

Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 11/20/2024 10:16 AM

2 **ADRIAN NOGALES,**

3 Worker-Appellant,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-41453

5 **ALBUQUERQUE PUBLIC SCHOOLS,**

6 Employer/Insurer-Appellee.

7 **APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

8 **Leonard J. Padilla, Workers' Compensation Judge**

9 Candelaria Law LLC

10 Jacob R. Candelaria

11 Albuquerque, NM

12 for Appellant

13 Kimberly A. Syra

14 Veguita, NM

15 for Appellee

16 **MEMORANDUM OPINION**

17 **DUFFY, Judge.**

18 {1} Worker appeals from an order granting summary judgment entered in favor
19 of Employer on September 25, 2023. [1 RP 284] This Court issued a calendar notice
20 proposing to summarily affirm. Worker filed a memorandum in opposition, which
21 we have duly considered. Unpersuaded, we affirm.

1 {2} Worker initially asserts in his memorandum in opposition that the Legislature
2 did not intend workers to bear the financial costs of obtaining expert medical
3 testimony to prove their entitlement to Worker’s compensation benefits. [MIO 2]
4 However, the issue before this Court is whether the district court abused its
5 discretion in denying Worker’s application for an independent medical examination
6 (IME), pursuant to NMSA 1978, Section 52-1-51 (2013). The plain language of
7 Section 52-1-51(B) comports with Worker’s assertion and states that “[t]he
8 employer shall pay for any [IME].” *See High Ridge Hinkle Joint Venture v. City of*
9 *Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599 (“[T]he plain
10 language of a statute is the primary indicator of legislative intent.” (internal
11 quotation marks and citation omitted)). Thus, if Worker had been entitled to the IME,
12 Section 52-1-51(B) would have required Employer to pay for it. Yet, Worker must
13 still demonstrate that the district court abused its discretion in denying the
14 application for the IME, pursuant to Section 52-1-51(A). Consequently, we conclude
15 this argument does not demonstrate error.

16 {3} Worker next asserts a number of facts that he alleges “more than establish a
17 legally sufficient reason to order an IME.” [MIO 5] However, we do not sit in the
18 same position as the WCJ. Our standard of review requires us to determine if there
19 was an abuse of discretion, not whether we would have ordered the IME if we were
20 the WCJ. *See Gutierrez v. J & B Mobile Homes*, 1999-NMCA-007, ¶ 17, 126 N.M.

1 494, 971 P.2d 1284 (concluding that a “WCJ is invested with the discretion to
2 determine whether . . . good cause exists for conducting [an IME]”). “An abuse of
3 discretion occurs when a ruling is clearly contrary to the logical conclusions
4 demanded by the facts and circumstances of the case.” *Benz v. Town Ctr. Land, LLC*,
5 2013-NMCA-111, ¶ 11, 314 P.3d 688 (internal quotation marks and citation
6 omitted). Indeed, Worker specifically acknowledges that “there may be reasons for
7 not granting an IME.” [MIO 6]

8 {4} The only factual assertions supporting the request for the IME that were not
9 already addressed in our proposed disposition are that Worker saw an improvement
10 after receiving the antibiotics in Spain and that “Dr. Jones is not an expert in
11 infectious diseases medicine.” [MIO 5] *See State v. Mondragon*, 1988-NMCA-027,
12 ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary
13 calendar notice must come forward and specifically point out errors of law and fact,”
14 and the repetition of earlier arguments does not fulfill this requirement), *superseded*
15 *by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297
16 P.3d 374. Upon review of the application for the IME and the motion for
17 reconsideration, we were unable to locate where Worker made these assertions
18 before the WCJ. [1 RP 26-28, 212-15] Further, Worker does not indicate in his
19 memorandum where the assertions were preserved or whether he presented evidence
20 establishing these facts to the WCJ. *See Gutierrez*, 1999-NMCA-007, ¶ 17 (“[T]he

1 party seeking an order authorizing the conducting of an IME must present evidence
2 to show that the request is reasonably necessary.”); *Campos Enters., Inc. v. Edwin*
3 *K. Williams & Co.*, 1998-NMCA-131, ¶ 12, 125 N.M. 691, 964 P.2d 855 (noting
4 that this Court reviews only matters that were presented to the trial court).
5 Consequently, we conclude that these unpreserved assertions do not demonstrate
6 that the WCJ abused its discretion. *See Crutchfield v. N.M. Dep’t of Tax’n &*
7 *Revenue*, 2005-NMCA-022, ¶ 14, 137 N.M. 26, 106 P.3d 1273 (noting that without
8 a “citation to the record or any obvious preservation, we will not consider” an issue).

9 {5} Lastly, Worker asserts that we should not affirm “because the testimony of
10 any provider that [Worker] paid out of their own pocket to see on account of the
11 WCJ’s refusal to order an IME who was not Dr. Jones, or an IME provider, would
12 not be admissible at trial.” [MIO 3] This assertion does not demonstrate that the WCJ
13 abused its discretion in denying the application for the IME. Accordingly, for these
14 reasons and those stated in our notice of proposed disposition, we affirm.

15 {6} **IT IS SO ORDERED.**

16 
17 _____
MEGAN P. DUFFY, Judge

18 **WE CONCUR:**

19 
20 _____
SHAMMARA H. HENDERSON, Judge

21 
22 _____
GERALD E. BACA, Judge