BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TIFFANIE WILLIAMS Claimant V. **KC CARES HANDYMAN, LLC** Respondent AND **INSURANCE COMPANY UNKNOWN** Insurance Carrier AND **DIVISIONS, INC.** Respondent AND **CONTINENTAL CASUALTY COMPANY** Insurance Carrier AND **KANSAS WORKERS COMPENSATION FUND**	)	AP-00-0495-890 CS-00-0493-575

ORDER

The respondent, Divisions, Inc., (Divisions) and its insurance carrier, Continental Casualty Company, through Kevin Johnson, requested review of Administrative Law Judge (ALJ) Ali Marchant's preliminary hearing Order dated April 16, 2026. Gabrielle Altenor appeared for the claimant. Terry Torline appeared for the respondent, KC Cares Handyman, LLC (KC Cares). John Nodgaard appeared for the Kansas Workers Compensation Fund (Fund).

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the: (1) preliminary hearing transcript, held April 1, 2026, with the claimant's Exhibits A-G[1], KC Cares' Exhibits 1-5, and Fund's Exhibit 1; (2) preliminary hearing transcript, held April 8, 2026; and documents of record filed with the Division, including the parties' briefs.

[1] The ALJ did not admit Exhibit H. See P.H. Trans. (Apr. 1, 2026) at 22, 33.

ISSUES

Divisions phrases the appeal around whether the claimant's injury arise out of and in the course of her employment with Divisions. The parties' briefs reveal the following issues:

1. Did the claimant's accidental injuries arise out of and in the course of her employment?

2. If so, who was the claimant's employer?

3. Did KC Cares have the requisite payroll for coverage under the Kansas Workers Compensation Act?

4. Is Divisions liable for the claimant's injuries pursuant to K.S.A. 44-503(a)?

5. Is the Kansas Workers Compensation Fund liable for the claimant's injuries?

FINDINGS OF FACT

The claimant had past experience in basic maintenance, including plumbing, carpentry and electrical. In late October or early November 2025, she began working as a handyman for KC Cares performing various jobs. The claimant learned of the job at KC Cares after receiving a response from Kevin Clem, owner of KC Cares, to her message on the Nextdoor app, asking if anyone had jobs available. Prior to working for KC Cares, the claimant operated her own welder fabricator business out of her home. She testified most of her income in 2025 was from working for another individual who stopped giving her jobs after he was incarcerated.

KC Cares, a handyman business, has been operating since 2006. Mr. Clem testified he does not have employees, only subcontractors. He testified he hires independent contractors to perform handyman jobs for him and they receive 1099 forms. One of the ways he finds jobs is through an app, called DMG Pro, which is owned and operated by Divisions.

Mr. Clem testified KC Cares began performing jobs for Divisions in 2023, after a representative of Divisions called him about becoming a subcontractor. Divisions sent Mr. Clem paperwork setting forth terms. KC Cares abided by such terms. Mr. Clem testified Divisions could fire him for violating any of the of the terms listed under "Performance of the Work" contained in "Provider Terms and Conditions."[2] These terms concerned a

[2] See *id*., Fund Ex. 1.

number of possibilities, such as unworkman-like work or untimely work, work not being done to a customer's satisfaction, having workers arrive at a job scene in an unacceptable vehicle, workers being unprofessional, workers having weapons, workers using vulgarity, workers publically urinating, or workers using drugs or alcohol on the customer's location. Under the terms, Divisions required notice of any work accident within 24 hours, and required providers to have general liability insurance and workers compensation insurance as "required" by law.[3] KC Cares' contract with Divisions allowed Divisions to terminate Mr. Clem's services at any time without cause. Mr. Clem agreed Divisions supervised the work of KC Cares.

Mr. Clem testified Divisions instructed him to download the DMG Pro app, which sent him jobs on the app with a brief description, including the name of Divisions' customer, the customer's address, the type of maintenance work needing done and the pricing terms. The listing did not provide any explanation or general instruction on how to perform the job. Mr. Clem could either accept or reject the job. If accepted, he called a subcontractor to ask if they wanted the job. He testified all subcontractors, including the claimant, could accept or reject the job. Mr. Clem explained KC Cares was graded after each job and could be fired from doing a job if it was unsatisfactory. He agreed he and his subcontractors were required to participate in safety training over Zoom at the direction of Divisions.

The claimant testified Mr. Clem was her boss. Mr. Clem testified when the claimant started doing work for him, he submitted her name as a technician on Divisions' web page. Divisions then had the ability to review the information and approve or disapprove the claimant. Once approved, the claimant was allowed access to the DMG Pro app, and Mr. Clem started sending jobs to the claimant through the DMG Pro app. The claimant was paid a trip charge and $20 per hour for each job completed.

The claimant testified Mr. Clem instructed her to introduce herself as "representing Divisions" and that she "worked for KC Cares" when arriving at a job site.[4] Her main form of communication with Mr. Clem was by text.[5] On one occasion, Mr. Clem visited the job site and showed her how to perform the work. The claimant testified Mr. Clem told her how to do tasks at "[o]ther times."[6] She also called him to get instructions on how to complete tasks. He would make sure subcontractors understood how to do the work. If needed, he would tell subcontractors how to do the work. The claimant supplied her own tools, but stated if she did not have a tool needed for the job, she would ask Mr. Clem to provide it.

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[3] *Id.*, Fund Ex. 1 at 8.

[4] See *id.* at 45; see also pp. 63, 99 and 102.

[5] See *id.*, Cl. Ex. G.

[6] *Id.* at 43.

Mr. Clem would tell the claimant what tools she needed for the job. Mr. Clem would supply parts for jobs. Mr. Clem stated, depending on the job, he might instruct the claimant on how to complete a certain task or how a job should be done. The claimant testified Mr. Clem told her how to do work on several occasions. She asserted never doing a job the way she wanted to, always asking Mr. Clem, and noting her work was subject to his review. Mr. Clem testified if a subcontractor did not perform a job correctly, he would be required to step in and correct the job.

Mr. Clem denied telling the claimant she had to work certain times, other than possibly passing information on from a customer as to when the best time might be. He indicated the claimant was free to leave the job and pick up her child so long as she completed the job. He agreed a job had to be completed by the due date specified by Divisions. The claimant agreed she had the flexibility to perform jobs on her own schedule, pick and choose what jobs to do, and not follow set hours, but she denied declining any work offered through the DMG Pro app.

On December 1, 2025, the claimant was on a ladder at Buffalo Wild Wings when the ladder slipped and she fell approximately 10 feet to the ground. This job was arranged through the DMG Pro app. The prior day, Mr. Clem instructed the claimant she needed to be at Buffalo Wild Wings before 8:30 a.m. to avoid conflict with the noon game day events. Mr. Clem supplied the ladder for the job. The claimant understood this job was very important to KC Cares. A text from Mr. Clem told the claimant "We're about to get fired. It's an emergency. Do you understand it's an emergency?"[7] She testified Mr. Clem walked her through the specific electrical wiring process by text messages.

As a result of the accident, the claimant lost consciousness and testified she has little memory of the time immediately after the fall. The claimant was taken by ambulance to the hospital. She suffered fractures in both arms, lacerations on her face, a broken right big toe and abrasions on both shins. She was in the hospital for about a week, at which time she underwent surgery by Dr. Bradley Dart on both arms, including hardware placement. The claimant testified she was told to give her face time for the swelling to go down before determining what reconstructive surgery would be needed.

Mr. Clem testified he is not in a position to financially pay the claimant's medical bills, in excess of $160,000, and temporary total disability (TTD) benefits. KC Cares does not have workers compensation insurance. The claimant needs ongoing medical treatment and has not been released to return to work.

Six affidavits were submitted into evidence by persons claiming to be independent contractors, not controlled by KC Cares, and not employees of KC Cares. The evidence

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[7] *Id.*, Cl. Ex. 6 at 32.

established KC Cares paid $43,762.42 to 13 individuals in 2025. KC Cares asserted all such persons were independent contractors.

Stacey DuRant-Fisher has provided bookkeeping services for KC Cares since 2023. She prepares invoices for Divisions. Ms. DuRant-Fisher testified once a job has been completed, it shows up in invoicing. She then fills out an invoice manually and submits it to Divisions for payment. Ms. DuRant-Fisher testified KC Cares works for companies other than Divisions.

On February 2, 2026, the Fund impleaded Divisions as the claimant's statutory employer pursuant to K.S.A. 44-503.

The claimant continues to have trouble breathing through her nose and experiences constant arm discomfort. She is unable to fully extend her arms. She denied any prior injuries to her bilateral arms, nose or chin. The claimant testified Dr. Dart has her on temporary work restrictions of no lifting over 10 pounds on each arm. She stated no accommodated work has been offered, nor has she requested it.

The ALJ found the claimant's injuries arose out of and in the course of her employment, and the work-related accident was the prevailing factor causing the claimant's injuries. The ALJ further ruled:

> In the present case, Respondent KC Cares operates a handyman business, and Claimant was working for KC Cares as a handyman. She was doing the same types of jobs for Divisions that KC Cares's owner, Mr. Clem, was doing. Claimant was paid on an hourly basis for the jobs she did and received a 1099 tax form. Although she had her own set of basic tools, Mr. Clem provided any specialized tools that Claimant needed and purchased all of the parts that were needed for each job. Claimant admittedly had some flexibility in setting her own schedule and could leave a job if she needed to pick up her child from school; however, it is clear from the text messages between Claimant and Mr. Clem that Mr. Clem exercised control over timing of some of the jobs, such as setting forth when the job needed to be completed or how long a job should take. Additionally, it is clear from the text messages presented that Mr. Clem gave Claimant frequent instructions regarding how jobs were to be done, and Claimant often went to Mr. Clem with questions regarding the jobs she was doing.
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> After considering the record as a whole, the Court finds that Respondent KC Cares exercised the right and authority to control the work that Claimant did. The Court finds that Claimant was an employee of Respondent KC Cares rather than an independent contractor.[8]

[8] P.H. Order at 6.

The ALJ's Order further states:

> Mr. Clem testified that KC Cares did not have any payroll in 2024 or 2025 and presented uncontroverted evidence that the people who did work for Respondent other than Claimant were independent contractors rather than employees. As noted above, the Court has found that Claimant was an employee of KC Cares, and her 2025 1099 tax form from KC Cares indicates that Claimant received only $1,107.00 in compensation. Based upon the foregoing, the Court finds that Claimant has not met her burden to prove that Respondent had sufficient payroll to fall within the coverage of the Kansas Workers Compensation Act. As a result, Respondent is not liable for Claimant's work-related injuries.[9]

Despite this ruling, the ALJ noted Divisions could still be liable for the claimant's injuries under K.S.A. 44-503(a). She observed Divisions provider terms entered into with KC Cares stated:

> > Divisions, Inc. dba Divisions Maintenance Group ("Divisions," "DMG," "we," "us," "our") provides best-in-class facility maintenance services for commercial and residential multisite organizations nationwide. We are an essential partner to our customers and technicians, offering dedicated teams, local field support, 24/7 coverage, tailored products, and a customer-first commitment. We deliver uninterrupted peace of mind to our customers.
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> (Prelim. Hearing, Fund Ex. 1). Divisions has multiple large business customers with locations across the United States, including Lowes, Walgreens, and Buffalo Wild Wings, that hire Divisions to provide facility maintenance services. Divisions hires independent contractors, like and including KC Cares, who perform maintenance jobs requested by Divisions's customers. Divisions has employees within its company that are assigned to each of its customers and communicate directly with Divisions's independent contractors to ensure jobs are being completed to Divisions's satisfaction. Divisions would assign KC Cares jobs, which KC Cares could then take and complete for pay by the job. When Claimant arrived at a job, she would tell the business that she was there representing Divisions and KC Cares.
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> The evidence establishes that the work that KC Cares was doing for Divisions, which was facility maintenance jobs for Divisions's customers, is necessarily inherent in and an integral part of Divisions's business, which it describes as, "providing facility maintenance services for commercial and residential multisite organizations." (Prelim. Hearing, Fund Ex. 1). In fact, it is the only service that Divisions purports to provide to its customers. This is further supported by the

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[9] *Id*. at 8.

> fact that Divisions sets forth specific requirements for each of its customers' jobs and has employees dedicated to larger customers to ensure the service jobs are done to their satisfaction. Performing facility maintenance service jobs is an integral part of Divisions's business.
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> Based upon the foregoing, the Court finds that Respondent Divisions was Claimant's statutory employer at the time of her work-related accident and thus is liable for workers compensation benefits related to Claimant's December 1, 2025, work-related injuries.[10]

PRINCIPLES OF LAW AND ANALYSIS

Divisions argues it is not the claimant's statutory employer. Divisions contends it is a software intermediary without a principal trade or business in physical maintenance, so it should not be treated as a statutory employer under Kansas law. Divisions contends KC Cares is the claimant's employer and workers purporting to be independent contractors for KC Cares were employees, such that KC Cares met the payroll requirement under the Act.

KC Cares and the Fund maintain the Order should be affirmed. KC Cares argues the Board has no jurisdiction over any issue other than "arising out of and in the course of employment" based on what Divisions put in its Application for Review.

The claimant asserts all purported independent contractors of KC Cares were employees. The claimant further requests the Board reverse the finding KC Cares is not subject to the Act and find both respondents and the Fund are liable for providing the claimant workers compensation benefits.

An employer is liable to pay compensation to an employee incurring personal injury by accident arising out of and in the course of employment.[11] The provisions of the Workers Compensation Act are applied impartially to all parties.[12] The employee has the burden of proof to establish the right to an award of compensation, including the various conditions upon which the right to compensation depends.[13] The trier of fact considers the whole record in determining if a claimant satisfied the burden of proof.[14]

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[10] *Id.* at 10-11.

[11] See K.S.A. 44-501b(b).

[12] See *id*.

[13] See K.S.A. 44-501b(c).

[14] See *id*.

The Board's review of an order is de novo on the record.[15] A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.[16] On de novo review, the Board makes its own factual findings.[17]

1. The claimant was KC Cares' employee at the time of her accident.

K.S.A. 44-508(b) states, in part:

> "Worker," "employee," "claimant" or "workman" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer.

There is no absolute rule for determining whether an individual is an independent contractor or an employee.[18] The relationship of the parties depends upon all the facts, and the label they choose to employ is only one of those facts. The terminology used by the parties is not binding when determining whether an individual is an employee or an independent contractor.[19]

The primary test to determine whether the employer-employee relationship exists is whether the employer had the right of control and supervision over the work of the alleged employee, as well as the result to be accomplished. It is not the actual interference or exercise of control by the employer, but the existence of the right or authority to interfere or control that renders one a servant, rather than an independent contractor.[20]

Other commonly recognized tests of the independent contractor relationship are:

(1) The existence of a contract to perform a piece of work at a fixed price.
(2) The independent nature of the worker's business or distinct calling.
(3) The employment of assistants and the right to supervise their activities.
(4) The worker's obligation to furnish tools, supplies and materials.

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[15] See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

[16] See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

[17] See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

[18] See *Wallis v. Secretary of Kansas Dept. of Human Resources*, 236 Kan. 97, 102, 689 P.2d 787 (1984).

[19] See *Knoble v. National Carriers, Inc.*, 212 Kan. 331, 337, 510 P.2d 1274 (1973).

[20] *Wallis*, 236 Kan. at 102-03.

(5) The worker's right to control the progress of the work.
(6) The length of time the employee is employed.
(7) Whether the worker is paid by time or by job.
(8) Whether the work is part of the regular business of the employer.[21]

In *Hill*, the Court noted several factors other than the right of control, including:

(1) [t]he existence of the right of the employer to require compliance with instructions;
(2) the extent of any training provided by the employer;
(3) the degree of integration of the worker's services into the business of the employer;
(4) the requirement that the services be provided personally by the worker;
(5) the existence of hiring, supervision, and paying of assistants by the workers;
(6) the existence of a continuing relationship between the worker and the employer;
(7) the degree of establishment of set work hours;
(8) the requirement of full-time work;
(9) the degree of performance of work on the employer's premises;
(10) the degree to which the employer sets the order and sequence of work;
(11) the necessity of oral or written reports;
(12) whether payment is by the hour, day or job;
(13) the extent to which the employer pays business or travel expenses of the worker;
(14) the degree to which the employer furnishes tools, equipment, and material;
(15) the incurrence of significant investment by the worker;
(16) the ability of the worker to incur a profit or loss;
(17) whether the worker can work for more than one firm at a time;
(18) whether the services of the worker are made available to the general public;
(19) whether the employer has the right to discharge the worker; and
(20) whether the employer has the right to terminate the worker.[22]

The evidence establishes the claimant was the employee of KC Cares. Mr. Clem exercised actual control over the claimant. The claimant was paid by the hour. While she

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[21] See *McCubbin v. Walker*, 256 Kan. 276, 281, 886 P.2d 790 (1994).

[22] *Hill v. Kansas Dept. of Labor*, 42 Kan. App. 2d 215, 222-23, 210 P.3d 647 (2009), *aff'd in part, rev'd in part*, 292 Kan. 17, 248 P.3d 1287 (2011).

expressed having latitude in performing her work, she also had clear instructions on when to arrive for the Buffalo Wild Wings job. She supplied some, but not all tools. KC Cares supplied some tools, such as the ladder the claimant fell from, and all supplies. While the claimant testified she could decline work, she denied ever doing so. Mr. Clem, as the owner of KC Cares, instructed the claimant how to do certain jobs. The claimant denied ever doing work based on her own judgment, instead deferring to Mr. Clem.

2. The claimant's accidental injury arose out of and in the course of her employment with KC Cares.

The Board agrees with the ALJ's straightforward assessment. There is no question the claimant's accidental injury arose out of and in the course of her employment with KC Cares.

As an aside, KC Cares argues the Board lacks jurisdiction on any issue other than "arising out of and in the course of employment," as based on Divisions' Application for Review. The Board disagrees. Every other issue covered by this Order, with the exception of whether Divisions had the requisite payroll for coverage under the Act, was extensively litigated to the ALJ and asserted to the Board.

3. The claimant did not prove KC Cares had the requisite payroll for coverage under the Kansas Workers Compensation Act.

K.S.A. 44-505 states, in part:

> (a) Subject to the provisions of K.S.A. 44-506 and amendments thereto, the workers compensation act shall apply to all employments wherein employers employ employees within this state except that such act shall not apply to:
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> . . .
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> (2) any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer had a total gross annual payroll for the preceding calendar year of not more than $20,000 for all employees and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than $20,000 for all employees, except that no wages paid to an employee who is a member of the employer's family by marriage or consanguinity shall be included as part of the total gross annual payroll of such employer for purposes of this subsection;
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> (3) any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer has not had a payroll for a calendar year and wherein the employer reasonably

> estimates that such employer will not have a total gross annual payroll for the current calendar year of more than $20,000 for all employees . . . [.]

The ALJ concluded the affidavits from the six individuals purporting to be independent contractors were uncontroverted, showing they did not work for KC Cares as employees. This conclusion is debatable, depending on if KC Cares treated the other individuals the same or differently than the claimant. The record does not establish all the purported independent contractors were necessarily treated the same as the claimant. However, at this point, the credible evidence is insufficient to establish whether the six people worked as employees for KC Cares or were independent contractors. The claimant did not prove KC Cares had the required payroll for it to need coverage under the Kansas Workers Compensation Act.

4. Is Divisions liable for the claimant's injuries under K.S.A. 44-503(a)?

K.S.A. 44-503(a) states:

> Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal; and where compensation is claimed from or proceedings are taken against the principal, then in the application of the workers compensation act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed. For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor.

The Kansas Workers Compensation Act also provides that commercial entities contracting out work may in some circumstances become liable for benefits due the subcontractor's employees for on-the-job injuries sustained while performing the subcontract.[23] The principal contracting out the work is then considered a "statutory employer" under the Act.[24] The Kansas Supreme Court has developed two independent criteria for determining when a principal becomes a statutory employer under the first test

[23] *White v. RGV Pizza Hut*, No. 122,239, 487 P.3d 383, 2021 WL 2387963 (Kansas Court of Appeals unpublished opinion filed June 11, 2021).

[24] *Bright v. Cargill*, Inc., 251 Kan. 387, 390, 837 P.2d 348 (1992).

set out in K.S.A. 44-503(a): (1) the subcontracted work is "inherent in and an integral part of [its] trade or business"; or (2) the subcontracted work "ordinarily [would] have been done by [its] employees."[25] Either is sufficient to impose statutory employer status under the Act. In *Bright*, the court refined the first criterion to focus the assessment of inherency and integrality on whether similar business entities perform the work with their own employees.[26]

Claimant was not a self-employed subcontractor. Claimant was an employee of KC Cares. KC Cares contracted with Divisions to do the work of Divisions. As concluded by the ALJ, facility maintenance is inherent in and an integral part of Divisions' trade or business. Divisions is not simply a technology company arranging services between facilities and facility maintenance workers. The Board agrees and finds the first part of the *Hanna* test has been met. Divisions is the claimant's statutory employer. Consequently, the Fund is not presently liable for payment of benefits.

WHEREFORE, the undersigned Board member affirms the preliminary hearing Order.

IT IS SO ORDERED.

Dated this _____ day of June, 2026.

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JOHN F. CARPINELLI
BOARD MEMBER

c: (via OSCAR)
Gabrielle Altenor
Terry Torline
Kevin Johnson
John Nodgaard
Hon. Ali Marchant

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[25] *Hanna v. CRA, Inc.*, 196 Kan. 156, 159-60, 409 P.2d 786 (1966); see also *Bright*, *supra*, Syl. ¶ 3.

[26] See *Bright, supra,* at 399.