Excerpt from Brief by Troy Lance Greene:

III.
The OSHA report is inadmissible.

At trial, counsel for the claimant attempted to introduce an OSHA report compiled by an investigator. The employer objected to certain sections of the report as being hearsay. The claimant contended the report was admissible under *O.C.G.A.§ 24-8-803(8)(C).* The report claimant's counsel tendered contains numerous statements in which the name of the interviewee is blacked out. Obviously, if the name is blacked out then counsel for the employer has been deprived of the opportunity to cross-examine or interrogate the witness making the alleged statements. The code section cited by the claimant (*O.C.G.A. § 24-8-803(8)(C)* clearly indicates these reports are not admissible if the sources of information or the circumstances of the report indicate "lack of trustworthiness." In this case, the objected to portions of the report contained hearsay statements from witnesses who are not identified and who names are blacked and are also not identified in any other portions of the report. Accordingly, this indicates a lack of trustworthiness as outlined by the statute. Therefore, these statements should not be admitted.

Pursuant to *O.C.G.A. § 24-8-802* hearsay evidence is inadmissible unless a specific exception within *O.C.G.A. § 24-8-803* or *§ 24-8-804* applies. The OSHA report on which the claimant has rested her entire case is hearsay because it is an out of court statement that is being used to assert the truth of its contents. Moreover, the

Excerpt from Brief by Troy Lance Greene:

OSHA investigator did not testify at trial or by deposition. Accordingly, the report was never authenticated and is therefore inadmissible. The OSHA report should be excluded because it is hearsay that does not qualify for any exemption or exception.

Even if the court finds an exception to the hearsay rule applies to the OSHA reports the majority of its contents must still be excluded as hearsay, or double hearsay. As outlined above, the sources of information the OSHA investigator used to compose this report were the interviews of witnesses from the site. These statements were all made outside of court and are now being used to prove the truth of how the incident occurred. As such, all information from these interviews is evidently hearsay contained within a report that in itself is hearsay, thereby making all information obtained from any interview hearsay within hearsay or double hearsay. To be admissible under *O.C.G.A. § 24-8-805* each part of a combined hearsay statement must fit within an exception to the hearsay rule. Because the interview testimony of these witnesses does not fall within an exception to the rule, it should be excluded and inadmissible. Finally, because this report is inadmissible, any testimony relying on it should also be excluded.

The OSHA report is inherently flawed. First, it contains many hearsay statements from witnesses whose names have been blacked out. Accordingly, the employer has not been afforded the opportunity to cross-examine these individuals since it is unaware of who they are due to the names being blacked out. This alone

Excerpt from Brief by Troy Lance Greene:

should result in the exclusion of those portions of the report from the court's consideration. Moreover, the report itself relies on these hearsay statements and therefore it should also be excluded. Finally, the findings of the initial report were reversed by higher officials at OSHA. See *Toole v. McClintock, 999 F.2d 1430 (11th Cir. 1993).* ("*Rule 803* makes no exception for tentative or interim reports subject to revision"). Specifically, those portions of the report that indicated [redacted] and others were "employees" were redacted to show they were "sub-contractors." Thus, the original report, in that regard, has no weight whatsoever. Those portions of the report should be stricken and not be considered by the court in its determination of this matter.

The employer would reference the court to the case of *Hines v. Brandon Steel Decks, Inc. 886 F.2d 299 (11th Cir. 1989).* In that case, the court considered the *Rainey* decision cited by the *Barnett* court. Obviously, the *Barnett* decision did not involve the findings of an OSHA investigator. In *Hines*, the Eleventh Circuit addressed the implications of the *Rainey* decision. Therein, the court discussed the difference between "factual" and "legal" conclusions. The court opined "legal" conclusions contained in OSHA reports would not fall within the purview of *Federal Rule of Evidence 803(8)(C)* as a "finding." The court held legal conclusions are inadmissible because the fact finder would have no way of knowing whether the preparer of the

Excerpt from Brief by Troy Lance Greene:

report was cognizant of the requirements underlying the legal conclusion and, if not, whether the preparer might have a higher or lower standard than the law requires.

The court also discussed the fact the trial court should consider the fact whether the report was trustworthy in light of *Rule 803(8)(C).* The court noted the fact the opposing party was not allowed any opportunity to cross-examine individuals making statements to the investigator could result in a finding that the report was untrustworthy. Moreover, the court also indicated that reports containing double hearsay could be properly excluded. The court also noted the fact the OSHA investigator did not testify would affect the trustworthiness of the report. (It should be noted the investigator did not testify in this case). Finally, the court noted that any report could be excluded where it is more prejudicial than probative. (Citing *Rule 402* and *403*). In the case *sub judice*, the report of the investigator contains legal conclusions that should be excluded. (Again, it should be noted these were reversed by higher authorities at OSHA). Moreover, it contains hearsay statements of individuals who are not identified and are therefore not subject to cross-examination. This alone indicates the report is not trustworthy. Finally, the investigator in question did not testify at the hearing, was not deposed, and did not authenticate his report. All of these circumstances combined lead to the inevitable conclusion that the report itself should not be admitted and should not be relied upon by the court.

Excerpt from Brief by Troy Lance Greene:

WHEREFORE, the employer would request this court deny this claim on the grounds the decedent was not an employee of the employer at the time of the accident and the employee was under the influence of marijuana and other drugs which proximately resulted in his death and the claimant's widow was not a "dependent" as outlined by Georgia law. Finally, the employer contends the OSHA report submitted by the claimant is not admissible under Georgia law.

RESPECTFULLY SUBMITTED, this 29th day of April, 2019.

ATTORNEY FOR EMPLOYER:
TROY LANCE GREENE

_____
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REFERENCE ID: [redacted]
DATE: [redacted]
CASE OF: [redacted]
CLAIM NUMBER: [redacted]
DATE OF INJURY: [redacted]

[redacted] EMPLOYEE (DECEASED)

[redacted] CLAIMANT

[redacted] EMPLOYER

[redacted] COUNSEL FOR CLAIMANT

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DEC 1 1 2019

This appeal by the Claimant is before the Appellate Division for review of an award by Judge Tifverman, dated May 21, 2019. The Employer filed a cross-appeal. This appeal and cross-appeal were heard by the Appellate Division on August 20, 2019. After a review of the record as a whole, as well as the arguments presented, the Appellate Division now adopts in part and amends in part the findings of fact, conclusions of law, and award of Judge Tifverman.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This claim arises from the accidental death of the alleged Employee. The Employer defended the claim on the grounds that the decedent was not, in fact, an employee but an independent

contractor; that the Employer did not have the requisite number of employees to render it subject to the Workers' Compensation Act; and that the fatal accident was caused by the decedent's alleged willful misconduct. The administrative law judge found that the decedent was an independent contractor and not an employee and that the Claimant did not carry her burden of proving that the Employer had three or more employees at the time of the accident. She did not make any findings regarding the willful misconduct defense, having concluded that issue was moot in light of the other findings.

The Claimant alleges, inter alia, that the administrative law judge erred in excluding from evidence certain documents identified by the Claimant as "OSHA Documents" and marked as Claimant's Exhibit 4. This exhibit consists of 100 pages of assorted materials. When the Claimant tendered the exhibit at the hearing, the Employer objected to the admissibility of certain portions of the exhibit on the grounds that they were hearsay which, subject to certain exceptions, is not admissible. O.C.G.A. S 24-8-802. The Claimant argued that the documents were not subject to exclusion, characterizing them as "an official government report where everything that is in there is a part of the report, and the findings of the investigator are certainly not hearsay. The conclusions of the investigator are certainly something that the Court should consider in this case." T. 30. The administrative law judge admitted those portions of the exhibit to which the Employer did not object and reserved ruling on the remaining portions, inviting the parties to address the admissibility issues in their post-hearing briefs, which the parties did. After considering the parties' written arguments, the administrative law judge addressed the materials in her award, finding that "Claimant's Exhibit 4 is inadmissible as the OSHA investigation and the OSHA statutes and rules are irrelevant in this workers' compensation claim." The Claimant alleges this ruling was error.

Before we reach the hearsay issue, we must first determine whether these documents were properly authenticated or identified. O.C.G.A. S 24-9-901. Rather than pursue the traditional self-authenticating method provided for by statute (O.C.G.A. S 24-9-902), the Claimant appears to contend that the documents speak for themselves. However, it is not altogether clear that these 100 pages can accurately be described as "a report," although some portions of them appear to be. After examining the materials to which the Employer objected at the hearing, we conclude that their appearance and contents are sufficient to find that they consist of various documents obtained from the Occupational Safety and Health Administration. O.C.G.A. S 24-9-901 (b)(4). We cannot, however, make any specific findings regarding whether all of the materials in Claimant's Exhibit 4 constitute a "report" or multiple "reports" in the absence of any additional identifying evidence. Some form of attestation or certification specifically identifying the various documents contained within the exhibit likely would have been helpful.

The parties do not dispute that the materials in Claimant's Exhibit 4 consist of hearsay. We agree, in part, with the Claimant that, to the extent this hearsay contains matters observed

pursuant to duty imposed by law as to which matters there was a duty to report and factual findings resulting from an investigation made pursuant to authority granted by law, Claimant's Exhibit 4 fall under the exceptions to the hearsay rule found in O.C.G.A. S 248-803(8)(B) and (C). We are not persuaded by the Employer's arguments that there is a lack of trustworthiness that would exclude the documents' admission pursuant to that statute. Accordingly, we conclude that it was error to exclude those portions of the exhibit consisting of the OSHA investigator's factual findings and matters observed by him. However, the administrative law judge properly excluded pages 81 through 89 of Claimant's Exhibit 4. Those pages consist of handwritten statements made by unidentified persons and, as such, are not subject to the above-described hearsay rule exceptions. We note, however, that the factual findings admitted pursuant to these exceptions are not binding on the Board as factfinder and must, instead, be weighed with the other evidence in the record, which includes the testimony of witnesses subject to cross-examination.

We next turn to the question of whether the preponderance of the evidence, including the factual findings made pursuant to the OSHA investigation found in Claimant's Exhibit 4, supports the administrative law judge's finding that the deceased Employee was an independent contractor and her finding that the Claimant did not carry her burden of proving that the Employer had three or more Employees. Although it is a close question, we find that the preponderance of the evidence, including that considered by the administrative law judge and those portions of Claimant's Exhibit 4 which should have been admitted, supports the factual finding that the deceased Employee was an independent contractor and not an employee. Whereas the OSHA investigator found that the Employer paid the deceased Employee and his son separately, the actual hearing evidence shows that this was done on one occasion only and that on a prior occasion, a single check was paid to the deceased Employee from which he, apparently, paid his son. Additionally, the OSHA investigator concluded that the deceased Employee's work on two different job sites indicated that the Employer was scheduling the work. The record before us, however, includes evidence that this was not a matter of controlling the time of the work to be performed but only a temporary stoppage of the deceased Employee's work due to another project's undertaking on the site, during which the deceased Employee requested additional work elsewhere. We note further that the OSHA investigator specifically reported in his summary of facts upon which he based his finding that the deceased Employee was an employee and not an independent contractor that the Employer provided "some of the more expensive equipment." He did not, however include in that summary the evidence that the deceased Employee also used his own tools.

Although the OSHA investigator's findings are admissible, and although we recognize an inherent degree of reliability therein, when taken together with the other admissible evidence in the record, we find that the Claimant did not carry her burden of proving an

employer-employee relationship and that the weight of the evidence indicates an independent contractor relationship.

In its cross-appeal, the Employer alleges that the administrative law judge erred in not finding that the Claimant's claim was barred by the deceased Employee's wrongful misconduct pursuant to O.C.G.A. S 34-9-1 7(b)(2). The administrative law judge determined that it was unnecessary to address this defense in light of her having found that the Employer was not subject to the Act and that the deceased Employee was an independent contractor. We agree with the administrative law judge's reasoning and conclude that this was not error.

Nevertheless, in reviewing the evidence, we conclude that even if the Claimant had successfully established that the deceased Employee was an employee and that the Employer was subject to the Act, the claim would be barred by O.C.G.A. S 34-9-1 7(b)(2). The evidence clearly establishes that there was THC (the active ingredient in marijuana) in the deceased Employee's blood within eight hours of the accident, as shown by chemical analysis of the deceased Employee's blood. This having been established, a statutory presumption arose that the accident and death were caused by the ingestion of marijuana.

In her brief to the administrative law judge, the Claimant asserts that there was "no evidence that the mere presence of marijuana caused the wall and roof to collapse." She also cites the 1949 case of Gen. Accident Fire & Life Assurance Corp. v. Prescott, 80 Ga. App. 421 , 56 S.E.2d 137 (1949), for the proposition that it was essential for the Employer to have shown that the death was caused by intoxication and that intoxication was the proximate cause of death. We disagree.

The Workers' Compensation Act was amended in 1994 to add a rebuttable presumption of causation when any amount of marijuana is within an employee's blood within eight hours of the accident. Ga. L. 1994, p. 887, S 2. With that amendment, once the presence of marijuana is established, an employer has sufficiently carried its burden of proof as to causation, subject to rebuttal. Beyond proving that there was any amount of marijuana in the deceased Employee's blood within eight hours of the time of the accident, the Employer need not have proved that marijuana caused the accident and death: it was, instead, the Claimant's burden to rebut the presumption by proving that it did not. "Once that presumption arises, the [claimant] then has the burden of showing by 'clear, positive, and uncontradicted' evidence that the presence of drugs was not the cause of the injury.' Lastinger v. Mill & Mach., 236 Ga. App. 430, 430-31, 512 S.E.2d 327, 328 (1999). The Claimant argues, based on the OSHA documents, that it was a lack of training and preparation that caused the accident. Even if we

accepted that those factors contributed to the accident, we find there is insufficient evidence to overcome the legal presumption that the ingestion of marijuana caused the accident and death.

Based on the foregoing, to the extent the administrative law judge made findings of fact and conclusion of law inconsistent with our findings and conclusions herein, we reverse, strike, and amend the findings of fact and conclusions of law as necessary to remain consistent and in accordance with our findings and conclusions herein. See Bankhead Enterprises v. Beavers, 267 Ga. 506, 480 S.E.2d 840 (1 997); Russ v. American Telephone & Telegraoh, 228 Ga. App. 858, 493 S.E.2d 46 (1 997); Bennett-Murrayt Inc. v. Barnes, 222 Ga. App. 137, 473 S.E.2d 166 (1996).

Finally, except as stated above, the findings of the administrative law judge in this matter are hereby accepted by the Appellate Division as such findings are supported by a preponderance of competent and credible evidence contained within the record on review. See O.C.G.A. S 34-9-103(a). The Appellate Division adopts the conclusions of law of the administrative law judge as such reflect an appropriate application of the Act to the findings of fact, except as stated above.

AWARD

Based upon the foregoing, the Appellate Division adopts the award of Judge Tifverman, dated May 21 , 2019, as its award, except as stated above. The claim for workers' compensation benefits is denied.

IT IS SO ORDERED, this the 1 Ith day of December, 2019.

Concurring: Presiding Judge Frank R. McKay and Judge Benjamin J. Vinson.

STATE BOARD OF WORKERS' COMPENSATION

This award is electronically signed and approved.

Terry H. Chastain

_____

Judge

Appellate Division

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REFERENCE ID: [redacted]
DATE: [redacted] **CASE OF:** [redacted]
CLAIM NUMBER: [redacted] **DATE OF INJURY:** [redacted]

[redacted] **DECEASED EMPLOYEE**

[redacted] **CLAIMANT**

[redacted] **EMPLOYER**

[redacted] **COUNSEL FOR EMPLOYEE**

TROY LANCE GREENE **COUNSEL FOR EMPLOYER**
P.O. DRAWER 1088
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STATEMENT OF THE CASE

A hearing took place in Millen, Georgia on March 22, 2019 at the request of Claimant who seeks payment of dependency death benefits from March 23, 2016 and continuing, medical benefits, burial expenses, penalties and assessed attorney fees. Employer defended the claim on the basis that it was not subject to the Workers' Compensation Act, the decedent was an independent contractor and not an employee, and the death was a result of the decedent's willful misconduct. Claimant has the burden of proof regarding her claim, though Employer has the burden of proof regarding the affirmative defense of willful misconduct.

Based upon a review of the entire record and consideration of the briefs filed by the parties, I find Claimant has failed to prove by a preponderance of competent and credible evidence that Employer was subject to the Act or that the decedent was an employee.

EVIDENCE

At the hearing, Claimant's Exhibit 4, documents of the Occupational Safety and Health Administration (OSHA), was tendered into evidence. Employer objected to pages 2-5, 11-12, 20-22, 28-33, and 80-89 of the 100 pages of documents on the basis that they contain hearsay statements, names of people referenced were blacked out so that it is not possible to determine the identities of those making statements, and because they contain conclusions made by the investigator. Claimant argued the documents were admissible pursuant to O.C.G.A. § 24-8-803(8)(C), an exception to the hearsay rule for public records and reports. The admissibility of the exhibit was taken under advisement to allow both counsel to address the issue in their briefs.

Having considered the arguments made by both counsel, I find that Claimant's Exhibit 4 is inadmissible as the OSHA investigation and the OSHA statutes and rules are irrelevant in this workers' compensation claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon careful consideration of the stipulations of the parties, the documents admitted into evidence, and the testimony at the hearing, I find and conclude as follows:

1. The parties stipulated to: jurisdiction of the State Board of Workers' Compensation; venue in Emanuel County, though the case was heard in Jenkins County; the parties are subject to the Workers' Compensation Act; Employer had notice of the accident; and Employee's average weekly wage was $800.00.

2. Employee, the deceased husband of Claimant, owned a construction company from 2004 to 2008. (Transcript page 8). After the financial crisis of 2008, he worked for other construction companies, performing carpentry work, building houses and doing repairs. (T.8-9; 67).

3. Employer is a company owned by J.Y. that did remodeling, flipped houses, and managed construction. (T.73-74).

4. Employee contacted J.Y. in March 2016, stating that he was a licensed contractor looking for work and asked if Employer had anything. J.Y. initially told Employee that he did not have any jobs. (T.156). When Employee called again, J.Y. told him that he had a remodeling job in Swainsboro. They met at the job site for Employee to look at the job, after which J.Y. asked what Employee would charge as a "turnkey price" with Employer providing the materials. Employee responded that he did not want to give a flat rate and instead would charge $32 per hour to provide the tools and labor. (T.75, 157). They agreed Employee would start the job the following Monday. (T.76).

5. Employer issued payment to Employee on two separate dates prior to the accident date. On March 11, 2016, one payment was made to Employee for the work he and his 23-year-old son had performed. (Claimant's Exhibit 6, page 3; T.81). On March 18, 2016, Employer issued separate checks to Employee and his son for the work they had performed. (C-6, pp.1-2).

6. On March 23, 2016, as Employee and his son were demolishing the breezeway of the Swainsboro building, a brick wall fell onto Employee. (T.19, 21). Employee died on the scene as a result of blunt force injury. (C-2, C-3, pp. 3-4).

7. The initial issue to be determined is whether Employer was subject to the Workers' Compensation Act. The Workers' Compensation Act applies to persons or companies that have regularly in service three or more employees in the same business within this state. O.C.G.A. § 34-9-2(a)(2).

8. J.Y. testified that Employer had no employees. (T.85). He had a pool of contractors he would call upon for their expertise when his company contracted to do a job. (T.155-156). He stated that the carpenters, electrician, and sheetrocker working at the job site on the accident date were independent contractors. (T.80-81).

9. If Employer is found to be subject to the Act, Claimant has the burden of proving that the decedent was working as an employee and not as an independent contractor. Goolsby v. Wilson, 150 Ga. App. 611, 258 S.E.2d 216 (1979). No benefits are payable under the Workers' Compensation Act if the injured worker was an independent contractor as opposed to an employee. O.C.G.A. § 34-9-2(e); Hartford Accident & Indemnity Company v. Parsley, 113 Ga. App. 830, 149 S.E.2d 848 (1966). A person qualifies as an independent contractor and not an employee if he meets all of the following criteria: (1) he is a party to a contract, written or implied, which intends to create an independent contractor relationship; (2) he has the right to exercise control over the time, manner, and method of the work to be performed; and (3) he is paid a set price per job or on a per unit basis, rather than on a salary or hourly basis. A person who does not meet all of these criteria shall be considered an employee unless otherwise determined by the administrative law judge to be an independent contractor. O.C.G.A. § 34-9-2(e). Any legitimate doubt as to whether the worker was an employee or an independent contractor on the accident date is to be resolved in favor of finding employment status. Ratliff v. Liberty Mutual Insurance Company, 149 Ga. App. 211, 253 S.E.2d 799 (1979).

10. There are factors upon which Claimant relies to support the position that the decedent was an employee of Employer. First, there was no written independent contractor agreement. (T.80). Second, the son contends Employer had the right to control the time, manner, and method of the execution of the work performed. The son testified that he and his father began working for Employer on a Vidalia job site, building duplexes. (T.9). The son asserted that J.Y. told them where to go, when to be there, and what to do. (T.10-11, 49). After they had spent four days framing the houses, J.Y. moved the whole crew to the remodeling job in Swainsboro, Georgia. (T.12-13). J.Y. testified, however, that Employee and his son actually started first on the Swainsboro remodeling job, but had nothing to do when the sheetrockers came in. Employee asked J.Y. whether he could do anything on the Vidalia job because he needed the work. (T.79). J.Y. responded that the job was already contracted to T.T. J.Y. asked T.T. if he needed Employee's help on the Vidalia job and T.T. said he did not, but J.Y. said he would pay Employee extra to go there so he could work and pay his bills. (T.80, 142). T.T. testified that Employee and his son were on the Vidalia job site for one day and then returned to the Swainsboro job site. (T.144, 184). Third, Employee was paid by the hour as opposed to being paid a set price per job. The son testified that Employee was paid $20 per hour and the son was paid $12 per hour. (T.23). This arrangement appears to have been at Employee's request, however, due to his

concern that his quote of a flat rate for the Swainsboro job might shortchange himself or overcharge Employer. (T.75).

11. On balance, there are more factors supporting a finding that Employee was an independent contractor. The work performed by Employee required a significant amount of skill. *See* Moss v. Central of Georgia Railroad Company, 135 Ga. App. 904, 219 S.E.2d 593 (1975). Employee had been licensed by the State of Georgia as a general contractor (T.42), a license that meant he had built a certain number of houses and was OSHA-certified (T.43). Employer did not have to train him to do any job. (T.56). Employee and his son used their own tools in performing the work. (T.33, 41, 51). *See* RBF Holding Co. v. Williamson, 260 Ga. 526, 397 S.E.2d 440 (1990). Employer paid Employee whatever Employee stated he was owed for the week, writing one check out of which Employee paid himself and his son. On the occasion J.Y. wrote separate checks to the father and son, this was after Employee requested he do so as a favor because he would not be going to the bank that week but his son would. (T.81). Employer did not make any payroll deductions from the amount paid to Employee. (T.40). *See* Teachers' Retirement System of the State of Georgia v. Forehand, 234 Ga.App. 437, 506 S.E.2d 913 (1998). Employee was free to work for other companies or persons at the time of his accident. (T.53). In fact, J.Y. testified that Employee told him he had a framing job he was starting and doors he was replacing in Lyons at the same time as his job for Employer. (T.163-164). Employee was hired to perform a specific job with a definite beginning, continuance and ending (the Swainsboro project), as opposed to being hired for indefinite employment. (T.181). *See* Employers Mutual Liability Insurance Company of Wausau v. Johnson, 104 Ga.App. 617, 122 S.E.2d 308 (1961). Employee's son did not meet J.Y. before he and his father started at the Swainsboro job, as only Employee met with J.Y. to negotiate regarding the project. (T.57, 161). I find these facts to be an indication that the parties intended to create an independent contractor relationship, in which Employee would provide the labor, rather than individual employment relationships the Employer had with the father and son. Furthermore, Employee was free to set his own hours and create his own schedule. When J.Y. asked Employee when he could start, Employee said he didn't want to start on a Friday, so he would start on Monday. (T.76). T.T. and J.Y. testified that J.Y. did not tell anyone working at the job site when to start or end work or when to take breaks. (T.137, 179-180). Regarding the work Employee and his son were performing at the time of the accident, the son testified that the two of them had decided on that day that they would "go outside and tear out the breezeway." (T.14). In addition, T.T. testified that J.Y. did not supervise those working on the job site and he never observed J.Y. tell Employee or his son how to perform their jobs. (T.127, 129). J.Y. testified that he would only do a final walk-through when the job was finished and point out if there was an obvious problem. (T.180). I find that these facts establish that Employee, not Employer, had the right to control the time, manner, and method of the execution of the work and thus was an independent contractor rather than an employee.

12. While a significant amount of testimony addressed the factors mentioned above as to Employee and his son's relationship to Employer, Claimant failed to show that any of the other individuals on the jobsite on the accident date qualified as employees. T.T. testified that he worked on the job site as a contractor (T.119), performing drywall and demolition work (T.121) with his own employee (T.134) and that there were other subcontractors on the job site as well. (T.123). Therefore, even if Claimant were able to prove that Employer employed her husband and son, she has failed to prove that Employer had a third employee in order to be subject to the Act. On this basis alone, the claim must be denied.

13. Even if Employer were subject to the Act, I find that Employee was hired as an independent contractor of the company and not an employee. For this reason as well, the claim must be denied.

14. Having found that Employer is not subject to the Workers' Compensation Act and that Employee was an independent contractor, it is not necessary to address Employer's willful misconduct defense.

AWARD

Based on the foregoing, this claim for workers' compensation benefits is denied in its entirety.

IT IS SO ORDERED, this the 21st day of May, 2019.

STATE BOARD OF WORKERS' COMPENSATION

Nicole D. Tifverman
Administrative Law Judge