IN THE SUPREME COURT, STATE OF NEVADA

Supreme Court No.: 78076

INTERNATIONAL ACADEMY OF STYLE,

Petitioner,

vs.

DIVISION OF INDUSTRIAL RELATIONS, and the NEVADA DEPARTMENT OF ADMINISTRATION, APPEALS OFFICER SHEILA MOORE,

Respondents.

RESPONDENT DIVISION'S MOTION TO REISSUE MAY 18, 2022 ORDER OF AFFIRMANCE AS AN OPINION

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MOTION TO REISSUE ORDER AS AN OPINION

COMES NOW, Respondent Division of Industrial Relations (the "Division"), by and through its counsel of record and moves this Court pursuant to Rule 36(f) of the Nevada Rules of Appellate Procedure, to reissue the Order of Affirmance, filed May 18, 2022, in this matter as a published opinion of the Court of Appeals of Nevada. The Order of Affirmance is attached as Exhibit 1.

I. INTRODUCTION

Respondent Division respectfully requests this Court reissue its May 18, 2022 Order of Affirmance as an opinion for several reasons. The Court's Order presents issues of public importance that have application beyond the parties to this ligation, according to NRAP 36(c)(1)(C). The Court's Order provides further analysis of "normal work" test first enunciated in *Meers v. Haughton Elevator*, 101 Nev. 283, 285, 702 P.2d 1006, 1007 (1985) particularly as to the uniqueness of Nevada's statutory scheme that holds that sub-contractors and independent contractors are considered equivalent to employees of a principal contractor. This opinion further elucidates the fact that this statutory scheme applies not only to construction cases but to cases that arise in general industry.

Respondent Division is responsible for regulating Nevada's workers' compensation system. The Division encounters similar cases where employers in general industry attempt to escape their responsibility for obtaining and maintaining workers' compensation insurance for their employees by improperly classifying those employees as "independent contractors" or "sub-contractors." The Uninsured Employers' Claim Account, which provides coverage for these uninsured injured workers, is particularly hard hit by employers who either do not understand Nevada's workers' compensation requirements or refuse to comply with the

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requirements. This Court's Order provides much-needed guidance to these general industry employers in particular, the Department of Administration Hearings Division which hears these appeals, and workers' compensation practitioners throughout the State. If this Order is not published, stakeholders may be left with a hodgepodge of frequently inapposite rulings regarding general industry principal contractor liability.

NRAP 36(c)(1)(B) also permits publication of the Order of Affirmance as an opinion as the Order "alters, modifies, or significantly clarifies a rule of law." In its Order of Affirmance this Court makes it clear that the control test first devised in *Clark County v. State Ind. Ins. Sys.*, 102 Nev. 353, 354, 724 P.2d 201, 202 (1986), has been abrogated by the enactment of NRS 616B.603:

> We recognize that the control test might be unnecessary given Nevada's use of the *Meers* normal work test and NRS 61613.603. *See Harris,* 1.17 Nev. at 491, 25 P.3d at 21.2 (noting that previously the court had "observed that the enactment of [NRS 61.6B.603] manifested the Legislature's intent to codify *[Meers's* normal work test] for non-construction cases, thus abrogating use of the control test for determining employer immunity in non-construction cases" (footnote omitted)).

Order of Affirmance, p. 9, fn. 12. Despite the passage of NRS 616B.603, the Division finds that stakeholders, the Department of Administration Hearings Division and the Bench continue to invoke the control test in workers' compensation cases. The Order of Affirmance is clear instruction that NRS 616B.603 is the appropriate test for determining employment classification.

Finally, the Division notes that there has been no published opinion of the Supreme Court or Court of Appeals for Nevada discussing NRS 616B.603 in the workers' compensation context since *Richards v. Silver State,* 122 Nev. 1213, 148 P.3d 684 (2006). Moreover, that case dealt only with co-employee immunity when a property owner hires an NRS Chapter 624 licensed contractor to perform work within the confines of the contractor's license. The case at bar

discusses an entity's requirement to provide workers' compensation insurance for alleged independent contractors absent any Chapter 624 licensing issues. The most relevant precedent is *Hays*, *supra*, published in 2001 and that case does not provide any analysis regarding the abrogation of the control test and does not discuss at length the status that independent contractors and sub-contractors have as employees of a principal contractor as discussed in the Order of Affirmance.

II. CRITERIA FOR PUBLICATION

NRAP 36(c) states in pertinent part that "[e]xcept to establish issue or claim preclusion or law of the case as permitted by subsection (2), unpublished dispositions issued by the Court of Appeals may not be cited in any Nevada court for any purpose." NRAP 36(c). while publicly available, may not be cited as precedent except in very limited circumstances. . . ." NRAP 36(c). But, "[a] published disposition is an opinion designated for publication in the Nevada" and may be cited as precedent. NRAP 36(c). NRAP 36(f) allows any interested party, including the parties to the litigation, to file a motion to reissue an Order of this Court as an opinion. NRAP 36(f)(3) outlines the criteria in NRAP 36(c)(1)(A)–(C) as the basis to file such a motion, which are: (A) Presents an issue of first impression; (B) Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals; or (C) Involves an issue of public importance that has application beyond the parties. NRAP 36(f)(4) also states that "[p]ublication is disfavored if revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision." In the case at bar, the Court's Order can easily be converted into a published opinion without the need for extensive revisions.

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III. THIS ORDER IS APPROPRIATE FOR PUBLICATION

A. The Order Clarifies Nevada Law, which Is Beneficial to the Public and the Department of Administration, the Bench, the Bar, and Parties Beyond this Litigation.

As this Court is aware, Petitioner, International Academy of Style ("IAS"), failed to obtain or maintain workers' compensation coverage for its instructors, instead attempting to classify these employees as "independent contractors." The Division imposed a premium penalty against IAS for the amount of the premium IAS would have paid had IAS not chosen to misclassify the instructors. The Department of Administration Appeals Officer affirmed the Division's analysis and the premium penalty. The District Court affirmed the Appeals Officer's Decision and Order and this Court has ultimately affirmed the Decision and Order as well. As the Court found "irrespective of the semantic labels IAS attempts to assign to the activity being conducted by the cosmetology instructors, they were educating cosmetology students." *Order of Affirmance, p. 7.*

The Order of Affirmance further clarifies that NRS 616B.603 and *Meers*, *supra,* should be read in conjunction to determine when a non-licensed contractor is deemed the statutory employer or co-employee of an industrially injured employee in non-construction cases. However, the issue of misclassification continues to plague Nevada's labor force and compelling the Division to step in and provide coverage for uninsured and misclassified injured employees through the Uninsured Employers' Claim Account.

B. No Substantial Revisions of the Unpublished Order Will Be Necessary to Reissue the Order as an Opinion.

NRAP 36(f)(4) states that the granting of a motion to reissue an order as a published opinion is in the sound discretion of this Court. "[I]f revisions to the text of the unpublished

disposition will result in discussion of additional issues not included in the original decision," publication is disfavored. NRAP 36(f)(4). However, in the case at bar, the Order of Affirmance does not require extensive revisions for publication. The Order succinctly sets forth the background facts and legal standards pertinent to this Court's disposition regarding the status of principal and independent contractors in Nevada law and the abrogation of the control test by the passage of NRS 616B.603. Furthermore, the Court sets forth a detailed analysis of the legal issues supporting its holdings. As such, the Court can publish the Order without substantial revisions.

IV. CONCLUSION

Based upon the foregoing, Respondent Division respectfully request that this Court reissue its May 18, 2022 Order of Affirmance as an opinion.

DATED this 27 day of May, 2022.

DIVISION OF INDUSTRIAL RELATIONS

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and electronically filed with the Court of Appeals of Nevada, addressed to the following:

Document Served: **Division of Industrial Relations' MOTION TO REISSUE MAY 18, 2022 ORDER OF AFFIRMANCE AS AN OPINION**

Person(s) Served: International Academy of Style Bonnie Schultz & Loni Casteel 2295 Market Street Reno, NV 89502	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____
Person(s) Served: Jason Guinasso, Esq. Hutchison & Steffen 5371 Kietzke Lane Reno, NV 89511	**U.S. Mail** __X__ **via State Mail room** (regular or certified) circle one _____ **deposited directly with U.S. Mail Service** _____ **Overnight Mail** _____ **Interdepartmental Mail** _____ **Messenger Service** _____ **Facsimile** fax number: _____

DATED this 27 day of May, 2022.

An Employee of the Division of Industrial Relations

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

INTERNATIONAL ACADEMY OF STYLE,
Appellant,
vs.
DIVISION OF INDUSTRIAL RELATIONS,
Respondent.

No. 82864-COA

ORDER OF AFFIRMANCE

International Academy of Style (IAS) appeals from a district court order denying a petition for judicial review in an administrative law matter. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

IAS, co-owned by Loni Casteel and Bonnie Schultz, is a beauty school licensed in Nevada that has operated since 1998.[1] Since the first year of its operation, IAS has hired what it labels "independent contractors" to provide additional instruction to its students. In its opening brief on appeal, IAS identifies these individuals as "cosmetology professionals" because they "own or work in salons" and "make their living from the performance of cosmetology services."[2] Each instructor was required to sign an "independent instructor agreement,"[3] which provided in relevant part that the instructors

[1]We do not recount the facts except as necessary for our disposition.

[2]For our purposes, we refer to these individuals as "cosmetology instructors."

[3]We note that the title of these agreements varied over the years: "Independent Instruction Contractor Contract" in 2013 and "Independent Instructor Agreements" in 2016. We refer to these documents as "independent instructor agreements" throughout this order for consistency.

were "independent contractors" and IAS would not be responsible for workers' compensation insurance.

In 2017, following an investigation, the Division of Industrial Relations (DIR) imposed two premium penalties on IAS because of lapses in workers' compensation insurance coverage: (1) $16,390.94[4] for the period of December 21, 2010, through November 30, 2015; and (2) $251.10 for the period of December 1, 2016, through December 30, 2016. IAS subsequently appealed to the Nevada Department of Administration and argued before an appeals officer that IAS was not considered the "employer" of the cosmetology instructors because the instructors were "independent contractors" and "independent enterprises." Further, IAS's position was that the cosmetology instructors were not in the same trade or business as IAS.[5] Therefore, IAS argued the premium penalties were wrongfully imposed. The appeals officer conducted a hearing at which Casteel testified as a witness. During her testimony, Casteel answered affirmatively when responding to whether IAS could still provide quality education *without* the cosmetology instructors. But she also testified that the cosmetology instructors "[show the students] what they do in the salon, so that the student can visually see it and connect with it."

The appeals officer issued a decision and order finding, inter alia, that the cosmetology instructors were "clearly in the same trade[,] business,

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Further, we note that the independent instructor agreements underwent significant revisions around 2015 or 2016, but for simplicity we refer to the updated agreements as the 2016 agreements.

[4]The first penalty amount was later corrected to be $16,190.19.

[5]We note that IAS argued several other points before the appeals officer that were not presented on appeal. Therefore, we need not address them.

occupation or profession as Ms. Casteel and Ms. Schultz." The appeals officer found that the cosmetology instructors were "furthering the operation of the business of the school by providing the instruction necessary to qualify as a cosmetology school." The appeals officer also conducted an analysis under the five-factor control test set forth in *Clark County v. State Industrial Insurance System*, 102 Nev. 353, 354, 724 P.2d 201, 202 (1986), which courts have previously used "in determining whether a putative employer has exercised enough control over a person to establish an employer/employee relationship under the [Nevada Industrial Insurance Act]." *Willison v. Texaco Ref. & Mktg., Inc.*, 109 Nev. 141, 143-44, 848 P.2d 1062, 1063 (1993) (describing the control test). Based on the record, we conclude that the appeals officer addressed each of the five factors of the control test and found that IAS had a level of control over each instructor, indicative of an employer-employee relationship.[6] Upon completing the control test analysis, the appeals officer determined that "the instructors [were] not independent contractors." Ultimately, the appeals officer found that the two premium penalties were properly imposed by DIR on IAS. The district court denied IAS's petition for judicial review and this appeal followed.

On appeal, IAS maintains that the appeals officer's determinations were impacted by clear errors of law by not properly applying

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[6]Although the appeals officer's decision does not specifically state that IAS and each of its instructors were in an employer-employee relationship, the appeals officer's findings as to each of the five factors of the control test coupled with the appeals officer's decision that the instructors were not "independent contractors," support that the appeals officer found the relationship between IAS and each of its instructors to be akin to that of an employer-employee.

NRS 616B.603,[7] and the premium penalties imposed by DIR should be reversed. IAS avers that the cosmetology instructors fulfilled all of the requirements to be defined as "independent enterprises" under NRS 616B.603(2) and that its "instructors are not in the same business as IAS because they are in the business of cosmetology practice, whereas the school is in the education business." Further, IAS argues the instructor's activities "are not indispensable to IAS and said activities, in this business, are not normally carried on through employees." Finally, IAS argues that substantial evidence does not support the appeals officer's findings regarding the five-factor control test and continues to maintain that the cosmetology instructors were in fact "independent contractors." In response, DIR argues that the cosmetology instructors are not independent enterprises as defined in NRS 616B.603(2), and the instructors are in the same trade, business, or profession as IAS under NRS 616B.603(1)(b). Specifically, DIR contends that "[t]he focus of NRS 616B.603 is the relationship between the instructors and IAS while on the job for IAS." Finally, DIR argues that even under the five-factor control test, IAS remains the statutory employer of the cosmetology instructors. For the reasons discussed below, we are not persuaded by the arguments put forth by IAS on appeal and conclude that substantial evidence supports the appeals officer's determinations.

As a preliminary matter, "[t]he standard for reviewing petitions for judicial review of administrative decisions is the same for [the appellate] court as it is for the district court." *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). We review questions of law de novo,

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[7]NRS 616B.603(1) provides that a person who contracts with an "independent enterprise" that "is not in the same trade, business, profession or occupation" will not be considered the "employer" of that independent enterprise for workers' compensation purposes.

Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010), but we "shall not substitute [our] judgment for that of the agency as to the weight of evidence on a question of fact," NRS 233B.135(3). But we may reverse a final decision if the final decision of the agency was affected by an error of law, if it was "[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record," or if the decision was "[a]rbitrary or capricious or characterized by abuse of discretion." NRS 233B.135(3)(e) & (f). Substantial evidence is "evidence which a reasonable mind might accept as adequate to support a conclusion." NRS 233B.135(4). Therefore, "[w]e defer to an agency's findings of fact as long as they are supported by substantial evidence." *Phillips*, 126 Nev. at 349, 240 P.3d at 4. As a final consideration, we note that we will "not give any deference to the district court decision." *Warburton*, 127 Nev. at 686, 262 P.3d at 718.

Under Nevada's workers' compensation laws, employers "must procure workers' compensation coverage for their employees," thereby generally immunizing them "from common law liability for workplace injuries." *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 483, 25 P.3d 206, 207 (2001); *see also* NRS 616B.633 ("Where an employer has in his or her service any employee under a contract of hire, . . . the terms, conditions and provisions of [the workers' compensation NRS] chapters are conclusive, compulsory and obligatory upon both employer and employee."). Broadly, IAS's argument is that it need not procure coverage because the cosmetology instructors are "independent enterprises" and "independent contractors."[8]

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[8]On appeal, IAS, by citing to the definition of "independent contractor," appears to argue that the cosmetology instructors were in fact independent contractors such that workers' compensation benefits were not required to be paid by IAS. Based on the facts of this case—that the cosmetology instructors were in the same trade, business, occupation, or profession as IAS—we

Under NRS 616B.603(1), a person is not considered an "employer" for workers' compensation purposes if "[t]he person enters into a contract with another person or business which is an independent enterprise" *and* "[t]he person is not in the same trade, business, profession or occupation as the independent enterprise." The "same trade" language under NRS 616B.603(1)(b) codified the "normal work" test found in *Meers v. Haughton Elevator*, 101 Nev. 283, 701 P.2d 1006 (1985). *See GES, Inc. v. Corbitt*, 117 Nev. 265, 269, 21 P.3d 11, 13 (2001) (noting the normal work test "originally articulated in [*Meers*]" is "now codified as NRS 616B.603(1)(b)"). Under the normal work test, we examine whether the "activity is, in that business, *normally* carried on through employees rather than independent contractors." *Meers*, 101 Nev. at 286, 701 P.2d at 1007 (internal quotation marks omitted).[9]

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conclude that even if the instructors could be characterized as independent contractors, this would not result in reversing the penalties imposed. *See Meers v. Haughton Elevator*, 101 Nev. 283, 285, 701 P.2d 1006, 1007 (1985) ("Nevada's Industrial Insurance Act is uniquely different from industrial insurance acts of some states in that sub-contractors and independent contractors are accorded the same status as employees." (internal quotation marks omitted)). The record indicates that before the appeals officer, IAS argued it was not responsible for workers' compensation coverage under NRS 616B.639, but IAS has not presented this argument on appeal, so we need not consider it. *See* NRS 616B.639(1)(a) & (b) (describing how if certain criteria are met—such as a contract in writing "provid[ing] that the independent contractor agrees to maintain coverage" and "[p]roof of such coverage is provided to the principal contractor"—a "principal contractor is not liable for the payment of compensation for any industrial injury to any independent contractor").

[9]Nevada authority indicates NRS 616B.603 and *Meers* should be read in conjunction. *See Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 1220, 148 P.3d 684, 688-89 (2006) ("Accordingly, the *Meers* normal work test and NRS 616B.603 have been conjunctively used in determining

The appeals officer concluded that the cosmetology instructors were in the same trade, business, occupation, or profession as Casteel and Schultz and appropriately cited to *Meers*. We agree. Irrespective of the semantic labels IAS attempts to assign to the activity being conducted by the cosmetology instructors, they were educating cosmetology students.[10] The proper focus of the inquiry is on the activity being done by the cosmetology instructors when in service to IAS at its facility, not the business they engaged in when working elsewhere at their respective salons. *Cf. D & D Tire, Inc. v. Ouellette*, 131 Nev. 462, 468-69, 352 P.3d 32, 36-37 (2015) (considering a party's purpose for being at a site during the time period surrounding an injury). Under *Meers*, the instruction being provided by the cosmetology instructors is an activity that is "normally" carried out by employees of the cosmetology school; that is, instructing students is an activity that is a part of IAS's normal business, as clearly demonstrated in part by its owners providing instruction on cosmetology skills related to hair, skin, and nails. *Cf. Meers*, 101 Nev. at 286, 701 P.2d at 1008 (concluding "that the specialized maintenance conducted by Haughton was not part of

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when a nonlicensed contractor is deemed the statutory employer or co-employee of an industrially injured employee in nonlicensed defendant and nonconstruction cases.").

[10]This is adequately supported in the record. IAS's own independent instructor agreements provide as much. In one example from 2013, the agreement provided, "I am contracted *to educate students* in all fields of Cosmetology." (Emphasis added.) Despite the appeals officer finding Casteel's testimony at the hearing to be self-serving and not credible, we note that she clearly described the "independent contractors" as providing educational/instructional services: "[W]e wanted people that actually were still working and still active in the industry *so that the students would in fact then learn* the most current techniques and the most current ways of doing anything." (Emphasis added.)

Centel's normal business" and "[a]lthough Centel had to maintain its physical facilities as part of its everyday function, . . . [the] specialized maintenance requiring skills and expertise not possessed by its employees is not a normal part of maintaining its building" (internal quotation marks omitted)).

This case is also similar to *Hays Home Delivery, Inc.*, in which Hays, a logistics management company, "enter[ed] into agreements with 'owner-operators,' instead of hiring drivers of its own, to deliver the merchandise." *See Hays Home Delivery, Inc. v. Emp'rs Ins. Co. of Nev.*, 117 Nev. 678, 680, 684, 31 P.3d 367, 368, 371 (2001) (concluding that Hays and an owner-operator driver were "in the same trade of delivering merchandise from retailers to end-customers"). Thus, we conclude that the appeals officer's decision that the cosmetology instructors were in the same trade, business, profession, or occupation was not affected by any error of law.[11] Further, there is substantial evidence in the record to support the appeals officer's findings in this regard.

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[11]Given that IAS is in the "same trade, business, profession or occupation" as the cosmetology instructors, we need not look any further under NRS 616B.603, as it would not matter whether or not each instructor was in fact an "independent enterprise" as defined under NRS 616B.603(2). *See Hays*, 117 Nev. at 683, 31 P.3d at 370 (highlighting the conjunctive nature of NRS 616B.603 in that "Hays must demonstrate that Green is an independent enterprise, *and* that Green and Hays are not involved in the same trade, business, profession or occupation" (internal quotation marks omitted)). IAS also argues that the appeals officer erred in reading NRS 616B.603 when finding "that the instructors are clearly furthering the operation of the business of the school by providing the instruction necessary to qualify as a cosmetology school," but we do not read this finding as introducing a new requirement or element into NRS 616B.603. This finding is supported in the record to the extent that the cosmetology instructors were in fact at IAS to instruct students. Such a finding is useful to applying the normal work test. *Meers*, 101 Nev. at 286, 701 P.2d. at 1007.

The appeals officer also proceeded to analyze the relationship between IAS and the cosmetology instructors by using the five-factor control test set forth in *Clark County*, 102 Nev. 353, 724 P.2d 201.[12] The control test's factors include "(1) the degree of supervision; (2) the source of wages; (3) the existence of a right to hire and fire; (4) the right to control the hours and location of employment; and (5) the extent to which the workers' activities further the general business concerns of the alleged employer." *Id.* at 354, 724 P.2d at 202.

The findings as to each factor by the appeals officer are supported by substantial evidence. First, the appeals officer properly noted that some level of supervision was inherently necessary to confirm that the instructors were meeting the requirements set forth in the instructor agreements, such as those requirements related to complying with standards set forth by the Board of Cosmetology. For example, one independent instructor agreement signed in 2013 provided that, "I am aware that all instruction and records shall be in a format that complies with the standards and policies of the accrediting agency for International Academy of Style." Further, the 2016 agreement also gave IAS the ability to terminate the agreement "for cause." To determine whether such grounds exist, some level of supervision must exist.

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[12]We recognize that the control test might be unnecessary given Nevada's use of the *Meers* normal work test and NRS 616B.603. *See Harris*, 117 Nev. at 491, 25 P.3d at 212 (noting that previously the court had "observed that the enactment of [NRS 616B.603] manifested the Legislature's intent to codify [*Meers*'s normal work test] for non-construction cases, thus abrogating use of the control test for determining employer immunity in non-construction cases" (footnote omitted)). Nevertheless, its application by the appeals officer further demonstrates that the relationship between IAS and each cosmetology instructor was that of employer-employee.

Second, nothing in the record contradicts the appeals officer's finding that the instructors were being paid from student tuition. Third, as mentioned above, the independent instructor agreements from 2016 indicated that IAS had the power to hire or fire because the agreements provided IAS the ability to terminate the agreement with the cosmetology instructors "for cause," such as if the "[i]nstructor fail[ed] to perform his or her services in a competent manner." This supports the appeals officer's finding that IAS was able to sever its relationship with the instructors.

As to the fourth factor, we recognize that some of the findings regarding the employer's control over time and location may be partially inaccurate as written,[13] but the record does in fact support that the instructors did not have unfettered control over their hours and location of employment. At the hearing, it was revealed that rarely did the instructors teach off IAS's premises. And as demonstrated in the 2016 independent instructor agreement, several restrictions were put in place before an instructor could teach off site or outside of the school's normal hours (e.g., "Use of IAS facilities for instruction outside of IAS normal hours of operations must be requested and approved in advance by IAS.").[14] Finally, without question, substantial evidence supports that the instructors' services furthered the general business concerns of IAS, which was to provide

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[13]For example, the appeals officer noted that "the instruction must be done at the school." However, our review of the record suggests that this may not be completely accurate, although there was no evidence presented at the hearing regarding specific instances of instruction at other locations.

[14]Notwithstanding the supposed control the instructors had over their schedules and Casteel's testimony alleging there were no ramifications should an instructor fail to show up on a particular day, most of the agreements in the record clearly provided for specific days and times that the instructors would provide their services.

students with education related to the cosmetology field. Thus, the record contains substantial evidence that a reasonable mind could accept as adequate to support the conclusion that IAS and each of the cosmetology instructors were in an employer-employee relationship.

For the reasons set forth above, we conclude that the appeals officer's determination that the two premium penalties imposed by DIR was proper is supported by substantial evidence and is not clearly erroneous or impacted by an error of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Laurie A. Yott, Settlement Judge
Hutchison & Steffen, LLC/Reno
State of Nevada Department of Business and Industry/Div. of Industrial Relations/Las Vegas
Washoe District Court Clerk