

**M. WALBORN V. ULTIMATE MASONRY**

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**MERLIN E. WALBORN,**  
Worker-Appellee,  
**v.**  
**ULTIMATE MASONRY,**  
Defendant-Appellant.

NO. 29,283

COURT OF APPEALS OF NEW MEXICO

June 11, 2009

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION, Victor Lopez,  
Workers' Compensation Judge

**COUNSEL**

Victor Titus, Farmington, NM, for Appellee

Lorenzo Brown, Farmington, NM 87402, for Pro Se Employer/Appellant, for Appellant

**JUDGES**

RODERICK T. KENNEDY, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,  
TIMOTHY L. GARCIA, Judge

**AUTHOR:** RODERICK T. KENNEDY

**MEMORANDUM OPINION**

**KENNEDY, Judge.**

Employer is appealing from a compensation order entered in a case involving the uninsured employers fund. We issued a calendar notice proposing to affirm and Employer has responded with a memorandum in opposition. We affirm.

In its memorandum in opposition, Employer continues to claim that the Workers' Compensation Judge (WCJ) abused its discretion in extending the time for Worker to file his response to the requests for admissions. Specifically, Employer is claiming that the Rules of Civil Procedure should be enforced. However, discovery orders are generally reviewed for abuse of discretion. See *Pub. Serv. Co. of N.M. v. Lyons*, 2000-NMCA-077, ¶ 10, 129 N.M. 487, 10 P.3d 166. More to the point, the rule applicable here provides authority for this as well. Rule 1-036(A) NMRA ("The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow . . ."). Depending on whether the three day waiting period applied to Worker's response, it was either one or four days late. [DS 3; MIO 1] In light of the limited extent of the violation here, we are not inclined to say that the WCJ's ruling amounted to an abuse of discretion. See *Sims v. Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930 P.2d 153 ("An abuse of discretion occurs when a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case."). Accordingly, we affirm.

**IT IS SO ORDERED.**

**RODERICK T. KENNEDY, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**TIMOTHY L. GARCIA, Judge**