down work if they did not have availability during a particular time period. Additionally, at least two of the men had other jobs during the same time period that they were performing work for Carpenter.

The Department argued at hearing that the fact that many of Carpenter's workers did not have a business presence weighed in favor of finding the workers employees. In the determination of independent contractor versus employee, no one factor is dispositive and the relationship as a whole must be considered to determine the status of the parties' relationship. Subcontractors do not necessarily have to offer services to the general public in order to be classified as non-employees. This argument ignores the reality of the construction industry, in which contractors who provide specific services are often very knowledgeable about the array of subcontractors who perform the specialized tasks they require.

Many of the same factors exist for Mr. Caldwell. He used his own truck to perform clean-up work at Carpenter job sites on an as-needed basis. He set his own schedule and was responsible for getting the work done during the assigned time period if he accepted a job. No one from Carpenter supervised Mr. Caldwell on job sites.

With respect to Mr. Colin, the evidence demonstrates that he has a roofing business that operates in the Des Moines area. Carpenter subcontracted several big roofing and concrete jobs to Mr. Colin in 2008 for which he provided his own crew. Mr. Colin also provided all of his own tools and equipment. No one from Carpenter supervised his concrete work or his roofing work.

C. Snow Removal

The evidence likewise supports the conclusion that the following individuals who performed snow removal services for Carpenter were independent contractors: Darin Pendroy; Gilbert Olson; Mark Pendroy; Brent Wiese; Troy Wiese; David Marks; John Einetsen; and Ricardo Martinez. The workers who performed snow removal all provided their own equipment, with the exception of an end loader that was occasionally borrowed from Carpenter. Although the workers were paid hourly, the undisputed testimony was that this is the custom in snow removal generally; when Carpenter bids on a job for snow removal, it is paid hourly as well. The workers are paid only when there is snow to remove and Carpenter does not pay them to guarantee their availability. Generally, there was no one from Carpenter supervising snow removal jobs. The majority of the individuals who did snow removal for Carpenter also provided snow

removal services for other businesses during the same time period. All these factors point to an independent contractor relationship.

D. Scott Carpenter

For purposes of Iowa's employment security law, the remuneration paid to a member of a limited liability company is not considered wages as long as remuneration is allocated among members in proportion to their investments in the company.¹⁰ In this case, the remuneration paid to Mr. Carpenter exceeded Mr. Dawson's remuneration in every quarter that the Department examined. The Department considered as wages only that portion of Mr. Carpenter's remuneration that exceeded Mr. Dawson's; in other words, only remuneration beyond Mr. Carpenter's 50% share was considered. This action by the Department is consistent with the applicable law.

In its post-hearing brief on this issue, Carpenter argued that the Department's March 4, 2010 notice did not put Carpenter on notice regarding the theory behind the Department's determination that certain funds paid to Scott Carpenter were wages. That notice references Iowa Code § 96.19(41), which contains the applicable law regarding remuneration to members of a limited liability company and when it is considered to be wages.

Carpenter also argued in its post-hearing brief that the application of 871 Iowa Administrative Code 23.3(2)(j) was quite technical and that, with the record closed, it was unable to adequately evaluate the Department's calculations and submit rebuttal evidence. I note that the record was reopened on this point specifically and Carpenter made a decision not to appear or submit rebuttal evidence regarding the Department's calculations.

E. Alan Swift and Todd Bolz

The evidence supports the conclusion that Alan Swift was an independent contractor in his dealing with Carpenter. Mr. Swift fixed a truck for the business. There was no evidence that he was in the ongoing employ of Carpenter or that Carpenter had the right to direct and control the way in which he did the work.

With respect to Mr. Bolz, the money paid to him was not wages, but rather payment for goods; specifically, a snow plow blade. There is no evidence to support the conclusion that Mr. Bolz was an employee of Carpenter.

F. Remaining Workers

The Department listed a number of other workers who it concluded were employees: Cody Belgrade; Ian Flanagan; A. McPerson; Kyle Scheeler; Ryan Stapp; Harrison Swift; Segundo Coello; Aaron Baird; Eric Gates; and Joel Rodrigo. The employer has the burden to prove employment is exempt under the Iowa Employment Security Law. Carpenter did not present any testimony at hearing regarding the work or services these

¹⁰ Iowa Code § 96.19(41)(e) (2011); 871 IAC 23.3(2)(j).

individuals engaged in. The Department presented evidence that all of these individuals were paid by Carpenter at some point between 2005 and 2009. Consequently, the Department's decision to classify these individuals as employees and assess unemployment insurance tax based on their wages is correct.

DECISION

The Department's decision is affirmed in part and reversed in part, as specified above in the Reasoning and Conclusions of Law section. The Department's determination that Carlos Paucar, Jorge Paucar, Riumas Soto, Randy Caldwell, Sergio Colin, Darin Pendroy, Gilbert Olson, Mark Pendroy, Brent Wiese, Troy Wiese, David Marks, John Einetsen, and Ricardo Martinez were employees of Carpenter is reversed. The Department's decision to classify the portion of Scott Carpenter's remuneration that exceeded his 50% membership interest in the LLC is affirmed. The Department's decision to classify Cody Belgrade, Ian Flanagan, A. McPerson, Kyle Scheeler, Ryan Stapp, Harrison Swift, Segundo Coello, Aaron Baird, Eric Gates, and Joel Rodrigo as employees of Carpenter is affirmed. The Department shall take any action necessary to implement this decision.

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