

State of South Carolina  
**Workers' Compensation Commission**

**APPELLATE PANEL DECISION AND ORDER**

**COMMISSION PANEL:** The Honorable T. Scott Beck, The Honorable R. Michael Campbell, II,  
The Honorable John Gabriel Coggiola

SCWCC File No.: 2020858

John Littleton,

Claimant,

v.

B&K Services, Inc.,

Employer,

and

Accident Fund National Insurance,

Carrier,

Defendants.

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**AFFIRMED**

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Hearing held in Richland County, South Carolina,  
on November 18, 2025

Per notice timely and properly served upon all Parties of Interest.

Appearances: Brad B. Easterling, Esquire, of The Clardy Law Firm,  
appeared on behalf of Claimant/Appellant.

Amity S. Edmonds, Esquire, of Gallivan, White & Boyd,  
appeared on behalf of Defendants/ Respondents.

Court Reporter: Amber Scarborough, Creel Court Reporting, Inc.  
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Filed:

December 22, 2025

## I. STATEMENT OF THE CASE

This case was heard by Commissioner Gene McCaskill on May 24, 2023, in Columbia, South Carolina, to determine all issues pursuant to S.C. Reg. 67-601. Notices were timely and properly served upon all parties of interest at which time all parties were present for the hearing: The Claimant John G. Littleton, represented by his attorney Brad B. Easterling; and, Defendants, B&K Services Inc. (hereinafter B&K), and Accident Fund National Insurance, represented by their attorney, Amity S. Edmonds.

The Claimant contended he suffered an injury by accident to his left hand on December 10, 2020, while allegedly working as an employee of B&K. In particular, the Claimant was working as a gas pipe fitter when he sustained a laceration to his left hand after cutting it on gas piping. The Claimant denied that he was an independent contractor at the time of the accident as he contended that under the framework set forth by our Courts, the nature of the relationship between him and B&K was that of employer-employee. *See Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299 (2009) (holding four factors should be used to analyze the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire."). Accordingly, the Claimant asked the Commission to find he was entitled to all benefits afforded under the South Carolina Workers' Compensation Act as a covered employee.

It was the Claimant's position that he viewed himself as a direct employee of B&K for the majority of the 12 years he worked with them, as B&K had the right to control the Claimant in the performance of his work. The Claimant argued that in the absence of a written independent contractor agreement between the parties, the parties' daily interactions should be carefully taken into consideration. With respect to the right or exercise of control, the Claimant asserted he

routinely reported to B&K's offices, where he would receive work assignment for the day from owner, Kerry DeArmond (hereinafter Kerry). He claimed Kerry would provide the location of job sites and project specificities, and also dictate the Claimant's rate of pay. Additionally, in his time working with B&K, the Claimant noted he did not bid for any of the work he performed for B&K, including the job he was working at the time of injury. Furthermore, the Claimant testified he only worked for two other HVAC companies during his decade long history with Defendants. However, he denied ever working concurrently for any other companies while working for B&K, as he claimed B&K would not allow employees to moonlight for other HVAC companies.

The Claimant asserted he was provided with and required to wear a yellow t-shirt with B&K's logo on it, while performing any work for the company. Even if wearing the shirt was not a specific requirement, the Claimant contended B&K received a marketing benefit from its wear. The Claimant also asserted he never used his personal funds to purchase any of the supplies needed for his work assignments, as this was provided by B&K. The Claimant further contended B&K reduced his pay for jobs he worked due to him not having workers' compensation coverage, which he claimed led him to believe he was covered as an employee under B&K's workers' compensation policy.

The Claimant also claimed B&K provided him with equipment necessary to perform his job duties. While he provided some of his own smaller hand tools while working on B&K's job sites, B&K provided the larger and more expensive equipment for use such as pipe fitting machines, scissor lifts, and ladders. The Claimant acknowledged he drove his own vehicle to and from worksites in the earlier years when he began working for B&K but testified that as time went on, he began to routinely drive a van provided by B&K while on the job. He claimed he was not required to pay for its gas, taxes, or insurance. On the date of the accident, the Claimant claimed

he was driving a vehicle owned by B&K, even though he acknowledged the van had the logo "Moon & Freeman" on it, rather than B&K Services. The van was acquired by B&K when they bought Moon & Freeman. The Claimant indicated he continued to drive either a Moon & Freeman or a B&K van to job sites consistently for approximately four (4) years.

The Claimant argued the method of payment supported their position that he was an employee, as he was paid on both an hourly and lump sum per project basis. The Claimant argued payment "on a time basis is a strong indication of the status of employment while payment on a completed project basis is indicative of independent contractor status." *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 480 (2013) (quoting 3 *Larsons's Workers' Compensation Law* §61.06). According to the Claimant, on multiple occasions he was paid on a time basis, rather than a completed project basis, as he had to submit his hours to B&K's accountant, Martha Lanham, in order to be paid. His hourly work was paid at a rate of \$20.00 per hour, with the rate of pay being solely determined by B&K. While the Claimant acknowledged he was always paid by B&K on a 1099 basis, he argued this was merely for tax purposes, and did not define the existence of an independent contractor relationship.

Regarding the fourth prong of the employment test, the Claimant believed he could be fired by B&K at a moment's notice, and he did not have the right to refuse work. Additionally, Claimant argued the right to terminate a working relationship hinged on whether the independent contractor "has the legal right to complete the project." *Id.*, 406 S.C. at 481 (quoting 3 *Larsons's Workers' Compensation Law* §61.08 [1]). To support this position, the Claimant contended that at one point Kerry DeArmond had in fact terminated him from B&K, but he ultimately was re-hired. As such, he argued this further supported his position that he was a direct employee of B&K at the time of his accident.

Defendants, on the other hand, argued the preponderance of the evidence established the Claimant was not an “employee,” as defined under Section §42-1-30, but rather an excluded independent contractor and therefore, he was not entitled to coverage under the Act. Relying on *Young v. Warr*, Defendants contended “in the absence of a statutory provision to the contrary, an injured person who is not an employee, but an independent contractor for the work, is not within the course and scope of the Act.” *Young v. Warr*, 252 S.C. 179 (1969). Furthermore, while workers’ compensation laws are to be construed liberally in favor of coverage, our Courts have consistently held “that principle, however, does not go so far as to justify an analytical framework that preordains the result.” *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 300-301, (2009).

B&K is a family-owned residential and commercial provider of HVAC services, based out of Greenville, South Carolina. At the time of the Claimant's accident, B&K employed roughly 25 direct employees in addition to various independent subcontractors, including the Claimant, in an effort to meet the contractual demands of their clients. It was Defendants' position that analyzing the four-factor test prescribed by *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299 (2009), clearly evidences an intent for the Claimant to operate as an independent subcontractor for B&K. Of particular importance was the undisputed fact that the Claimant hired and fired his own employees, one of whom was working for him on the date of the accident and had been his direct employee consistently for at least 7 months. Beyond that, testimony from multiple witnesses presented at the hearing established there had been extensive discussions with the Claimant over the years, wherein he acknowledged he was a subcontractor for B&K rather than an employee.

Defendants pointed out that during his time working with B&K, the Claimant admittedly hired and fired his own employees to assist him with projects for B&K. He confirmed he dictated his employees' schedules, paid them directly, and directed the manner in which they worked. In fact, during the Claimant's deposition, he specifically testified he personally "paid everyone that has ever worked for me." (Claimant's Depo. Tr. 48: 2-9). Importantly, there was no credible evidence to suggest B&K had the right to exercise any control over the Claimant's employees whom he used on B&K jobs. This was confirmed by testimony of Randy Webb, B&K's financial comptroller, who testified the Claimant hired and fired his own employees and was responsible for paying them directly. (Webb Depo. Tr., pp. 51 :20-12). At no point did B&K issue any payroll documentation for any of the Claimant's employees, vet their backgrounds, or consent to any of the employees brought on by the Claimant. *Id.* Given the Claimant was himself an employer at the time of his accident, Defendants argued it was inconceivable that he could have believed he was an employee of B&K.

Likewise, Defendants argued the way in which the Claimant performed services for B&K was consistent with that of an independent subcontractor and evidenced B&K's lack of right to exercise control over him. Specifically, Defendants contended the Claimant directed the manner in which he worked on a daily basis without much oversight by B&K, beyond ensuring he was meeting their contractual benchmarks and deadlines. He was not required to report to B&K daily, even though their employees were required to do so. The Claimant was free to set his own schedule, and also chose whether to accept or decline work offered to him by B&K, which evidenced a lack of control on B&K's part. Defendants further contended the Claimant differed from direct employees of B&K since he did not have purchase order authority and would have to contact B&K to request a subcontractor purchase order, whereas direct employees had purchasing

power without the need for authorization from B&K. Put simply, Defendants argued there was not sufficient evidence establishing B&K had the right to control the manner and method in which the Claimant performed his work to establish an employer-employee relationship.

With regard to furnishing equipment, Defendants contended this factor weighed in favor of an independent contractor relationship, as the evidence established the Claimant provided his own tools and ladders, including more costly tools such as a \$400.00 to \$500.00 roto hammer. On the other hand, B&K employees are supplied with all necessary tools. Additionally, while the Claimant was driving a borrowed van owned by B&K at the time of the accident, the Claimant admitted in his deposition he paid for gas and put tires on the vehicles he borrowed from B&K, which is inconsistent with him being a B&K employee, as transportation expenses for B&K employees were provided entirely by B&K.

Defendants also argued that the method of payment strongly supported a finding of an independent contractor status. The Claimant was admittedly paid on a 1099 basis. He also completed a W9 for B&K on March 2, 2020, which is the IRS form provided by self-employed individuals or independent contractors to a business for purposes of securing payment. Likewise, according to records from SCDEW, dated September 9, 2021, they were unable to locate any wage or unemployment information on the Claimant, which further showed he had not reported any wages as an employee to the State of South Carolina.

For work performed by the Claimant on behalf of B&K, Defendants argued the uncontroverted evidence established the Claimant was always paid based on a contractual amount consistent with the contract B&K had with their own customers. The amount and manner of pay he was offered per job was pre-determined by the contractual agreement B&K entered into with their customers, whether it be on a completed project basis or a time and materials basis. While he

was paid a per-hour amount on jobs where B&K's contract with their customer was on a time and materials basis, any hourly amounts paid to the Claimant were based on a pre-negotiated lump sum hourly amount of \$32.00, out of which the Claimant paid his own employees. Moreover, all of his pay requests were submitted to B&K on a form titled, "Subcontractor Payment Request," which outlined the specific job name, the total contract amount agreed upon between B&K and the Claimant, and the amount requested, as well as a summary of the work performed. Accordingly, Defendants submitted that the method of payment factor weighed heavily in favor of an independent contractor status.

Defendants also argued the fourth factor, the right to fire, proved the Claimant was an independent contractor. While the Claimant claimed he could have been fired by B&K, the overwhelming evidence established B&K only had the right to choose not to engage with the Claimant for future projects, as they could not "fire" him from a job he had already begun to undertake on behalf of B&K. Furthermore, while B&K had a strict policy against employees moonlighting and working for another HVAC company, multiple witnesses testified the Claimant worked for other HVAC companies while simultaneously working for B&K. Defendants also proffered a voice recording of the Claimant wherein he could be heard telling a Geico adjuster in no uncertain terms that he was a self-employed HVAC contractor working for three (3) different companies. Given the uncontradicted testimony that B&K strictly prohibited their employees from working for multiple HVAC companies at one time, and the Claimant's own admission he was in fact working for three (3) different HVAC companies during the time he was doing work for B&K, Defendants argued the evidence clearly demonstrated B&K did not have the right to fire the Claimant.

Accordingly, Defendants argued that based on the preponderance of the evidence, the Claimant was an independent contractor, who was also a sole proprietor, and he was therefore excluded from coverage under the Act. Beyond that, as a sole proprietor, the Claimant would have had to elect to be included in coverage as required under S.C. § 42-1-130, and there simply was no evidence he had done so. Taking all of those factors into account, Defendants contended the Commission does not have jurisdiction over the claim and request the Commission deny his request for benefits.

On May 24, 2023, a hearing was held before the single commissioner, and on May 5, 2025, the single commissioner issued an order in which they found that (1) the Claimant failed to establish by a greater weight of the evidence that he was an employee of the Defendant at the time of his December 10, 2020 accident, (2) the Claimant failed to meet his burden of proving entitlement to any benefits under the Act, and (3) the Claimant was not entitled to workers' compensation benefits of whatsoever nature or kind under the Act.

On May 19, 2025, Claimant filed an appeal, claiming that the single commissioner erred in finding that the Claimant had failed to establish by a preponderance of the evidence that Claimant was an employee of the Defendant at the time of the injury, ordering that the Claimant failed to meet his burden of proving entitlement to any benefits under the Act, and ordering that the Claimant was not entitled to any workers' compensation benefits of any kind. A hearing was held before the appellate panel on November 18, 2025. We affirm the decision of the single commissioner.

## II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

The verbatim findings of fact and conclusions of law in the appealed order of the single commissioner are as follows:

### Single Commissioner Findings of Fact

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended to date, with B&K Services as the alleged employer; Accident Fund National Insurance Company as carrier; and the Claimant as the alleged employee.

2. The South Carolina Workers' Compensation Commission has jurisdiction to hear the Claimant's claim for benefits.

3. Venue in Richland County, South Carolina, is proper.

4. The purpose of the hearing was to determine the issues pursuant to Reg. 67-601. Specifically, the Claimant alleged he was a covered employee subject to the Act at the time of his December 10, 2020, accident and, as such, requested an Order finding he is entitled temporary total disability benefits, medical benefits, and permanent disability. Defendants denied the Claimant was a covered employee pursuant to S.C. Code § 42-1-130, as he was an independent contractor and, therefore, sought an Order denying any benefits under the Act.

5. The Defendant, B&K Services, is a heating and air conditioning company which worked with the Claimant for more than 10 years.

6. The Claimant suffered a laceration injury to his left hand while performing work for B&K as a gas pipe fitter.

7. Based upon the testimony and evidence as a whole, I find that at the time of the Claimant's accident, he was working on a project for B&K as an independent contractor. This

finding is based on the greater weight of the evidence establishing the Claimant was working with an employee of his own, Michael Harrison, whom he hired, managed, and paid. In fact, the Claimant admitted to hiring two employees in 2020, both of which worked for him on a full-time basis. Having his own employees whom he hires, fires, and pays, is inconsistent with the Claimant's allegation that he was an employee of B&K. Moreover, there is no evidence to establish B&K had the right to exercise any control over the Claimant in the manner and method of his work, or his employee at the time of the accident.

8. Under well settled law, "the determination of whether a Claimant is an employee or independent contractor focuses on the issue of control, specifically whether the purported employer had the right to control the Claimant in the performance of his work." *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009). Under the controlling common law rubric of the right of control, "the Court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire." *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013) (citing *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009)).

9. After considering the direct evidence of Defendants' right to control the Claimant in performance of his work, pursuant to the first prong of the four-prong test in *Shatto v. McLeod Reg'l Med Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013), I find as fact this prong favors the Claimant's status as an independent contractor. Specifically, the Claimant had his own employees working under him, which Defendant seemed to have little, to no, control over. The Claimant told his employees the specific days/times they needed to work and directed them in the manner of their work.

10. While there was conflicting testimony as to whether the Claimant was required to wear at-shirt offered to him by B&K with their Defendant's logo on it while working, I find the greater weight of the evidence, including the testimony of Kerry DeArmond and Maurice DeArmond, establishes he was not required to wear a B&K shirt but, rather, was free to wear anything he chose as long as it complied with OSHA's requirement of being safety yellow or safety orange. The Claimant chose to wear a B&K shirt, but this was not a requirement and even though B&K may have realized some brand recognition based on the Claimant's choice, this is not sufficient to prove he was an employee at the time of his injury.

11. Moreover, the Claimant had different purchasing authority than Defendant's employees, which further evidences a lack of right to control the Claimant. The Claimant himself admitted he was required to obtain prior approval and a purchase order from Defendants before making any purchases, whereas Defendant's employees were provided with a purchase log which allowed them to make purchases on behalf of B&K without prior approval.

12. Furthermore, Defendant was not directly in control of the Claimant during the performance of his work beyond periodically checking in and assessing his work to ensure he was on pace to complete the work timely consistent with Defendants' contracts. As with all contractor-subcontractor arrangements, there is a certain level of oversight during the pendency of the contract needed to ensure the subcontractor is meeting his obligations to complete the work timely. That does not, however, rise to the level of exercising control over the performance of work.

13. The greater weight of the evidence establishes the Claimant understood he was a subcontractor for work he performed for B&K. This finding is based on the greater weight of testimonial evidence, as well as: (1) the fact that the Claimant had previously obtained his own workers' compensation policy; (2) the Claimant's signature on various "Subcontractor Payment

Request Forms"; and, (3) the Claimant's own voice recording wherein he admitted to a Geico adjuster that he was a self-employed contractor for multiple businesses during the same timeframe he alleges he believed he was a direct employee of B&K. Moreover, the testimony of Kerry DeArmond, Maurice DeArmond, Jeff Harraway, and Randy Webb all confirmed they had express discussions with the Claimant over the years wherein he directly acknowledged his status as a subcontractor.

14. Likewise, I find the Claimant dictated his own schedule and chose when he wanted to work. Although the Claimant disputed this, the greater weight of the credible evidence, including the testimony of Kerry DeArmond, Maurice DeArmond, Jeff Harraway, and Randy Webb all established the Claimant dictated his schedule, as well as that of his employees. This supports my finding that Defendant did not have control over the manner and performance of the Claimant's work.

15. The greater weight of the evidence also established the Claimant worked for other HVAC companies as an independent contractor while working for B&K, which was a fact known to Kerry DeArmond and Maurice DeArmond. Defendant's employees were strictly prohibited from "moonlighting" or working "side jobs." At the hearing, the Claimant admitted he worked side jobs. This evidences a lack of right to exercise control over the Claimant by Defendant.

16. As to the second prong of *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013), which addresses the furnishing of equipment, I find this prong favors the Claimant's status as an independent contractor. The Claimant admits he provided his own hand tools and also admitted he paid for maintenance and fuel for the vehicles he drove for work. Moreover, the fact that Defendant furnished expensive equipment to its contractors simply makes economic sense for all parties and does not indicate an employment relationship. Furthermore,

Defendant's decision to lend the Claimant a spare company vehicle when the Claimant had trouble with his own vehicle is most likely attributable to the personal relationship between the Claimant and Defendant rather than an employer-employee relationship. This is further supported by the uncontradicted evidence that Defendant's employees, unlike the Claimant, were provided company vehicles with all maintenance and fuel being paid for by Defendant. Additionally, the Claimant admitted he was never issued a uniform like that provided to employees of Defendant.

17. As to the third prong of the *Shatto* test, which addresses the method of payment, I find this prong favors the Claimant's status as an independent contractor. This is largely due to the issuance of Form 1099s and the absence of a W-2. While it is true pursuant to *Paschal v. Price*, 380 S.C. 419, 433, 670 S.E.2d 374, 382 (overruled by *Wilkinson* on other grounds), the issuance of a 1099 is not necessarily dispositive of the Claimant's status, it can still be a leading piece of evidence in determining that this prong supports a finding of contractor status. The distinction made in *Paschal* and *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 307, 676 S.E.2d 700,706 (2009), is that the four prongs of the *Shatto* test must be weighed in an evenhanded manner. Therefore, this consideration is not enough to decide the result of the entire four-part test, but it can be enough to decide the result of a single prong.

18. Additionally, the evidence establishes the Claimant was paid pursuant to a "Subcontractor Payment Request" form, which he submitted to Defendant for payment on a weekly basis. Importantly, these forms show the Claimant made requests for draws from the contractual amount based upon the percentage of work he had completed. Our Courts have held that payment on a time basis is a strong indication of the status of employment, while payment on a completed project basis is indicative of independent contractor status. See *Sellers v. Tech Service, Inc.*, 421 S.C.30 (Ct. App. 2017). The Claimant also confirmed his payment was based on completion of a

project and if he did not complete a job he accepted from Defendant, he would not be paid until he had finished or completed the project. (Claimant's Depo. Tr., p. 56:8-23). The Claimant also confirmed that on jobs where his pay was a lump sum based on completion of a job, he was paid the pre-determined amount whether it took him two (2) hours or five (5) hours to complete. (Claimant's Depo. Tr., p. 45:8-20). Lastly, the greater weight of the testimonial evidence established the Claimant not only had the right to negotiate pay with Defendant, he did in fact do so on multiple occasions.

19. Furthermore, according to records from SCDEW submitted into evidence, dated September 9, 2021, they were unable to locate any wage or unemployment information for the Claimant, which further shows he has not reported any wages to the State of South Carolina as an employee. Accordingly, I find the method of payment factors weighs in favor of an independent contractor status.

20. With regard to the fourth and final prong of the *Shatto* test, which addresses the right to fire, I find this prong favors the Claimant's status as an independent contractor. Defendant is likely best situated to know whether Defendant had the power to fire the Claimant. Defendant's witnesses testified that while they could certainly choose not to rehire the Claimant for future jobs, they did not have the complete right to fire the Claimant from a job he had already accepted. Also, while the Claimant testified he believed he could be fired by Defendants, he confirmed that he had never been fired by B&K at any point. Importantly, multiple witnesses confirmed that if Defendant's employees were found to be concurrently working for competitors or doing side work they would be fired, as B&K had a strict policy against this. However, multiple witnesses confirmed Defendant was aware the Claimant worked for himself and other HVAC companies during the time he worked with Defendant, yet he was never fired.

21. Weighing all of these prongs together in the even-handed manner prescribed by *Wilkinson v. Palmetto State Transp. Co.*, I find as fact based upon all the evidence in the record, including testimony at the hearing and deposition testimony of multiple witnesses, the Claimant's status more closely resembles that of a sole proprietor and independent contractor.

22. At the time of the Claimant's accident, because he was engaged in the type of work undertaken by Defendant, I find he was a "subcontractor" as defined by S.C. Code § 42-1-400. He employed his own employee(s), and was engaged in the type of work undertaken by Defendant. Accordingly, while the Claimant's employees would qualify as statutory employees of Defendant pursuant to § 42-1-400, as an independent sole proprietor contractor at the time of his accident.

23. As a sole proprietor, I find the Claimant is excluded from coverage under the Workers' Compensation Act unless he elected to be covered and put the insurer on notice pursuant to S.C. Code § 42-1-130. Based on the facts of this case and all of the evidence of record, there is no evidence the Claimant elected to opt into coverage under the Workers' Compensation Act. Therefore, he is not subject to workers' compensation-coverage and the Commission does not have jurisdiction over his claim.

24. Even if the Claimant did not qualify as a subcontractor pursuant to S.C. Code § 42-1-400, I find that he is an independent contractor based upon the four-prong test in *Shatto*, and, therefore, is not a covered employee under S.C. Code § 42-1-130. Regarding Defendant's right to control the Claimant, I find he is an independent contractor who is excluded from coverage under the Act.

25. Therefore, the Commission lacks jurisdiction of this claim. Since the Commission lacks jurisdiction of this claim, there is no need for an analysis of the Claimant's average weekly wage and compensation rate.

26. In light of the foregoing, I find as fact that the Claimant is not entitled to any workers' compensation benefits of any kind.

Single Commissioner Conclusions of Law

1. Under S.C. Code § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.

2. Under S.C. Code § 42-1-140, the employer was a covered employer.

3. Under S.C. Code § 42-1-130, the Claimant was not a covered employee.

4. Under S.C. Code § 42-1-150, an employee/employer relationship between the parties did not exist at the time of the Claimant's accident.

5. Under S.C. Code § 42-17-20, venue in Richland County, South Carolina is proper and agreed to by the parties.

6. Under S.C. Code § 1-23-320(b), and Reg. 67-607, notice of the hearing was timely and properly served upon all parties of interest.

7. Pursuant to S.C. Code § 42-1-130 and *Ramirez v. May River Roofing Inc.*, 433 S.C. 519, 526, 860 S.E.2d 680, 684 (Ct. App. 2021), I find the preponderance of the evidence establishes the Claimant was a sole proprietor who would have had to opt into workers' compensation coverage. Based on a preponderance of the evidence presented at the hearing, the Claimant has failed to meet his burden of proof showing he elected to opt into coverage under the Workers' Compensation Act. Therefore, he is not subject to workers' compensation coverage.

8. Furthermore, pursuant to S.C. Code § 42-1-130 and the four-factor test outlined by *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013) (citing *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009)), I find the preponderance of the evidence establishes the Claimant was an independent contractor at

the time of his accident and there was no employer-employee or master-servant relationship in existence between the Claimant and Defendant at the time of the Claimant's accident. Therefore, the Claimant was not a covered employee and the Commission does not have jurisdiction over his claim.

9. Under S.C. Code § 42-1-400 and based on a preponderance of evidence at the hearing, the Claimant was engaged in the type of work undertaken by Defendant at the time of his accident and, therefore, he was a "subcontractor" as defined by this statute section. Pursuant to this section, only the Claimant's employees, not the Claimant himself as a subcontractor, would qualify as a statutory employee of Defendant. Since the Claimant was an independent contractor at the time of his accident, he is excluded from coverage under the Workers' Compensation Act.

### **III. ISSUES ON APPEAL**

1. Did the single commissioner err in finding that the Claimant had not met his burden of proof to establish that Claimant was an employee at the time of the accident?
2. Did the single commissioner err in finding that the Claimant failed to meet his burden of proof to establish he was entitled to any workers' compensation benefits?
3. Did the single commissioner err in ordering that the Claimant was not entitled to any workers' compensation benefits of any kind?

### **IV. DECISION OF THE APPELLATE PANEL**

#### Appellate Panel's Findings of Fact

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended to date, with B&K Services. as the

alleged employer; Accident Fund National Insurance Company as carrier; and the Claimant as the alleged employee.

2. The South Carolina Workers' Compensation Commission has jurisdiction to hear the Claimant's claim for benefits.

3. Venue in Richland County, South Carolina, is proper.

4. The purpose of the hearing was to determine the issues pursuant to Reg. 67-601. Specifically, the Claimant alleged he was a covered employee subject to the Act at the time of his December 10, 2020, accident and, as such, requested an Order finding he is entitled temporary total disability benefits, medical benefits, and permanent disability. Defendants denied the Claimant was a covered employee pursuant to S.C. Code § 42-1-130, as he was an independent contractor and, therefore, sought an Order denying any benefits under the Act.

5. The Defendant, B&K Services, is a heating and air conditioning company which worked with the Claimant for more than 10 years.

6. The Claimant suffered a laceration injury to his left hand while performing work for B&K as a gas pipe fitter.

7. Based upon the testimony and evidence as a whole, we find that at the time of the Claimant's accident, he was working on a project for B&K as an independent contractor. This finding is based on the greater weight of the evidence establishing the Claimant was working with an employee of his own, Michael Harrison, whom he hired, managed, and paid. In fact, the Claimant admitted to hiring two employees in 2020, both of which worked for him on a full-time basis. Having his own employees whom he hires, fires, and pays, is inconsistent with the Claimant's allegation that he was an employee of B&K. Moreover, there is no evidence to establish

B&K had the right to exercise any control over the Claimant in the manner and method of his work, or his employee at the time of the accident.

8. Under well settled law, "the determination of whether a Claimant is an employee or independent contractor focuses on the issue of control, specifically whether the purported employer had the right to control the Claimant in the performance of his work." *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009). Under the controlling common law rubric of the right of control, "the Court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire." *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013) (citing *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009)).

9. After considering the direct evidence of Defendants' right to control the Claimant in performance of his work, pursuant to the first prong of the four-prong test in *Shatto v. McLeod Reg'l Med Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013), we find as fact this prong favors the Claimant's status as an independent contractor. Specifically, the Claimant had his own employees working under him, which Defendant seemed to have little, to no, control over. The Claimant told his employees the specific days/times they needed to work and directed them in the manner of their work.

10. While there was conflicting testimony as to whether the Claimant was required to wear at-shirt offered to him by B&K with their Defendant's logo on it while working, we find the greater weight of the evidence, including the testimony of Kerry DeArmond and Maurice DeArmond, establishes he was not required to wear a B&K shirt but, rather, was free to wear anything he chose as long as it complied with OSHA's requirement of being safety yellow or safety

orange. The Claimant chose to wear a B&K shirt, but this was not a requirement and even though B&K may have realized some brand recognition based on the Claimant's choice, this is not sufficient to prove he was an employee at the time of his injury.

11. Moreover, the Claimant had different purchasing authority than Defendant's employees, which further evidences a lack of right to control the Claimant. The Claimant himself admitted he was required to obtain prior approval and a purchase order from Defendants before making any purchases, whereas Defendant's employees were provided with a purchase log which allowed them to make purchases on behalf of B&K without prior approval.

12. Furthermore, Defendant was not directly in control of the Claimant during the performance of his work beyond periodically checking in and assessing his work to ensure he was on pace to complete the work timely consistent with Defendants' contracts. As with all contractor-subcontractor arrangements, there is a certain level of oversight during the pendency of the contract needed to ensure the subcontractor is meeting his obligations to complete the work timely. That does not, however, rise to the level of exercising control over the performance of work.

13. The greater weight of the evidence establishes the Claimant understood he was a subcontractor for work he performed for B&K. This finding is based on the greater weight of testimonial evidence, as well as: (1) the fact that the Claimant had previously obtained his own workers' compensation policy; (2) the Claimant's signature on various "Subcontractor Payment Request Forms"; and, (3) the Claimant's own voice recording wherein he admitted to a Geico adjuster that he was a self-employed contractor for multiple businesses during the same timeframe he alleges he believed he was a direct employee of B&K. Moreover, the testimony of Kerry DeArmond, Maurice DeArmond, Jeff Harraway, and Randy Webb all confirmed they had express

discussions with the Claimant over the years wherein he directly acknowledged his status as a subcontractor.

14. Likewise, we find the Claimant dictated his own schedule and chose when he wanted to work. Although the Claimant disputed this, the greater weight of the credible evidence, including the testimony of Kerry DeArmond, Maurice DeArmond, Jeff Harraway, and Randy Webb all established the Claimant dictated his schedule, as well as that of his employees. This supports my finding that Defendant did not have control over the manner and performance of the Claimant's work.

15. The greater weight of the evidence also established the Claimant worked for other HVAC companies as an independent contractor while working for B&K, which was a fact known to Kerry DeArmond and Maurice DeArmond. Defendant's employees were strictly prohibited from "moonlighting" or working "side jobs." At the hearing, the Claimant admitted he worked side jobs. This evidences a lack of right to exercise control over the Claimant by Defendant.

16. As to the second prong of *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013), which addresses the furnishing of equipment, we find this prong favors the Claimant's status as an independent contractor. The Claimant admits he provided his own hand tools and also admitted he paid for maintenance and fuel for the vehicles he drove for work. Moreover, the fact that Defendant furnished expensive equipment to its contractors simply makes economic sense for all parties and does not indicate an employment relationship. Furthermore, Defendant's decision to lend the Claimant a spare company vehicle when the Claimant had trouble with his own vehicle is most likely attributable to the personal relationship between the Claimant and Defendant rather than an employer-employee relationship. This is further supported by the uncontradicted evidence that Defendant's employees, unlike the Claimant,

were provided company vehicles with all maintenance and fuel being paid for by Defendant. Additionally, the Claimant admitted he was never issued a uniform like that provided to employees of Defendant.

17. As to the third prong of the *Shatto* test, which addresses the method of payment, we find this prong favors the Claimant's status as an independent contractor. This is largely due to the issuance of Form 1099s and the absence of a W-2. While it is true pursuant to *Paschal v. Price*, 380 S.C. 419, 433, 670 S.E.2d 374, 382 (overruled by *Wilkinson* on other grounds), the issuance of a 1099 is not necessarily dispositive of the Claimant's status, it can still be a leading piece of evidence in determining that this prong supports a finding of contractor status. The distinction made in *Paschal* and *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 307, 676 S.E.2d 700,706 (2009), is that the four prongs of the *Shatto* test must be weighed in an evenhanded manner. Therefore, this consideration is not enough to decide the result of the entire four-part test, but it can be enough to decide the result of a single prong.

18. Additionally, the evidence establishes the Claimant was paid pursuant to a "Subcontractor Payment Request" form, which he submitted to Defendant for payment on a weekly basis. Importantly, these forms show the Claimant made requests for draws from the contractual amount based upon the percentage of work he had completed. Our Courts have held that payment on a time basis is a strong indication of the status of employment, while payment on a completed project basis is indicative of independent contractor status. See *Sellers v. Tech Service, Inc.*, 421 S.C.30 (Ct. App. 2017). The Claimant also confirmed his payment was based on completion of a project and if he did not complete a job he accepted from Defendant, he would not be paid until he had finished or completed the project. (Claimant's Depa. Tr., p. 56:8-23). The Claimant also confirmed that on jobs where his pay was a lump sum based on completion of a job, he was paid

the pre-determined amount whether it took him two (2) hours or five (5) hours to complete. (Claimant's Depo. Tr., p. 45:8-20). Lastly, the greater weight of the testimonial evidence established the Claimant not only had the right to negotiate pay with Defendant, he did in fact do so on multiple occasions.

19. Furthermore, according to records from SCDEW submitted into evidence, dated September 9, 2021, they were unable to locate any wage or unemployment information for the Claimant, which further shows he has not reported any wages to the State of South Carolina as an employee. Accordingly, we find the method of payment factors weighs in favor of an independent contractor status.

20. With regard to the fourth and final prong of the *Shatto* test, which addresses the right to fire, we find this prong favors the Claimant's status as an independent contractor. Defendant is likely best situated to know whether Defendant had the power to fire the Claimant. Defendant's witnesses testified that while they could certainly choose not to rehire the Claimant for future jobs, they did not have the complete right to fire the Claimant from a job he had already accepted. Also, while the Claimant testified he believed he could be fired by Defendants, he confirmed that he had never been fired by B&K at any point. Importantly, multiple witnesses confirmed that if Defendant's employees were found to be concurrently working for competitors or doing side work they would be fired, as B&K had a strict policy against this. However, multiple witnesses confirmed Defendant was aware the Claimant worked for himself and other HVAC companies during the time he worked with Defendant, yet he was never fired.

21. Weighing all of these prongs together in the even-handed manner prescribed by *Wilkinson v. Palmetto State Transp. Co.*, we find as fact based upon all the evidence in the record,

including testimony at the hearing and deposition testimony of multiple witnesses, the Claimant's status more closely resembles that of a sole proprietor and independent contractor.

22. At the time of the Claimant's accident, because he was engaged in the type of work undertaken by Defendant, we find he was a "subcontractor" as defined by S.C. Code § 42-1-400. He employed his own employee(s), and was engaged in the type of work undertaken by Defendant. Accordingly, while the Claimant's employees would qualify as statutory employees of Defendant pursuant to § 42-1-400, as an independent sole proprietor contractor at the time of his accident.

23. As a sole proprietor, we find the Claimant is excluded from coverage under the Workers' Compensation Act unless he elected to be covered and put the insurer on notice pursuant to S.C. Code § 42-1-130. Based on the facts of this case and all of the evidence of record, there is no evidence the Claimant elected to opt into coverage under the Workers' Compensation Act. Therefore, he is not subject to workers' compensation-coverage and the Commission does not have jurisdiction over his claim.

24. Even if the Claimant did not qualify as a subcontractor pursuant to S.C. Code § 42-1-400, we find that he is an independent contractor based upon the four-prong test in *Shatto*, and, therefore, is not a covered employee under S.C. Code § 42-1-130. Regarding Defendant's right to control the Claimant, we find he is an independent contractor who is excluded from coverage under the Act.

25. Therefore, the Commission lacks jurisdiction of this claim. Since the Commission lacks jurisdiction of this claim, there is no need for an analysis of the Claimant's average weekly wage and compensation rate.

26. In light of the foregoing, we find as fact that the Claimant is not entitled to any workers' compensation benefits of any kind.

### Appellate Panel's Conclusions of Law

Based on the foregoing findings of fact, the undersigned commissioners make the following conclusions of law:

1. Under S.C. Code § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under S.C. Code § 42-1-140, the employer was a covered employer.
3. Under S.C. Code § 42-1-130, the Claimant was a not a covered employee.
4. Under S.C. Code § 42-1-150, an employee/employer relationship between the parties did not exist at the time of the Claimant's accident.
5. Under S.C. Code § 42-17-20, venue in Richland County, South Carolina is proper and agreed to by the parties.
6. Under S.C. Code § 1-23-320(b), and Reg. 67-607, notice of the hearing was timely and properly served upon all parties of interest.
7. Pursuant to S.C. Code § 42-1-130 and *Ramirez v. May River Roofing Inc.*, 433 S.C. 519, 526, 860 S.E.2d 680, 684 (Ct. App. 2021), we find the preponderance of the evidence establishes the Claimant was a sole proprietor who would have had to opt into workers' compensation coverage. Based on a preponderance of the evidence presented at the hearing, the Claimant has failed to meet his burden of proof showing he elected to opt into coverage under the Workers' Compensation Act. Therefore, he is not subject to workers' compensation coverage.
8. Furthermore, pursuant to S.C. Code § 42-1-130 and the four-factor test outlined by *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013) (citing *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009)), we find the preponderance of the evidence establishes the Claimant was an independent contractor at

the time of his accident and there was no employer-employee or master-servant relationship in existence between the Claimant and Defendant at the time of the Claimant's accident. Therefore, the Claimant was not a covered employee and the Commission does not have jurisdiction over his claim.

9. Under S.C. Code § 42-1-400 and based on a preponderance of evidence at the hearing, the Claimant was engaged in the type of work undertaken by Defendant at the time of his accident and, therefore, he was a "subcontractor" as defined by this statute section. Pursuant to this section, only the Claimant's employees, not the Claimant himself as a subcontractor, would qualify as a statutory employee of Defendant. Since the Claimant was an independent contractor at the time of his accident, he is excluded from coverage under the Workers' Compensation Act.

#### **ORDER**

Based on the preceding findings of fact and conclusions of law,

**IT IS HEREBY ORDERED** that the Claimant has failed to establish by a greater weight of the evidence that he was an employee of the Defendant at the time of his December 10, 2020, accident, pursuant to S.C. Code § 42-1-130 and *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013) (citing *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 792 (2009)).

**IT IS FURTHER ORDERED** that that the Claimant has failed to meet his burden of proving entitlement to any benefits under the Act, including medical or disability benefits.

**IT IS FURTHER ORDERED** that the Claimant shall not be entitled to workers' compensation benefits of whatsoever nature or kind under the Act, and his claim is denied and dismissed.

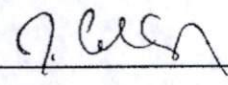
**AND SO IT IS ORDERED.**



T. Scott Beck, Commissioner



R. Michael Campbell, II, Commissioner



John Gabriel Coggiola, Commissioner

Date

Columbia, SC

**Appellate Panel Decision and Order**

<p><b>Served via E-Mail:</b></p> <p>Amity S. Edmonds, Esquire <a href="mailto:aedmonds@gwblawfirm.com">aedmonds@gwblawfirm.com</a></p> <p>Timothy A. Nowacki, Esquire <a href="mailto:tim@theclardylawfirm.com">tim@theclardylawfirm.com</a></p> <p>Brad B. Easterling, Esquire <a href="mailto:bbe@theclardylawfirm.com">bbe@theclardylawfirm.com</a></p> <p>James Bonner Snyder, Esquire <a href="mailto:bonner@theclardylawfirm.com">bonner@theclardylawfirm.com</a></p>	
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**Via USPS:**

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

**December 22, 2025**

**By: Valerie D. Deller, Judicial Department**