Filed 06/29/20 by Clerk of Supreme Court

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2020 ND 137

Stoneart OFS LLC, d/b/a Scotty Fain Construction and Scotty Fain, Individually, Appellant

v.

North Dakota Workforce Safety and Insurance Fund, Appellee

No. 20200063

Appeal from the District Court of Williams County, Northwest Judicial District, the Honorable Benjamen J. Johnson, Judge.

AFFIRMED.

Per Curiam.

Stephen D. Little, Bismarck, ND, for appellant.

Jacqueline S. Anderson, Special Assistant Attorney General, Fargo, ND, for appellee.

Stoneart OFS LLC v. WSI
No. 20200063

Per Curiam.

[¶1] Stoneart OFS LLC d/b/a Scotty Fain Construction, and Scotty Fain individually (together "Fain"), appealed from a district court judgment affirming an administrative law judge's ("ALJ") order determining Dennis Teems was acting as Fain's employee during an accident that resulted in Teems' death.

[¶2] Fain asserts there is no evidence Teems was performing services for remuneration and therefore the ALJ improperly applied the statutory presumption that Teems was an employee. *See* N.D.C.C. § 65-01-03(1) (stating an individual who performs services for remuneration is presumed to be an employee unless it is proven he or she is an independent contractor under the common law test).

[¶3] We conclude the ALJ's finding that Teems was performing services for remuneration is supported by a preponderance of the evidence. *See SAEJ Enter., LLC v. Workforce Safety and Ins.*, 2020 ND 61, ¶ 3, 940 N.W. 2d 611 (applying the preponderance of the evidence standard to an ALJ's finding of fact). We summarily affirm under N.D.R.App.P. 35.1(a)(5).

[¶4] Jon J. Jensen, C.J.
Gerald W. VandeWalle
Jerod E. Tufte
Daniel J. Crothers
Lisa Fair McEvers