

TRUJILLO V. THE GEO GROUP, INC.

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RAYMOND TRUJILLO,
Worker-Appellee,
v.
THE GEO GROUP, INC. and
NEW HAMPSHIRE INSURANCE
COMPANY,
Employer/Insurer-Appellants.

No. 32,487

COURT OF APPEALS OF NEW MEXICO

February 20, 2013

APPEAL FROM WORKERS' COMPENSATION ADMINISTRATION, Gregory D.
Griego, District Judge

COUNSEL

Benito Sanchez, Albuquerque, NM, for Appellee

Allen, Shepherd, Lewis & Syra, P.A., Kimberly A. Syra, Sebastian A. Dunlap,
Albuquerque, NM, for Appellants

JUDGES

CYNTHIA A. FRY, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, J. MILES
HANISEE, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Judge.

Employer-Insurer appeals from a workers' compensation order. We issued a notice of proposed summary disposition proposing to affirm on December 12, 2012. Appellant filed a timely memorandum in opposition on December 21, 2012. Worker filed a memorandum in support on December 28, 2012. We remain unpersuaded that our original proposed disposition was incorrect, and we therefore affirm.

In its docketing statement, Appellant argued that the Workers' Compensation Judge (WCJ) erred in failing to accept deposition testimony regarding maximum medical improvement (MMI) as conclusive for determining Worker's entitlement to all benefits, and that other evidence was not admissible to show Worker's MMI for a psychological condition. [DS 1-4] We proposed to affirm on the basis that the deposition testimony Appellant cited was irrelevant to the issue of MMI for the psychological condition and that the evidence supporting MMI on the psychological condition was admissible. [CN 2-4]

In its memorandum in opposition, Appellant does not argue that this proposed disposition is incorrect. Rather, Appellant now argues that Worker violated the terms of the pre-trial order by presenting the issue of entitlement to temporary total disability benefits (TTD) for the psychological condition. [MIO 2] Appellant argues that the pre-trial order does not list Worker's entitlement to TTD for the psychological issue as a contested issue, and the WCJ improperly allowed the amendment, causing prejudice to Appellant. [MIO 2-3] See NMAC 11.4.4.12(L)(3), (10) (2010, prior to amendments through Dec. 2012) (stating that the pre-trial order shall contain a list of contested issues and the WCJ can only modify that pre-trial order "as provided by law").

We disagree that the amendment of the pre-trial order caused any prejudice to Appellant. The memorandum opinion signed by the WCJ indicates that, at trial, counsel for Worker moved to amend the pre-trial order to include the issue of TTD benefits for the psychological condition, and Appellant consented to the amendment. [RP 136] Appellant does not dispute this in its memorandum in opposition. [MIO 2-3] We therefore find no error in the amendment of the pre-trial order in this case. See *Lucero v. City of Albuquerque*, 2002-NMCA-034, ¶ 11, 132 N.M. 1, 43 P.3d 352 (finding no error in the WCJ's amendment of the pre-trial order to add a contested issue where there was no prejudice to the employer).

For these reasons, and those stated in our notice of proposed summary disposition, we affirm.

IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

TIMOTHY L. GARCIA, Judge

J. MILES HANISEE, Judge