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



**VICTORIA CHAVEZ,**

Worker-Appellant,

v. **No. A-1-CA-42494**

**PRULL CUSTOM BUILDERS and BUILDERS TRUST OF NEW MEXICO,**

Employer/Insurer-Appellees.

**APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**
**Sonya Carrasco-Trujillo, Workers' Compensation Judge**

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for Appellees

## MEMORANDUM OPINION

**BOHNHOFF, Judge Pro Tempore.**

{1} Worker Victoria Chavez injured her left knee when she slipped and fell in the parking lot of her employer, Prull Custom Builders (Prull). Worker appeals the decision of the Workers' Compensation Judge (WCJ) denying her claim for scheduled injury and other related benefits under the Workers' Compensation Act

(the Act), NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2025). We reverse and remand for further proceedings in accordance with this opinion.

{2} Because this is a memorandum opinion and the parties are familiar with the background of the case, we reference only the facts and procedural history that we deem relevant to our analysis.

**BACKGROUND**

**Section 52-1-49**

{3} Subsection 52-1-49(A) provides that "[a]fter an injury to a worker and subject to the requirements of the [Act], and continuing as long as medical or related treatment is reasonably necessary, the employer shall, subject to the provisions of this section, provide the worker in a timely manner reasonable and necessary health care services from a health care provider."

{4} The remainder of Section 52-1-49 describes in detail how a health care provider (HCP) is selected. In summary, and omitting deadlines and consequences of missing deadlines:

1. Section 52-1-49(B) gives the employer the option of initially selecting the HCP or allowing the injured worker to make the selection. That initial selection remains in effect for sixty days from the date the worker receives treatment from that HCP.

2. Section 52-1-49(C) provides that after the expiration of that sixty-day period, the party who does not make the initial selection may select a new HCP.

3. If a party objects to an HCP selection made pursuant to Section 52-1-49(C), then, pursuant to Section 52-1-49(D), that party shall give notice of the objection by filing a notice with the WCJ. In addition, Section 52-1-49(E) permits a party who disagrees with the other party's choice of HCP to file with the WCJ at any time a request to change the HCP. Under either of these provisions and pursuant to Section 52-1-49(F), the WCJ resolves the objection or change request with the party objecting to or seeking to change the HCP bearing the burden of proving that the care being received by the existing HCP is not reasonable. *See Chavez v. Intel Corp.*, 1998-NMCA-175, ¶ 7, 126 N.M. 335, 968 P.2d 1198; *City of Albuquerque v. Sanchez*, 1992-NMCA-038, ¶ 18, 113 N.M. 721, 832 P.2d 412.

{5} Section 52-1-49(D) and (G) generally limit an employer's financial responsibility for an injured worker's health care to that which is provided by an HCP that is selected in accordance with these provisions—that is, a qualified HCP. *See DeWitt v. Rent-A-Center, Inc.*, 2009-NMSC-032, ¶¶ 15-17, 146 N.M. 453, 212 P.3d 341. A separate provision, Section 52-1-51(C), provides that only a qualified HCP who has treated a worker or a health care provider who has conducted an independent medical examination, pursuant to Section 52-1-51(A), may give medical testimony about the worker's injury. Given these two key roles in the

functioning of the workers' compensation system, our Supreme Court has recognized the selection of a qualified HCP as "an important component" of the Act. *DeWitt*, 2009-NMSC-032, ¶ 15. For the same reasons, this Court has observed that the selection of an HCP also is "a highly contested issue" in workers' compensation cases. *Howell v. Marto Elec.*, 2006-NMCA-154, ¶ 13, 140 N.M. 737, 148 P.3d 823.

**Factual Background**

{6} Chavez worked as the office manager for Prull in Santa Fe, New Mexico. On the morning of February 24, 2022, Chavez slipped on ice in the parking lot of Prull's offices when she arrived for work and injured her left knee. Chavez was taken to a Concentra urgent health care facility; after being examined and treated, she was released to return to work with certain restrictions. She was seen again at Concentra on February 28, 2022, and given referrals for physical therapy and an MRI. Based on these two visits, Chavez was unhappy with the care she had received from, and did not trust, Concentra.

{7} Several events occurred on March 1, 2022. In the morning, Chavez spoke over the phone with Chantel Lujan, the adjustor for Builders Trust, Prull's workers' compensation insurer, about her workers' compensation claim. During the call, Chavez complained about the return-to-work authorization that she had received from Concentra, and requested approval of the Concentra MRI referral. Lujan recorded in her notes of this call that she asked Chavez whether she was directed by

her employer to go to Concentra or chose to go there on her own, and that Chavez stated that "she chose." Lujan made another note in her file that Chavez had selected Concentra as her "initial HCP."

{8} That afternoon, Chavez on her own went to a Christus St. Vincent outpatient clinic, where she previously had received healthcare through her private insurance; she was seen by a physician's assistant and received a referral to be seen by Dr. Sann Gossum, an orthopedic surgeon who was part of the Christus St. Vincent organization.

{9} Later the same day, Lujan mailed Chavez a package of form letters and forms that, as standard procedure, Builders Trust sends an injured worker to start the workers' compensation claims process. One of the letters addressed HCP selection. The letter (the HCP Selection Letter) quoted Section 52-1-49 in its entirety, summarized Subsections (A) and (B), and then advised Chavez that Prull had decided to allow her to choose the initial HCP and asked her to contact Lujan with her choice. The letter did not mention that Chavez had selected Concentra.

{10} During the evening of March 1, Chavez texted Bill Prull, the owner of Prull Custom Builders, writing, "I have decided not to pursue the Workman's Comp claim. I am going to seek an alternative opinion from my own PCP. At this point I do not feel comfortable with Concentra." The following morning, March 2, Chavez phoned Lujan and gave her the same message: she would not be pursuing her

workers' compensation claim. Lujan sent Chavez another letter later that day, memorializing Chavez's decision and stating that Builders Trust would be closing her claim.

{11} Chavez returned to work at Prull on March 10. Prull had agreed to the return-to-work restrictions specified by Concentra and to maintain Chavez's previous salary. However, Chavez was dissatisfied with the result of her discussions with Prull about accommodations that were made for her, in particular, arrangements for clearing ice and snow in the parking lot in the future, and quit her job the same day.

{12} Chavez was seen by Dr. Gossum for her injury on March 10, 2022, and had follow-up visits on April 7 and August 11, 2022, and then once again on May 31, 2024. Dr. Gossum testified in his deposition that as a result of the February 24, 2022, fall, Chavez had torn her left knee's anterior cruciate ligament (ACL) and medial and lateral menisci. He concluded that Chavez reached maximum medical improvement as of August 11, 2022, because by that point she had received physical therapy and nothing remained to be done unless she underwent surgery, which she did not want.

**Procedural Background**

{13} On May 5, 2022, Chavez, now represented by counsel, filed her complaint with the Workers' Compensation Administration (WCA). At trial and on appeal, Chavez has taken the position that in February and March 2022, neither she nor Prull

and Builders Trust (collectively, Employer/Insurer) had selected an HCP, and that she had first given notice in an April 2024 summary judgment motion that she had selected Dr. Gossum as her HCP.

{14} The case was tried on October 31, 2024. The testimony focused on Chavez's decision to withdraw her claim, whether or not she had selected Concentra as her HCP, and her proof of her injuries. Chavez testified at length about these issues as well as her decision to quit her job at Prull. A Builders Trust employee who had replaced Lujan sometime in the spring of 2022 as the adjustor for Chavez's claim also testified briefly. The adjustor testified that the correspondence that was sent to Chavez on March 1, 2022, including the HCP Selection Letter, was standard procedure. The adjustor also testified that if a workers' compensation claimant decides not to pursue their claim anymore, the claim file will be closed, but that the file can be reopened if the worker changes their mind. Closing Chavez's file was "just an administrative closure, not a global closure." Chavez offered into evidence the records of Christus St. Vincent's and Dr. Gossum's treatment of her left knee, and the transcript of Dr. Gossum's deposition.

**The WCJ's Ruling**

{15} The WCJ entered findings of fact and conclusions of law that center on the aforementioned issues, and ultimately denied Chavez's claim for workers' compensation benefits. First, after noting that Chavez closed her claim on March 2,

2022, the WCJ found that Chavez (1) never "re-engaged" with the Employer/Insurer to continue with or reopen her claim; and (2) in fact never reopened the claim. The WCJ also determined that "Worker is not entitled to a finding of loss of use, because she voluntarily closed her workers['] compensation claim and never attempted to reopen her claim."

{16} Second, the WCJ found that the Employer/Insurer gave Chavez the right to select the initial HCP, and that Chavez had selected Concentra on March 1, 2022. The WCJ concluded that Concentra was Chavez's "authorized," i.e., qualified, HCP and that there was "no legal basis" for Chavez to have a new HCP.

{17} Third, the WCJ determined that Chavez had not proven any compensable damages. The WCJ rejected, as not credible, Chavez's claim that she was forced to quit her job because Prull would not commit to clear ice in the parking lot during inclement weather. In light of the workplace accommodations Prull had made for Chavez following her injury, the WCJ ruled that she voluntarily quit her job and therefore was not entitled to any temporary total disability benefits. *See* § 52-1-25.1(D)(1) (providing that a worker is not entitled to temporary total disability benefits if the employer "makes a reasonable work offer at or above the worker's pre[]injury wage, within medical restrictions").

{18} The WCJ then ruled that Chavez also had failed to prove any loss of use that would be the predicate to any scheduled injury benefits. The WCJ found that

Chavez's testimony about her loss of function in her knee was not credible. In addition, the WCJ ruled that Dr. Gossum's records and deposition testimony were not admissible, because he was not a qualified HCP and he had not performed an independent medical exam. For the same reason, the WCJ denied Chavez's claim for recovery of her past and future expenses incurred obtaining medical care from Christus St. Vincent and Dr. Gossum. Lastly, in light of the denial of any benefits, the WCJ denied Chavez's request for an award of her attorney fees.

**DISCUSSION**

{19} On appeal, Chavez does not challenge the WCJ's determination that she voluntarily quit her job and that as a result she is barred from seeking disability benefits. Chavez also does not challenge the WCJ's finding that her testimony about her knee's loss of function as a result of the injury was not credible. However, she challenges the WCJ's denial of her claim for scheduled injury benefits, an award of past and present medical care provided by Christus St. Vincent and Dr. Gossum, and her attorney fees. Specifically, she argues first that the WCJ erred in ruling that, because Chavez closed her workers' compensation claim, she was barred from seeking benefits. Second, she argues that the WCJ erred in ruling that Concentra was, and Dr. Gossum was not, her selected and thus qualified HCP. She further argues that, because Dr. Gossum was her qualified HCP, his testimony about the nature and extent of her injuries was admissible and, as the only such evidence

presented, established that she suffered loss of use of her left knee and thus was entitled to seek scheduled injury benefits, recovery of her past and future medical expenses, and her attorney fees.

{20} We review factual findings of a WCJ under a whole record standard of review. *See DeWitt*, 2009-NMSC-032, ¶ 12; *Grine ex rel. Grine v. Peabody Nat. Res.*, 2006-NMSC-031, ¶ 28, 140 N.M. 30, 139 P3d 190. However, we review a WCJ's statutory interpretation de novo. *DeWitt*, 2009-NMSC-032, ¶ 14. Relatedly, while we generally apply an abuse of discretion standard to the admission or exclusion of evidence, when the application of an evidentiary rule involves an exercise of discretion or judgment, we apply a de novo standard to review "any interpretations of law underlying the evidentiary ruling." *Id.* ¶ 13.

## I. Chavez Reopened Her Workers' Compensation Claim by Filing Her Complaint with the WCA on May 5, 2022

{21} As stated, the WCJ ruled that, because she never "re-engaged" with the Employer/Insurer following closure of her workers' compensation claim during the March 2, 2022, phone call with the Builder's Trust adjustor, Chavez never reopened her claim. The WCJ did not elaborate on this conclusion. However, the premise may have been that Chavez could reopen her claim, but she had to do that by contacting the Employer/Insurer as opposed to simply filing her administrative complaint with the WCA. In any event, we disagree.

{22} Neither the Act nor its implementing regulations bar a worker from closing a claim for workers' compensation benefits that has been handled on an informal level between the employer and/or its insurer, and then reopening the claim by either further pursuing it at the informal level or filing a complaint with the WCA.[1] In addition, neither the Act nor its regulations impose any requirement that a worker pursue a claim informally with the employer at all, much less to some point of finality, before filing a complaint with the WCA. On the contrary, Section 52-5-5(A) is the "principal provision of the Act for initiating claims," *Eldridge v. Circle K Corp.*, 1997-NMCA-022, ¶ 9, 123 N.M. 145, 934 P.2d 1074, and states straightforwardly, without qualification, that "[w]hen a dispute arises under [the Act], any party may file a claim *with the director*." (Emphasis added.)

{23} Employer/Insurer suggest, without pointing to any evidence, that allowing a workers' compensation claim to be closed and then reopened is at odds with the goal of efficiency expressed in Section 52-5-1. That section states that the legislative intent of the Act is to "assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers who are subject to [the Act]." *Id.* Employer/Insurer also argue that the Act created a

[1]As stated, the Builders Trust employee who replaced Lujan as the adjustor assigned to Chavez's claim testified that if a workers' compensation claimant does not want to pursue her claim anymore, the file can be closed but then reopened if the worker changes their mind.

"system" within which workers can recover benefits, and, citing *Swallows v. City of Albuquerque*, 1956-NMSC-063, ¶ 5, 61 N.M. 265, 298 P.2d 945, urge that compliance with the Act is a prerequisite to recover under the Act.

{24} As stated, we find no language in the Act that bars a worker from filing a complaint with the WCA before exhausting their informal claim for workers' compensation benefits. Section 52-5-1's articulation of the Act's legislative intent also does not support such an argument. Indeed, if, for whatever reason, a worker decides to close their claim with the employer, it is arguably *more* cost efficient to allow them to do that with the understanding that they can reopen the claim later if they change their mind, rather than be forced to keep the claim open for fear of permanently losing their rights under the Act. The only statutory limitation on initiating, closing, and reopening a claim is Section 52-1-31's one-year statute of limitations for filing, pursuant to Section 52-5-5, a complaint with the WCA.

{25} More fundamentally, while one of the goals of the Act is to promote an efficient system of providing workers' compensation benefits, an equally central purpose of the Act is "to ensure that an employee is adequately compensated for income lost due to an injury." *Hawkins v. McDonald's*, 2014-NMCA-048, ¶ 12, 323 P.3d 932. Further, we will construe the Act "in favor of providing compensation to an injured worker absent clear language to the contrary. It is not our place to insert language into [the Act] that does not exist." *Id.* ¶ 14. We therefore conclude that

having closed, i.e., withdrawn, her workers' compensation claim with Employer/Insurer on March 2, 2022, Chavez was not barred from reopening her claim informally with Employer/Insurer, or from filing her complaint with the WCA, without first reopening her claim on an informal level.

## II. Chavez Selected Christus St. Vincent and Dr. Gossum as Her Qualified Health Care Providers on April 12, 2024

{26} As stated, Chavez argues that the WCJ erred in ruling that she selected Concentra as her HCP, and that on the contrary, she selected Christus St. Vincent and Dr. Gossum as her HCP. We separately consider each contention.

{27} Finding of fact No. 45 states, "On March 1, 2022, within an hour of speaking to Worker, Ms. Lujan, called Employer to confirm the claim information and also confirmed that Worker had made the first selection of health care provider, that being Concentra." Lujan did not testify, and we do not find any reference in the record that memorializes this statement. However, Lujan's claim notes, which were admitted into evidence, do record that, on March 1, 2022, Chavez called Lujan for the first time in the early morning and asked about the status of her MRI getting approved. Lujan recorded that, during this conversation, she asked Chavez if she was directed to Concentra or if she chose to go there, and that Chavez responded that "she chose." Later that day, Lujan filled out a form with "Initial Participant Contact" information that identified Concentra as the initial HCP chosen by Chavez, and she made another claim note to the same effect later that afternoon.

{28} We agree with Chavez that in finding that she selected Concentra as her HCP on March 1, 2022, the WCJ erred as a matter of law. As is explained in *Silva v. Denco Sales Co.*, 2020-NMCA-012, ¶ 23, 456 P.3d 1117, under Section 52-1-49,

> an employer retains the power to decide at what point the worker will be able to select [their] own HCP. . . . Thus, *an injured worker's right to initially select an HCP occurs only by permission of the employer*. And under the Act and associated regulations [, *see* 11.4.4.12(B)(2)(a) NMAC,] . . . if the employer permits the worker to make the initial HCP selection, it must provide written notice of its decision allowing the worker to do so. *Without written notice from the employer, the worker has been given no right to select the initial HCP*.

*Silva*, 2020-NMCA-012, ¶ 23 (emphasis added) (citations omitted).[2] Employer/Insurer first gave Chavez written notice that Prull would permit her to make the initial HCP selection in the HCP Selection Letter that Builders Trust sent on March 1, 2022. Chavez could have received the letter no earlier than March 2.[3] Therefore, as a matter of law Chavez could not have selected Concentra as her HCP during her phone call with Lujan on March 1.

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[2]*See also* 11.4.4.12(B)(2)(b) NMAC (stating that "[i]f the decision of the employer is not communicated in writing to the worker, then the medical care received by the worker prior to written notification shall not be considered a choice of treating HCP by either party"). The phrase "[i]f the decision of the employer is not communicated," *id.*, is most reasonably construed to mean "until the decision of the employer is communicated." In any event, we follow *Silva*'s construction of Section 52-1-49(B) quoted above.

[3]Chavez testified that she had not yet received the HCP Selection Letter at the time she had her phone call with Lujan on the morning of March 2, 2022, and stated that she was withdrawing her claim.

{29} The next question is whether Chavez validly selected Christus St. Vincent and Dr. Gossum as her HCPs by identifying them as such in her April 12, 2024, summary judgment motion. Several considerations inform our analysis. First, "Section 52-1-49 must be read to allow the employer and the worker each to make a selection of a health care provider at some point in the case." *Grine ex rel. Grine v. Peabody Nat. Res.*, 2005-NMCA-075, ¶ 13, 137 N.M. 649, 114 P.3d 329, *rev'd on other grounds*, 2006-NMSC-031, ¶ 39. This conclusion follows from the underlying purpose of Section 52-1-49 to accommodate the interests of both the worker and the employer. *See Howell v. Marto Elec.*, 2006-NMCA-154, ¶ 13, 140 N.M. 737, 148 P.3d 823 (stating that by allowing both the worker and the employer an opportunity to select an HCP, the Act "strikes a compromise" between a worker's interest in selecting their physician and the employer's interest in controlling the medical process); *City of Albuquerque v. Sanchez*, 1992-NMCA-038, ¶ 20, 113 N.M. 721, 832 P.2d 412 (stating that under the Act both the worker and the employer "have input into the selection of worker's health care provider," thereby accommodating "both the value of allowing the worker to have a doctor [they] trust[] and the need to ensure that the care received by the worker is appropriate and reasonable").

{30} Second, we understand the phrase "in the case," as used in *Grine ex rel. Grine*, 2005-NMCA-075, ¶ 13, to mean during the course of the employer's informal handling of the worker's claim or after the worker has filed a formal claim with the

WCA. In the context of this case, where Chavez had withdrawn her informal claim for workers' compensation benefits before she received the written notification of her right to select an HCP, her next opportunity to select an HCP "in the case" was May 5, 2022, when she filed her complaint with the WCA.

{31} Third, under Section 52-1-49(B), if the employer permits the worker to make the initial HCP selection, the worker, given their injury, certainly will have incentive promptly to engage an HCP and then notify the employer of the engagement in order to obtain treatment, the cost of which the employer will cover. However, the statute does not establish a deadline for doing so. Again, "[i]t is not our place to insert language into [the Act] that does not exist." *Hawkins*, 2014-NMCA-048, ¶14.

{32} *DeWitt* is instructive. There, the worker had injured her back while at work. 2009-NMSC-032, ¶ 2. After initial treatment, she was released to return to work. *Id.* ¶ 3. After a few months, she again experienced back pain. *Id.* A dispute or misunderstanding arose as to whether the insurer had denied additional medical care, whereupon the worker resigned and later obtained her own medical care, ultimately including surgery. *Id.* ¶¶ 3-4, 20-25. Thereafter, the worker filed a complaint with the WCA for workers' compensation benefits, and in the complaint she gave notice that she was exercising her right under Section 52-1-49 to designate her own choice of HCP (the doctors who had provided her care after she had resigned) in place of

the employer-designated HCP that had provided her initial care. *DeWitt*, 2009-NMSC-032, ¶ 5.

{33} In its opinion, our Supreme Court focused on (and resolved in the affirmative) whether the worker's HCPs could testify about the entirety of her medical history, including her condition and treatment before the doctors became her HCPs. *See id.* ¶¶ 26-38. However, in the course of this analysis of the permissible scope of HCP testimony under Section 52-1-51(C), the Court considered the "consequences of late compliance with the HCP designation provisions of the Act." *DeWitt*, 2009-NMSC-032, ¶ 34. The Court noted that the legislative goals of "avoid[ing] testimony-shopping" and "limit[ing] the use and number of experts in workers' compensation cases" are accomplished "by use of the limited ability of the parties to name new authorized treating HCPs through the notice, objection, and WCJ approval requirements" in Section 52-1-49. *DeWitt*, 2009-NMSC-032, ¶ 35 (internal quotation marks and citation omitted). The Court then observed that, had the employer disagreed with the worker's HCP designation, it could have pursued those means of bringing the issue to the attention of the WCJ for resolution. *Id.* However, the employer did not do that. *See id.* As a result,

> [t]he [w]orker's doctors were therefore HCPs who were authorized to provide testimony on the issues in the case. While it certainly would have been desirable for [the w]orker not to have made such a belated designation of her treating physicians as HCPs, and while she certainly ran the risk of their not being designated as such by the WCJ, we find no authority in the Act for a truncation of their authorized testimony.

*Id. DeWitt* thus stands for the proposition that HCP selection may take place not only within the context of the informal handling of a workers' compensation claim by an employer and/or its insurer that might precede the filing of a formal complaint, but also while the claim is pending before a WCJ. *See Grine ex rel. Grine*, 2006-NMSC-031, ¶¶ 12-14 (noting that worker's HCP had been selected prior to worker's submission of a notice of accident report with employer and employer's HCP was selected during pendency of the litigation).

{34} The procedural posture of Chavez's workers' compensation claim was unusual. Within days of her accident, and before she received Employer/Insurer's notice that they were giving her the right to select an HCP, Chavez withdrew her claim for workers' compensation benefits. She then changed her mind two months later and decided to pursue her claim after all. Two years later, and six months prior to trial, she gave notice to Employer/Insurer in a summary judgment motion that she had selected Christus St. Vincent and Dr. Gossum as her HCPs. Employer/Insurer conceivably could have objected at that point to the timing of Chavez' HCP selection under Section 52-1-49(E) or 11.4.4.13(F) or (O) NMAC. In particular, they could have argued that Chavez's notice of her HCP selection six months before trial prejudiced their ability to conduct discovery or otherwise prepare for trial. Alternatively, they could have elected under Section 52-1-49(C) to make their own selection of an HCP to examine and treat Chavez, and testify at trial, and in

connection with such an election they could have sought to delay the October 31, 2024, trial date. However, Employer/Insurer did not take any of these steps. Instead, they appear to have made a strategic decision to stand on their position, which we have determined to be legally incorrect, that Chavez had selected Concentra as her HCP on February 24 or March 1, 2022. On this record, we conclude that Chavez had selected Christus St. Vincent and Dr. Gossum as her HCPs.

## III. The WCJ Erred in Not Considering Dr. Gossum's Testimony Regarding Chavez's Loss of Use of Her Left Knee

{35} Dr. Gossum had testified at his deposition that: (1) the ACL prevents the knee from buckling or bending backwards, and otherwise provides stability, and the menisci act as "shock absorbers" and also provide stability; (2) Chavez had torn the ACL and the medial and lateral menisci of her left knee; (3) the cause of the torn ACL and menisci was Chavez's fall on February 24, 2022; (4) a torn meniscus is dysfunctional, i.e., it "doesn't do its job"; (5) by August 2022, Chavez had not regained full range of motion "maximum flexion." This testimony was relevant to Chavez's percentage loss of use of her left knee and thus could support an award of benefits under Section 52-1-43(A)(30) and (B), which authorize benefits for "partial loss of use" of a leg at or above the knee. *See Twin Mountain Rock v. Ramirez*, 1994-NMCA-020, ¶ 13, 117 N.M. 367, 871 P.2d 1373 (holding that Section 52-1-43 provides benefits for total or partial loss or impairment of body members or

functions); *see also* § 52-1-24(A) (stating that "impairment" includes a functional abnormality existing after the date of maximum medical improvement).

{36} Chavez selected Christus St. Vincent and Dr. Gossum as her HCPs in April 2024. Accordingly, she had a right under Section 52-1-51(C) to present Dr. Gossum's testimony at trial. *See DeWitt*, 2009-NMSC-032, ¶ 35. The WCJ erred by excluding it and then dismissing Chavez's claim for scheduled injury benefits based on a lack of admissible evidence. We remand this matter to the WCJ to reconsider its dismissal of this claim in light of our analysis above, as well as Chavez's entitlement to an award of future[4] medical care, *see* § 52-1-49(A), and her attorney fees, *see* § 52-1-54.

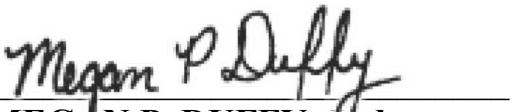
**CONCLUSION**

{37} We reverse the WCJ's compensation order. We remand this matter to the WCA for further proceedings in accordance with this opinion.

**HENRY M. BOHNHOFF, Judge**
**Pro Tempore**

[4] We construe Sections 52-1-49(A), (B), (D) and (G) not to require Employer/Insurer to reimburse Chavez for services rendered by Dr. Gossum and Christus St. Vincent prior to April 2024. *Cf. Montoya v. Anaconda Mining Co.*, 1981-NMCA-113, ¶ 23, 97 N.M. 1, 635 P.2d 1323 (stating that under pre-1990 version of Section 52-1-49, an employer was not responsible for medical care obtained by injured worker without first being given a reasonable opportunity to provide the services), *overruled on other grounds as recognized by San Juan 1990-A., L.P. v. El Paso Prod. Co.*, 2002-NMCA-041, 132 N.M. 73, 43 P.3d 1083.

**WE CONCUR:**



**MEGAN P. DUFFY, Judge**

**ZACHARY A. IVES, Judge**