AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals
MSC 345 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:
Employer Account No. - 2386193
D7 INC
WILLIAM E ROBERTS
2822 DAWLEY AVENUE
ORLANDO FL 32806-5720

PROTEST OF LIABILITY
DOCKET NO. 2010-109906L

RESPONDENT:
State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated June 16, 2010.

After due notice to the parties, a telephone hearing was held on November 3, 2010. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party appeared and testified.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

Issue:

Whether services performed for the Petitioner by the Joined Party working as a video editor constitute insured employment, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(21); 443.1216, Florida Statutes.

Findings of Fact:

1. The Petitioner is a corporation which operates a motion picture editing company.
2. The Joined Party began working for the Petitioner on or about October 1, 2008, as an assistant editor. The Joined Party was hired on a trial basis and was paid by the Petitioner at the rate of $7.00 per hour during the trial period. All of the work was performed at the Petitioner's location and the Petitioner provided the editing equipment, computers, and software. The Petitioner reviewed the work completed by the Joined Party and presented the Joined Party with an *Independent Contractor Deal Memo* to sign. The Joined Party signed the *Independent Contractor Deal Memo* on November 24, 2008.
3. The *Independent Contractor Deal Memo* provides that the job position is "Assistant Editor and Motion Graphics", that the rate of pay is $10.00 per hour, that the Petitioner will reimburse the

Joined Party for mileage in accordance with the federal mileage rate, that the work schedule will be determined on a weekly basis, that the start date is December 1, 2008, and that the end date is April 1, 2009.

4. The *Independent Contractor Deal Memo* provides that the Joined Party is an independent contractor and that the Joined Party is responsible for the payment of all state and federal taxes. The Memo provides that the Joined Party agrees to comply with the immigration verification employment eligibility provisions of the Immigration Reform and Control Act. The Memo states that the Joined Party acknowledges that she is not covered by medical insurance or workers compensation insurance provided by the Petitioner. The Memo provides that company owned equipment is for authorized company use only and may not be used for non-company business and may not be removed the Petitioner's premises without prior authorization.

5. The *Independent Contractor Deal Memo* states "The Independent Contractor shall devote during the period of this Agreement not more than 40% of its entire time, and skill to its duties to Company." The Memo also requires the Joined Party to perform the work to the best of her professional ability. The Memo requires the Joined Party to conduct herself in a professional like manner during the performance of the duties and provides that if the Joined Party does not do so she will be subject to immediate dismissal. The Memo also provides that the Joined Party is subject to immediate dismissal for use of alcohol or drugs during operating hours.

6. The *Independent Contractor Deal Memo* provides "Contractor hereby waives their right to any-and-all compensation for use of their images, likeness, vocal representation, and or photographs in all media, whether known or hereafter derived, throughout the universe in perpetuity."

7. After the Joined Party signed the *Independent Contractor Deal Memo* the Joined Party continued to perform services at the Petitioner's place of business using the Petitioner's equipment. Although the Memo provides that the Joined Party would be reimbursed for mileage, the Joined Party's assigned duties did not require travel. The Joined Party did not have any expenses in connection with the work.

8. The Petitioner's regular business hours are Monday through Friday from 9 AM until 5 PM. The Joined Party was required to personally perform the work at the Petitioner's business location during the Petitioner's regular business hours. The Joined Party was not allowed to hire others to perform the work for her. When the Joined Party was unable to work due to illness, the Joined Party called in to notify the Petitioner of her absence.

9. The Joined Party was required to complete a timesheet listing the time she reported for work each day, the ending time each day, and the total hours worked each day. No taxes were withheld from the Joined Party's pay.

10. The Joined Party did not receive fringe benefits such as health insurance, holiday pay, paid vacations or sick pay. However, the Petitioner paid a Christmas bonus to the Joined Party. The Petitioner covered the Joined Party under the Petitioner's workers compensation insurance policy even though the *Independent Contractor Deal Memo* states that the Petitioner would not provide workers compensation coverage.

11. Although the *Independent Contractor Deal Memo* states that the end date of the contract is April 1, 2009, the Joined Party worked under the same terms and conditions until December 2009 at which time she was released by the Petitioner.

Conclusions of Law:

12. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Unemployment Compensation Law, is governed by Chapter 443, Florida Statutes. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.

13. The Supreme Court of the United States held that the term "usual common law rules" is to be used in a generic sense to mean the "standards developed by the courts through the years of adjudication." United States v. W.M. Webb, Inc., 397 U.S. 179 (1970).

14. The Supreme Court of Florida adopted and approved the tests in 1 Restatement of Law, Agency 2d Section 220 (1958), for use to determine if an employment relationship exists. See Cantor v. Cochran, 184 So.2d 173 (Fla. 1966); Miami Herald Publishing Co. v. Kendall, 88 So.2d 276 (Fla. 1956); Magarian v. Southern Fruit Distributors, 1 So.2d 858 (Fla. 1941); see also Kane Furniture Corp. v. R. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987).

15. Restatement of Law is a publication, prepared under the auspices of the American Law Institute, which explains the meaning of the law with regard to various court rulings. The Restatement sets forth a nonexclusive list of factors that are to be considered when judging whether a relationship is an employment relationship or an independent contractor relationship.

16. 1 Restatement of Law, Agency 2d Section 220 (1958) provides:

    (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.

    (2) The following matters of fact, among others, are to be considered:

        (a) the extent of control which, by the agreement, the business may exercise over the details of the work;

        (b) whether or not the one employed is engaged in a distinct occupation or business;

        (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

        (d) the skill required in the particular occupation;

        (e) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;

        (f) the length of time for which the person is employed;

        (g) the method of payment, whether by the time or by the job;

        (h) whether or not the work is a part of the regular business of the employer;

        (i) whether or not the parties believe they are creating the relation of master and servant;

        (j) whether the principal is or is not in business.

17. Comments in the Restatement explain that the word “servant” does not exclusively connote manual labor, and the word “employee” has largely replaced “servant” in statutes dealing with various aspects of the working relationship between two parties.

18. In Department of Health and Rehabilitative Services v. Department of Labor & Employment Security, 472 So.2d 1284 (Fla. 1st DCA 1985) the court confirmed that the factors listed in the Restatement are the proper factors to be considered in determining whether an employer-employee relationship exists. However, in citing La Grande v. B&L Services, Inc., 432 So.2d 1364, 1366

(Fla. 1st DCA 1983), the court acknowledged that the question of whether a person is properly classified an employee or an independent contractor often cannot be answered by reference to "hard and fast" rules, but rather must be addressed on a case-by-case basis.

19. The Petitioner initially hired the Joined Party to perform services for the Petitioner effective October 1, 2008. The Joined Party initially worked on a trial basis. There was no written agreement between the parties until December 1, 2008. The Joined Party continued working for approximately eight months after the end date of the agreement. Although the *Independent Contractor Deal Memo* states that the Joined Party is an independent contractor, a statement in an agreement that the existing relationship is that of independent contractor is not dispositive of the issue. Lee v. American Family Assurance Co. 431 So.2d 249, 250 (Fla. 1st DCA 1983). The Florida Supreme Court commented in Justice v. Belford Trucking Company, Inc., 272 So.2d 131 (Fla. 1972), "while the obvious purpose to be accomplished by this document was to evince an independent contractor status, such status depends not on the statements of the parties but upon all the circumstances of their dealings with each other."

20. The Petitioner's business is the editing of motion pictures. The Joined Party's assigned position was as an assistant motion picture editor. The work performed by the Joined Party was not separate and distinct from the Petitioner's business but was an integral and necessary part of the Petitioner's business.

21. The Joined Party was required to perform the work at the Petitioner's premises during the Petitioner's regular business hours. The Petitioner provided all equipment and supplies that were needed to perform the work. The Joined Party did not have any expenses in connection with the work.

22. The Petitioner paid the Joined Party by the hour at a pay rate determined by the Petitioner. The Petitioner provided some fringe benefits including a Christmas bonus and workers compensation insurance coverage. The fact that the Petitioner chose not to withhold payroll taxes from the pay does not, standing alone, establish an independent contractor relationship.

23. The *Independent Contractor Deal Memo* provides that the Petitioner could immediately terminate the Joined Party if the Petitioner determined that the Joined Party did not conduct herself in a professional like manner. The Petitioner terminated the Joined Party in December 2009, approximately eight months after the end of the written agreement. Altogether the Joined Party performed services for the Petitioner for a period of time in excess of one year, which reveals a relationship of relative permanence. In Cantor v. Cochran, 184 So.2d 173 (Fla. 1966), the court in quoting 1 Larson, Workmens' Compensation Law, Section 44.35 stated: "The power to fire is the power to control. The absolute right to terminate the relationship without liability is not consistent with the concept of independent contractor, under which the contractor should have the legal right to complete the project contracted for and to treat any attempt to prevent completion as a breach of contract."

24. Whether a worker is an employee or an independent contractor is determined by measuring the control exercised by the employer over the worker. If the control exercised extends to the manner in which a task is to be performed, then the worker is an employee rather than an independent contractor. In Cawthon v. Phillips Petroleum Co., 124 So 2d 517 (Fla 2d DCA 1960) the court explained: Where the employee is merely subject to the control or direction of the employer as to the result to be procured, he is an independent contractor; if the employee is subject to the control of the employer as to the means to be used, then he is not an independent contractor.

25. Rule 60BB-2.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderence of the evidence that the determination was in error.

26. The Petitioner's sole witness was the Petitioner's Certified Public Accountant who testified concerning what he was told by the Petitioner regarding the relationship between the Petitioner

and the Joined Party. Section 90.604, Florida Statutes, sets out the general requirement that a witness must have personal knowledge regarding the subject matter of his or her testimony. Information or evidence received from other people and not witnessed firsthand is hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient, in and of itself, to support a finding unless it would be admissible over objection in civil actions. Section 120.57(1)(c), Florida Statutes.

27. The preponderance of the competent evidence presented in this case reveals that the Petitioner exercised significant control over the means and manner in which the Joined Party's work was performed. Thus, the Petitioner has failed to show by a preponderance of the evidence that the determination of the Department of Revenue is in error.

Recommendation: It is recommended that the determination dated June 16, 2010, be AFFIRMED.

Respectfully submitted on November 5, 2010.

R. O. SMITH, Special Deputy
Office of Appeals

AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA

PETITIONER:
Employer Account No. - 2386193

D7 INC
WILLIAM E ROBERTS
2822 DAWLEY AVENUE
ORLANDO FL 32806-5720

PROTEST OF LIABILITY
DOCKET NO. 2010-109906L

RESPONDENT:
State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

O R D E R

This matter comes before me for final Agency Order.

The issue before me is whether services performed for the Petitioner by the Joined Party as a video editor constitute insured employment pursuant to Sections 443.036(19); 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of liability.

The Joined Party filed an unemployment compensation claim in March 2010. An initial determination held that the Joined Party earned insufficient wages in insured employment to qualify for benefits. The Joined Party advised the Agency that she worked for the Petitioner during the qualifying period and requested consideration of those earnings in the benefit calculation. As a result of the Joined Party's request, the Department of Revenue conducted an investigation to determine whether work for the Petitioner was done as an employee or an independent contractor. If the Joined Party worked for the Petitioner as an employee, she would qualify for unemployment benefits, and the Petitioner would owe unemployment compensation taxes. On the other hand, if the Joined Party worked for the Petitioner as an independent contractor, she would remain ineligible for benefits, and the Petitioner would not owe unemployment compensation taxes on the remuneration it paid to the Joined Party. Upon completing the investigation, an auditor at the Department of Revenue determined that the services performed by the Joined Party were in insured employment. The Petitioner was required to pay unemployment compensation taxes on wages paid to the Joined Party. The Petitioner filed a timely protest of the determination. The claimant who requested the investigation was joined as a party because she had a

direct interest in the outcome of the case. That is, if the determination is reversed, the Joined Party will once again be ineligible for benefits and must repay all benefits received.

A telephone hearing was held on November 3, 2010. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party appeared and testified. The Special Deputy issued a Recommended Order on November 8, 2010.

The Special Deputy's Findings of Fact recite as follows:

1. The Petitioner is a corporation which operates a motion picture editing company.
2. The Joined Party began working for the Petitioner on or about October 1, 2008, as an assistant editor. The Joined Party was hired on a trial basis and was paid by the Petitioner at the rate of $7.00 per hour during the trial period. All of the work was performed at the Petitioner's location and the Petitioner provided the editing equipment, computers, and software. The Petitioner reviewed the work completed by the Joined Party and presented the Joined Party with an *Independent Contractor Deal Memo* to sign. The Joined Party signed the *Independent Contractor Deal Memo* on November 24, 2008.
3. The *Independent Contractor Deal Memo* provides that the job position is "Assistant Editor and Motion Graphics", that the rate of pay is $10.00 per hour, that the Petitioner will reimburse the Joined Party for mileage in accordance with the federal mileage rate, that the work schedule will be determined on a weekly basis, that the start date is December 1, 2008, and that the end date is April 1, 2009.
4. The *Independent Contractor Deal Memo* provides that the Joined Party is an independent contractor and that the Joined Party is responsible for the payment of all state and federal taxes. The Memo provides that the Joined Party agrees to comply with the immigration verification employment eligibility provisions of the Immigration Reform and Control Act. The Memo states that the Joined Party acknowledges that she is not covered by medical insurance or workers compensation insurance provided by the Petitioner. The Memo provides that company owned equipment is for authorized company use only and may not be used for non-company business and may not be removed the Petitioner's premises without prior authorization.
5. The *Independent Contractor Deal Memo* states "The Independent Contractor shall devote during the period of this Agreement not more than 40% of its entire time, and skill to its duties to Company." The Memo also requires the Joined Party to perform the work to the best of her professional ability. The Memo requires the Joined Party to conduct herself in a professional like manner during the performance of the duties and provides that if the Joined Party does not do so she will be subject to immediate dismissal. The Memo also provides that the Joined Party is subject to immediate dismissal for use of alcohol or drugs during operating hours.
6. The *Independent Contractor Deal Memo* provides "Contractor hereby waives their right to any-and-all compensation for use of their images, likeness, vocal representation, and or photographs in all media, whether known or hereafter derived, throughout the universe in perpetuity."
7. After the Joined Party signed the *Independent Contractor Deal Memo* the Joined Party continued to perform services at the Petitioner's place of business using the Petitioner's equipment. Although the Memo provides that the Joined Party would be reimbursed for

mileage, the Joined Party's assigned duties did not require travel. The Joined Party did not have any expenses in connection with the work.

8. The Petitioner's regular business hours are Monday through Friday from 9 AM until 5 PM. The Joined Party was required to personally perform the work at the Petitioner's business location during the Petitioner's regular business hours. The Joined Party was not allowed to hire others to perform the work for her. When the Joined Party was unable to work due to illness, the Joined Party called in to notify the Petitioner of her absence.
9. The Joined Party was required to complete a timesheet listing the time she reported for work each day, the ending time each day, and the total hours worked each day. No taxes were withheld from the Joined Party's pay.
10. The Joined Party did not receive fringe benefits such as health insurance, holiday pay, paid vacations or sick pay. However, the Petitioner paid a Christmas bonus to the Joined Party. The Petitioner covered the Joined Party under the Petitioner's workers compensation insurance policy even though the *Independent Contractor Deal Memo* states that the Petitioner would not provide workers compensation coverage.
11. Although the *Independent Contractor Deal Memo* states that the end date of the contract is April 1, 2009, the Joined Party worked under the same terms and conditions until December 2009 at which time she was released by the Petitioner.

Based on these Findings of Fact, the Special Deputy recommended that the determination be affirmed. The Petitioner's exceptions to the Recommended Order were received by mail postmarked November 18, 2010. No other submissions were received from any party.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

> The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Petitioner's exceptions are addressed below. Additionally, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

In its exceptions, the Petitioner contends that the Petitioner was not contacted at the scheduled hearing time. Section 120.57(1)(l), Florida Statutes, provides that the Agency cannot modify or reject the Special Deputy's Findings of Fact unless the findings are not based on competent substantial evidence in the record or the proceedings on which the findings were based did not comply with essential requirements of law. A review of the record reflects that the Special Deputy informed the parties during the hearing that he began the hearing fifteen minutes after the scheduled hearing time due to technical problems that had since been corrected. Since the Special Deputy's Findings of Fact are based on competent substantial evidence in the record, the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts, and the Petitioner has not shown that the proceedings did not comply with essential requirements of law, the Petitioner has not provided a basis for modifying the Recommended Order permitted under section 120.57(1)(l), Florida Statutes. The Petitioner's exceptions are respectfully rejected.

The Petitioner also alleges in its exceptions that the Petitioner's Certified Public Accountant was chosen to testify on his client's behalf and that the Special Deputy failed to notify the Petitioner that the testimony of the Petitioner's Certified Public Accountant would be considered hearsay evidence. The Petitioner further contends that it was prevented from calling other witnesses as a result of the Special Deputy's actions. Rule 60BB-2.035(15)(b), Florida Administrative Code, provides:

> (b) The special deputy will prescribe the order in which testimony will be taken and preserve the right of each party to present evidence relevant to the issues, cross-examine opposing witnesses, impeach any witness and rebut the evidence presented. The special deputy will restrict the inquiry of each witness to the scope of the proceedings.

Rule 60BB-2.035(15)(c), Florida Administrative Code, also provides:

> (c) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but will not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Chapter 90, F.S.

A review of the record shows that the Petitioner's representative, the Petitioner's Certified Public Accountant, stated that only he would be testifying and that two observers would be present when questioned by the Special Deputy about the number of witnesses to be called by the Petitioner. A review of the record also shows that the Petitioner did not ask any questions about the hearing procedures when provided an opportunity by the Special Deputy, did not request an opportunity to call on any additional

witnesses, and did not make any objection regarding the Special Deputy's conduct during the hearing. Pursuant to rule 60BB-2.035(15)(b), Florida Administrative Code, the Special Deputy properly rejected hearsay information provided by the Petitioner's witness that was not established by other competent evidence or presented or substantiated as a hearsay exception. The Special Deputy's Findings of Fact are based on competent substantial evidence in the record. The Special Deputy's Conclusions of Law also reflect a reasonable application of the law to the facts. The Petitioner has not demonstrated that the Special Deputy failed to preserve the Petitioner's right to present evidence relevant to the issues, that the Special Deputy failed to preserve the Petitioner's right to rebut any evidence, or that the proceedings did not comply with essential requirements of law. Therefore, the Agency must accept the Recommended Order without modification in accord with section 120.57(1)(l), Florida Statutes. The Petitioner's exceptions are respectfully rejected.

Also in its exceptions, the Petitioner maintains that the Special Deputy did not express facts in a fair and unbiased way and mixed opinions with facts in the Recommended Order in order to reach unsupported conclusions. The Petitioner also offers to provide additional evidence or propose alternative findings of fact. Pursuant to section 120.57(1)(l), Florida Statutes, the Agency may not reject or modify the Special Deputy's Findings of Fact unless the Agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. Also pursuant to section 120.57(1)(l), Florida Statutes, the Agency may not reject or modify the Special Deputy's Conclusions of Law unless the Agency first determines that the conclusions of law do not reflect a reasonable application of the law to the facts. A review of the record reveals that the Special Deputy's Findings of Fact are supported by competent substantial evidence in the record. A review of the record also reveals that the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts. As a result, the Agency may not modify the Special Deputy's Findings of Fact or Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes, and accepts the findings of fact and conclusions of law as written by the Special Deputy. Rule 60BB-2.035(19)(a) of the Florida Administrative Code prohibits the acceptance of evidence after the hearing is closed. The Petitioner's request for the consideration of additional evidence is respectfully denied. The Petitioner's exceptions are respectfully rejected.

The Petitioner also contends in its exceptions that the Special Deputy neglected to include that the Joined Party admitted she was an independent contractor and never intended to file a claim against the Petitioner. In *Keith v. News & Sun Sentinel Co.*, 667 So.2d 167 (Fla. 1995), the Florida Supreme Court provided guidance on how to approach an analysis of employment status. The court held that the lack of an

express agreement or clear evidence of the intent of the parties requires "a fact-specific analysis under the Restatement based on the actual practice of the parties." *Id*. at 71. However, when an agreement does exist between the parties, the court held that the courts should first look to the agreement and honor it "unless other provisions of the agreement, or the parties' actual practice, demonstrate that it is not a valid indicator of status." *Id*. As a result, the analysis in this case would not stop at an examination of the written agreement between the parties and statements made by the parties regarding the Joined Party's status.

A complete analysis would examine whether the agreement, the other provisions of the agreement, and the parties' statements were consistent with the actual practice of the parties. If a conflict is present, *Keith* provides further guidance. *Id*. In *Keith*, the court concluded that the actual practice and relationship of the parties should control when the "other provisions of an agreement, or the actual practice of the parties, belie the creation of the status agreed to by the parties." *Id*. For example, in *Justice v. Belford Trucking Co*., 272 So.2d 131, 136 (Fla. 1972), the Florida Supreme Court held that the Judge of Industrial Claims erred when relying solely on the language of a contract instead of considering all aspects of the parties' working relationship. In doing so, the court found that the judge "did not recognize the employment relationship that actually existed." *Id*. Therefore, the mere existence of an independent contractor agreement and the specific terms of such an agreement would not be conclusive regarding the issue of the Joined Party's status. Additionally, the claimant's admission that she worked as an independent contractor would not be conclusive of the issue. Although the Special Deputy found in Finding of Fact #2 that the Joined Party signed an independent contractor agreement and the Joined Party testified during the hearing that she worked as an independent contractor, the working relationship as described by the Special Deputy in the Findings of Fact would still merit the conclusion that an employer/employee relationship existed. Contrary to the result in *Keith*, the Special Deputy did not find that the behavior of the parties was consistent with an independent contractor status and did not find the Petitioner's right to control the Joined Party was limited to merely a right to control the results of the Joined Party's work. Instead, the Special Deputy concluded in Conclusion of Law #27 that "the Petitioner exercised significant control over the means and manner in which the Joined Party's work was performed." Competent substantial evidence in the record supports the Special Deputy's ultimate conclusion that the Petitioner controlled the way the Joined Party performed her services in a manner characteristic of an employment relationship. Thus, the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are not rejected by the Agency. The Petitioner's exceptions are respectfully rejected.

A review of the record reveals that the Findings of Fact are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential

requirements of the law. The Special Deputy's Findings of Fact are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the record of this case, the Recommended Order of the Special Deputy, and the exceptions filed by the Petitioner, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as contained in the Recommended Order.

In consideration thereof, it is ORDERED that the determination dated June 16, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **February, 2011.**

_____
TOM CLENDENNING,
Assistant Director
AGENCY FOR WORKFORCE INNOVATION