

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Court of Appeals of New Mexico
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Mark Reynolds

No. A-1-CA-41627

**JANET M. DI LUZIO, surviving spouse
of FRANK DI LUZIO, Deceased,**

Worker-Appellee,

v.

CITY OF SANTA FE,

Employer/Insurer-Appellant.

**APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION
Anthony "Tony" Couture, Workers' Compensation Judge**

Gerald A. Hanrahan
Albuquerque, NM

for Appellee

Garcia Law Group, LLC
Teague Williams
Albuquerque, NM

for Appellants

OPINION

BACA, Judge.

{1} This case asks us to interpret the death benefit provisions of the New Mexico Occupational Disease Disablement Law (ODDL), NMSA 1978, §§ 52-3-1 to -60 (1945, as amended through 2026). Worker Frank Clark Di Luzio was a firefighter for the City of Santa Fe New Mexico (the City), for over twenty years. After he retired, he developed Stage IV mantle cell non-Hodgkin's lymphoma, an occupational disease linked to his years of firefighting. Worker became disabled in January 2012 and remained disabled for the rest of his life. The City paid Worker permanent total disability (PTD) benefits for 492 weeks, approximately nine and one-half years, totaling \$360,714.72. Worker died from the disease on June 2, 2021, at the age of sixty-six.

{2} After his death, wife Janet Marlene Di Luzio (Widow), filed a claim for death benefits under the ODDL. Following trial, the Workers' Compensation Judge (WCJ) entered a compensation order (the Order) awarding Widow 700 weeks of death benefits at \$733.16 per week, totaling \$513,212. The WCJ concluded that the City was not entitled to reduce those death benefits by the 492 weeks of disability benefits it had already paid to Worker during his life. The total benefit period under the Order was therefore 1,192 weeks, almost twenty-three years, totaling \$873,926.72.

1 {3} The City appeals, advancing three arguments. First, Section 52-3-14(H) of the
2 ODDL requiring death to occur “within the period of two years” from the
3 disablement bars Widow’s claim because Worker died more than nine years after
4 the onset of his disablement. Second, Section 52-3-10(B)(4) of the ODDL bars death
5 benefits because Worker died more than three years after his last day of employment
6 with the City. Third, the total duration of all benefits is limited to 700 weeks, and
7 the 492 weeks of disability benefits paid to Worker during his life must be credited
8 against that limit, leaving only 208 weeks of death benefits available to Widow.

9 {4} For the reasons set forth below, we hold that the two-year clause in Section
10 52-3-14(H) does not bar death benefits where Worker remained continuously
11 disabled until his death. We decline to reach the merits of the second argument under
12 Section 52-3-10(B)(4), because the City did not preserve the issue for appellate
13 review. However, we do conclude that the 700-week aggregate limit on all collective
14 benefits under the ODDL, in Section 52-3-14(D), applies to Widow’s death benefits.
15 Because Worker received 492 weeks of disability benefits during his life, Widow’s
16 death benefits are limited to the remaining 208 weeks.

17 **BACKGROUND**

18 {5} The facts in this case are undisputed. Worker began working as a firefighter
19 for the City in March 1979. Over the next twenty-one years, he advanced through
20 the ranks, ultimately becoming fire chief. Worker left the fire department in January

1 2000 to serve briefly as a manager for the City. He retired from employment with
2 the City on August 1, 2001.

3 {6} On January 6, 2012, approximately twelve years after Worker’s last day with
4 the fire department, he was diagnosed with Stage IV mantle cell non-Hodgkin’s
5 lymphoma. He became physically unable to work on January 11, 2012, and never
6 recovered. Worker remained continuously disabled from that date until his death on
7 June 2, 2021, a period of almost nine and one-half years. At the time of Worker’s
8 death, the City had paid him almost \$1,086,659.09 in medical benefits and
9 \$360,714.72 in disability benefits, and later reimbursed Widow \$2,332.03 for his
10 funeral expenses.

11 {7} Prior to his death, in June 2012, Worker filed a workers’ compensation claim,
12 seeking disability benefits under Section 52-3-32.1 (2009, amended 2026) of the
13 ODDL. At that time, the statute created a presumption that certain diseases,
14 including non-Hodgkin’s lymphoma, were caused by employment as a firefighter
15 when a firefighter had served more than fifteen years. Section 52-3-32.1(B)(5)
16 (2009, amended 2026); *see Di Luzio v. City of Santa Fe*, 2015-NMCA-042, ¶ 14,
17 357 P.3d 401 (“By enacting the firefighter [ODDL], the Legislature adopted a
18 statutory presumption that the development of non-Hodgkin’s lymphoma by a
19 firefighter is linked to [their] service in that role under certain circumstances.”).
20 Following a 2013 trial on Worker’s claim, a WCJ entered a compensation order

1 awarding Worker PTD benefits. The City appealed. On appeal, this Court affirmed
2 the award, concluding that Worker was entitled to the statutory presumption because
3 he had served more than fifteen years as a firefighter, and reversed only the
4 calculation of the compensation rate. *See Di Luzio*, 2015-NMCA-042, ¶¶ 2, 25.

5 {8} After Worker’s death, Widow filed a separate claim for death benefits under
6 the ODDL. In response, the City asserted a single defense, the two-year period
7 limitation in Section 52-3-14(H). Following a trial on Widow’s claim, the WCJ
8 entered the Order awarding Widow 700 weeks of death benefits at \$733.16 per week
9 and concluding that the City was not entitled to a “credit” for the 492 weeks of
10 disability benefits paid to Worker during his life. The City appeals from the Order.

11 **DISCUSSION**

12 **I. Standard of Review**

13 {9} In this appeal, we are called upon to interpret the ODDL. Statutory
14 interpretation is a question of law that this Court reviews de novo. *Tom Growney*
15 *Equip. Co. v. Jouett*, 2005-NMSC-015, ¶ 13, 137 N.M. 497, 113 P.3d 320; *Ruiz v.*
16 *Los Lunas Pub. Sch.*, 2013-NMCA-085, ¶ 5, 308 P.3d 983.

17 {10} When we interpret statutes, our primary goal is to give effect to legislative
18 intent. *Aeda v. Aeda*, 2013-NMCA-095, ¶ 11, 310 P.3d 646. “To discern the
19 Legislature’s intent, we rely on the classic canons of statutory interpretation and look
20 first to the plain language of the statute, giving the words their ordinary meaning,

1 unless the Legislature indicates a different one was intended.” *Fowler v. Vista Care*,
2 2014-NMSC-019, ¶ 7, 329 P.3d 630 (internal quotation marks and citation omitted).
3 This Court will not read into a statute language that is not there, especially if it makes
4 sense as written. *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-
5 NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599. We avoid interpretations that would
6 render any statutory language superfluous or meaningless. *Baker v. Hedstrom*, 2013-
7 NMSC-043, ¶ 24, 309 P.3d 1047. Moreover, we do not interpret a statute in a way
8 that produces absurd, unreasonable, or contradictory results. *See State v. Smith*,
9 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022. “If we determine that the
10 language of a statute is clear and unambiguous, there is no need for additional
11 analysis of the statute” and “it is the responsibility of the judiciary to apply the statute
12 as written.” *Aeda*, 2013-NMCA-095, ¶ 11 (omission, internal quotation marks, and
13 citation omitted). When several sections of a statute are involved, we must read them
14 together to give effect to all parts, including amendments. *High Ridge Hinkle Joint*
15 *Venture*, 1998-NMSC-050, ¶ 5. This Court analyzes the statute’s overall structure
16 and its role within the broader legislative framework. *See Smith*, 2004-NMSC-032,
17 ¶ 10. We do not view a statutory subsection in isolation but rather in relation to the
18 entire statute and to other statutes addressing the same general subject. *See id.*

19 {11} “Unless a word or phrase is defined in the statute or rule being construed, its
20 meaning is determined by its context, the rules of grammar and common usage. A

word or phrase that has acquired a technical or particular meaning in a particular context has that meaning if it is used in that context.” NMSA 1978, § 12-2A-2 (1997).

{12} Importantly, for our purposes here, our Legislature has declared that the ODDL is “not remedial in any sense and [is] not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.” NMSA 1978, § 52-5-1 (1990). Our Supreme Court has interpreted this to mean that we interpret the ODDL with “a balanced and evenhanded construction.” *Gomez v. B.E. Harvey Gin Corp.*, 1990-NMSC-057, ¶ 9, 110 N.M. 100, 792 P.2d 1143. Put simply, we do not favor one party over the other. We read the text as written and follow where the statutory language leads. With these principles in mind, we turn to the City’s three arguments on appeal.

II. The Two-Year Clause in Section 52-3-14(H) Does Not Bar Widow’s Claim for Death Benefits

{13} The City argues that Widow is not entitled to death benefits under the ODDL because, in its view, Section 52-3-14(H) requires a worker’s death to occur within two years of the onset of disablement, and here Worker died more than nine years after he became disabled. For support, the City argues that for “the period of two years” to have meaning, it must be logically tied to a specific event—namely, the date on which a worker’s disability begins. *See id.*

1 {14} Section 52-3-14(H) is the ODDL provision governing death benefits. It
2 provides, in pertinent part, that “[i]n case death proximately results from the
3 disablement *within the period of two years*, compensation benefits to be paid such
4 worker shall be in the amounts and to the persons as follows.” (Emphasis added.)
5 Two conditions must be met before death benefits become payable. First, the
6 worker’s death must “proximately result[] from the disablement,” meaning the
7 occupational disease that caused the worker’s disablement must also be the cause of
8 the worker’s death. *Id.*; see § 52-3-4(D) (defining “disablement” in the ODDL);
9 *Proximate Cause, Black’s Law Dictionary* (12th ed. 2024) (“A cause that directly
10 produces an event and without which the event would not have occurred.”). Second,
11 the death must occur “within the period of two years.” Section 52-3-14(H). The
12 parties do not dispute the first condition. Their dispute concerns the second.

13 {15} Under the City’s reading, death benefits would be available in this case if
14 Worker died within two years of January 11, 2012, the onset of his disablement.
15 Widow argues that contrary to the City’s contention, the statute does not say “after
16 the beginning of such disablement.” Widow contends that the “period of two years”
17 refers to the ongoing period of the disablement itself, and that because Worker
18 remained continuously disabled until his death, his death necessarily fell within the
19 period of that disablement. *See id.*

1 {16} The WCJ agreed with Widow, reasoning that Worker “remained continuously
2 disabled due to his occupational disease until his death” and that “Worker had not
3 recovered from his disability such that he was able to fully return to work and such
4 that the [two]-year statute of limitations found in [Section] 52-3-14(H) would
5 apply.” We agree with Widow and the WCJ and explain.

6 {17} Consistent with our canons of statutory interpretation, we begin with the text
7 of Section 52-3-14(H). The critical clause within Section 52-3-14(H) is “death
8 proximately results from the disablement within the period of two years.” We are
9 acutely aware of what that provision does not say. Section 52-3-14(H) does not say
10 “within two years *after the beginning of* such disablement.” Nor does it say “within
11 two years *of the date the worker became disabled.*” It simply says “within the period
12 of two years,” without identifying a starting point. Section 52-3-14(H). This
13 omission is significant because our canons of statutory construction inform us that
14 the Legislature is fully capable of including language establishing the beginning of
15 a time period if it so chooses. *See State v. Rael*, 2024-NMSC-010, ¶ 41, 548 P.3d 66
16 (“[The L]egislature is presumed to say what it means and mean what it says.”); *State*
17 *v. Greenwood*, 2012-NMCA-017, ¶ 38, 271 P.3d 753 (“The Legislature knows how
18 to include language in a statute if it so desires.” (alteration, internal quotation marks,
19 and citation omitted)). As well, these canons direct us not to read language into a

1 statute that is not there, especially if the statute makes sense as written. *See High*
2 *Ridge Hinkle Joint Venture*, 1998-NMSC-050, ¶ 5.

3 {18} If the Legislature intended the two-year limitation period in Section 52-3-
4 14(H) to begin at the onset of a worker’s disablement, it would have included that
5 language in Section 52-3-14(H), as it did in other sections of the ODDL and in a
6 similar provision of the Workers’ Compensation Act (WCA), NMSA 1978, §§ 52-
7 1-1 to -70 (1929, as amended through 2025). For example, Section 52-3-19(A) of
8 the ODDL requires a worker to give their employer written notice of an occupational
9 disease “within fifteen days after the beginning of such disablement.” The same
10 subsection sets an outer limit on a worker’s notice to their employer, “not later than
11 sixty days after the beginning of such disablement.” *Id.*

12 {19} This point is reinforced by comparing Section 52-3-14(H), the ODDL’s death
13 benefit provision, with the parallel provision of the WCA, Section 52-1-46. Both the
14 ODDL and WCA address workers’ compensation benefits and include death-benefit
15 provisions that are similarly structured and worded. The Legislature enacted and
16 maintains both as part of a single worker’s compensation framework. The
17 Legislature’s intent in passing both statutes is set forth in a single purpose section,
18 § 52-5-1, and the WCA administrative rules define “Act” to include both the WCA
19 and the ODDL collectively. *See* 11.4.1.7(A) NMAC (“‘Act’ means collectively: the
20 [WCA], the Workers’ Compensation Administration Act, and the [ODDL].”).

1 Because the Legislature drafted the WCA and ODDL as components of the same
2 legislative scheme, when it uses specific language in one and omits it from the other,
3 we treat that omission as intentional. *Cf. State v. Jade G.*, 2007-NMSC-010, ¶ 28,
4 141 N.M. 284, 154 P.3d 659 (“[W]hen the Legislature includes a particular word in
5 one portion of a statute and omits it from another portion of that statute, such
6 omission is presumed to be intentional.”).

7 {20} A review of these two comparable sections of the same statutory scheme
8 reveals that Section 52-1-46 of the WCA expressly ties the two-year period to a
9 specific event, the worker’s accidental injury. Whereas, Section 52-3-14(H) of the
10 ODDL does not contain this language. On the one hand, Section 52-1-46 provides
11 that death benefits are payable “if an accidental injury sustained by a worker
12 proximately results in the worker’s death *within the period of two years following*
13 *the worker’s accidental injury.*” (Emphasis added.) On the other hand, Section 52-
14 3-14(H) does not tie its two-year period to any specific event. It reads: “In case death
15 proximately results from the disablement within the period of two years,
16 compensation benefits to be paid such worker shall be in the amounts and to the
17 persons as follows.” *Id.* The Legislature enacted and has maintained both statutes,
18 and we must respect its choice to anchor the time period in Section 52-1-46 and not
19 in Section 52-3-14(H). The City asks us to read the statute as if it said: “[W]ithin
20 two years after the beginning of such disablement.” We decline to do so.

1 {21} Nevertheless, the City argues that this reasoning would render the two-year
2 clause in Section 52-3-14(H) superfluous. The City contends that if a worker remains
3 continuously disabled and then dies from the occupational disease, the death will
4 always have occurred “within the period” of disablement, since the worker was still
5 disabled at the time of death. *See id.* Stated otherwise, the City argues that our
6 reading would serve as an automatic gateway rather than a meaningful limitation
7 imposed by our Legislature. The City presses this argument further, anticipating the
8 response that the clause would retain meaning in cases where a worker recovers and
9 later dies from a recurrence of the disease. The City contends that the statutory
10 framework makes that scenario impossible.

11 {22} The City’s argument begins with the statutory definition of “disablement”
12 under Section 52-3-4(D), which refers to physical incapacity caused by an
13 occupational disease, not the disease itself. If a worker recovers and returns to work,
14 the incapacity has ended, and the worker is no longer disabled within the meaning
15 of the statute. From this premise, the City reasons that if the disablement no longer
16 exists, a subsequent death cannot “proximately result[] from the disablement” under
17 Section 52-3-14(H). And if the recovery scenario cannot produce a death that
18 satisfies both conditions of Section 52-3-14(H), the City concludes that the two-year
19 clause has no scenario under which it could bar recovery under Widow’s reading.

1 {23} This Court agrees with the City that “disablement” under Section 52-3-4(D)
2 means the physical incapacity caused by an occupational disease, not the disease
3 itself. A worker who can no longer perform their employment duties because of an
4 occupational disease is disabled under the ODDL. Section 52-3-4(D) (defining
5 “disablement” to mean “an employee [cannot] perform any work for remuneration
6 or profit in the pursuit in which the employee was engaged” or the “incapacity of an
7 employee . . . to perform to some percentage extent any work for which [they are]
8 fitted by age, education and training”). When the incapacity lifts, the disablement
9 ends, even if the underlying occupational disease persists. The City is also correct
10 that in many cases involving a recovery followed by a fatal recurrence, the
11 recurrence itself would produce a new period of physical incapacity before death. In
12 that situation, the worker would become disabled again, and the death would occur
13 during the new disablement period and be proximately caused by it. The two-year
14 clause would be satisfied rather than triggered as a bar because the death would occur
15 within the period of new disablement. We therefore agree with the City that under
16 our reading, the scenarios in which the two-year clause of Section 52-3-14(H) would
17 bar recovery may be infrequent. Yet, they do exist.

18 {24} To illustrate, we offer the following non-exhaustive example. A worker with
19 an occupational disease becomes disabled, receives treatment, recovers enough to
20 return to work, thereby ending their disablement, and then, three years later, dies

1 suddenly. It is determined that the cause of death is not a new illness. Instead, it is a
2 long-term complication of the original occupational disease. The worker never
3 became physically incapable of working prior to death. As a result, there was no new
4 disablement period. In this example, the death may well have been the proximate
5 result of the original disablement, but it would not have occurred “within the period
6 of two years” of that disablement because no new disablement period existed.
7 Section 52-3-14(H). Therefore, the two-year clause would prevent the payment of
8 death benefits. As the WCJ correctly recognized, a worker can “become cured” and
9 “still ultimately die of one of the enumerated conditions after a period of wellness,”
10 thereby triggering the two-year limitation in Section 52-3-14(H).

11 {25} This Court, again, acknowledges that this may be an infrequent scenario. That
12 observation, however, does not establish surplusage. A statutory provision need not
13 be applied frequently to have meaning. A provision that applies in unusual but
14 plausible scenarios still has effect. We identified at least one such scenario above.
15 That is sufficient to conclude that our reading does not render the two-year clause
16 superfluous. Because the two-year clause of Section 52-3-14(H) retains operative
17 meaning, even if only in a narrow set of scenarios, the superfluity concern does not
18 compel us to adopt the City’s reading or to add language to the statute that our
19 Legislature did not include.

1 {26} We hold that the two-year period in Section 52-3-14(H) is not measured from
2 the date a worker is deemed disabled. Instead, the two-year period is tied to the
3 physical incapacity related to the disablement. While a worker remains continuously
4 disabled by an occupational disease, that disablement is ongoing for purposes of
5 Section 52-3-14(H) because the worker is physically incapable of performing their
6 duties of employment. Here, Worker remained continuously disabled by his
7 occupational disease from January 11, 2012, until his death on June 2, 2021, and the
8 parties agree that his death proximately resulted from that disablement. Therefore,
9 his death fell within the two-year period of that disablement. We affirm the WCJ's
10 determination that the two-year clause does not bar Widow's claim for death
11 benefits.

12 **III. The City Did Not Preserve Its Section 52-3-10(B)(4) Argument for**
13 **Appellate Review**

14 {27} The City argues that Section 52-3-10(B)(4) of the ODDL independently bars
15 Widow's death benefits. The portion of Section 52-3-10(B)(4) at issue states that

16 *in those cases where death results during a period of continuous*
17 *disablement from an occupational disease other than silicosis or*
18 *asbestosis for which compensation has been paid or awarded or for*
19 *which a claim, compensable but for such death, is on file with the*
20 *director, and in these cases compensation shall be paid if death results*
21 *within three years from the last day upon which the employee actually*
22 *worked for the employer against whom compensation is claimed.*

23 (Emphasis added.) The City contends that Section 52-3-10(B)(4) imposes a three-
24 year time limit, measured from the last day the worker actually worked for the

1 employer, within which the continuously disabled worker’s death must occur for
2 death benefits to be payable. Here, Worker retired from City employment on August
3 1, 2001. Worker died on June 2, 2021, almost twenty years later. As a result, because
4 Worker’s death falls beyond the three-year limit prescribed by Section 52-3-
5 10(B)(4), the City contends that Widow’s claim for death benefits is barred.

6 {28} However, before we consider the merits of this argument, we must address a
7 threshold matter. Widow contends that “[the City] did not raise Section 52-3-10 as
8 a contested issue nor as an affirmative defense in the [p]re-[t]rial [o]rder” and the
9 “[City’s] failure to raise Section 52-3-10[(B)(4)] as an affirmative defense in any
10 pleadings prior to trial precludes the raising of this issue on appeal.” Essentially,
11 Widow contends that the City failed to preserve this argument for appellate review.
12 We agree.

13 {29} Notably, the City’s own brief in chief acknowledges that “[t]he WCJ in the
14 present case did not address the applicability of . . . Section 52-3-10(B)(4).” Only in
15 its reply, after Widow raised preservation, did the City attempt to demonstrate that
16 the issue was properly preserved before the WCJ and this Court. Because the City
17 now maintains the applicability of Section 52-3-10(B)(4) was preserved, we address
18 each of its contentions as to how it preserved its argument, and explain why the
19 record shows otherwise.

1 {30} “To preserve an issue for review on appeal, it must appear that [the] appellant
2 fairly invoked a ruling of the [tribunal] on the same grounds argued in the appellate
3 court.” *Woolwine v. Furr’s, Inc.*, 1987-NMCA-133, ¶ 20, 106 N.M. 492, 745 P.2d
4 717; accord Rule 12-321(A) NMRA. “Our precedent explains that the party
5 claiming error must have raised the issue below clearly and have invoked a ruling
6 by the lower tribunal,” and that “to invoke a ruling from a tribunal, a party must have
7 asserted a legal principle, developed any facts necessary to show that the legal
8 principle applies, and brought the issue to the attention of the decision-maker.” *N.M.*
9 *Auto. Dealers Ass’n v. N.M. Env’t Improvement Bd.*, 2026-NMCA-061, ¶ 18, 591
10 P.3d 208 (alterations, internal quotation marks, and citation omitted). “Where the
11 record fails to indicate that an argument was presented to the [tribunal] below, unless
12 it is jurisdictional in nature, it will not be considered on appeal. Error may not be
13 predicated upon matters not raised in the [tribunal].” *Woolwine*, 1987-NMCA-133,
14 ¶ 20 (citations omitted). This Court recognizes that our preservation requirement
15 should not be implemented in an overly technical manner; instead, it “should be
16 applied with its purposes in mind.” *Gracia v. Bittner*, 1995-NMCA-064, ¶ 18, 120
17 N.M. 191, 900 P.2d 351. “The primary purposes for the preservation rule are: (1) to
18 specifically alert the [tribunal] to a claim of error so that any mistake can be corrected
19 at that time, (2) to allow the opposing party a fair opportunity to respond to the claim
20 of error and to show why the [tribunal] should rule against that claim, and (3) to

1 create a record sufficient to allow this Court to make an informed decision regarding
2 the contested issue.” *Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-
3 NMCA-095, ¶ 56, 146 N.M. 853, 215 P.3d 791. With this in mind, we turn to
4 consider the arguments of the City vis-à-vis preservation of this issue.

5 {31} In a workers’ compensation proceeding, when a complaint is filed, the
6 respondent must file an informal response that includes “a statement of facts and
7 affirmative defenses together with a short summary of reasons for denials of any
8 benefits claimed.” 11.4.4.10(C)(1)(a)-(b) NMAC. The respondent must then file an
9 answer admitting or denying each claim in the complaint, and “[a]ny affirmative
10 defenses to the complaint shall be stated in the answer.” 11.4.4.13(D) NMAC. The
11 Rules of Civil Procedure for the District Courts apply to WCA proceedings unless
12 otherwise stated or necessarily implied by the WCA administrative rules. *See*
13 11.4.4.9(A)(2) NMAC. Under the Rules of Civil Procedure for the District Courts,
14 a party “shall set forth affirmatively” any matter constituting “an avoidance or
15 affirmative defense” when “pleading to a preceding pleading.” Rule 1-008(C)
16 NMRA. The consequences of failing to comply with these requirements are well
17 established. “[A]ffirmative defenses must be pled or they are waived.” *Santistevan*
18 *v. Centinel Bank of Taos*, 1981-NMSC-092, ¶ 13, 96 N.M. 730, 634 P.2d 1282;
19 *Fredenburgh v. Allied Van Lines, Inc.*, 1968-NMSC-174, ¶ 3, 79 N.M. 593, 446 P.2d
20 868. “[T]he burden is on the [respondent] to raise any matter which will constitute

1 an avoidance or an affirmative defense to plaintiffs’ complaint.” *McCasland v.*
2 *Prather*, 1978-NMCA-098, ¶ 22, 92 N.M. 192, 585 P.2d 336. These pleading
3 requirements matter here because an affirmative defense that was not pled could not
4 have been ruled upon below, and without a ruling fairly invoked, nothing is
5 preserved for our review.

6 {32} The City had three opportunities to assert Section 52-3-10(B)(4) as a defense,
7 yet it did not. First, the City filed its informal response. The only defense asserted
8 was the two-year clause in Section 52-3-14(H). The City simply stated, “Pursuant to
9 Section 52-3-14(H), it sets forth, ‘[i]n case death proximately results from the
10 disablement within the period of two years, compensation benefits to be paid.”
11 Section 52-3-10(B)(4) was not referenced. Second, the City filed its answer. Again,
12 the only affirmative defense asserted was the two-year clause in Section 52-3-14(H),
13 which quoted the same statutory language as the informal response. Section 52-3-
14 10(B)(4) was not referenced. Third, the parties agreed in the pretrial order on the
15 issues to be addressed at trial. None of those contested issues referenced Section 52-
16 3-10(B)(4). The City responds that the pretrial order’s central contested issue,
17 whether Widow “is entitled to death benefits,” necessarily encompassed Section 52-
18 3-10(B)(4) because it addresses Widow’s entitlement to death benefits. However, a
19 generic framing of the ultimate question does not assert a specific legal principle or
20 bring a particular statutory defense to the decision-maker’s attention, *see N.M. Auto.*

1 *Dealers Ass’n*, 2026-NMCA-061, ¶ 18, and it serves none of the purposes of
2 preservation. *See Sandoval*, 2009-NMCA-095, ¶ 56. Simply put, in the above-
3 mentioned pleading process before trial, the City never identified Section 52-3-
4 10(B)(4) as a defense to Widow’s claim.

5 {33} The City notes that the parties discussed Section 52-3-10(B)(4) at the trial.
6 Although that is accurate, context matters. It was Widow, not the City, who raised
7 Section 52-3-10(B)(4) at trial. The City merely responded to Widow’s Section 52-
8 3-10(B)(4) argument. The City cannot rely on Widow’s argument for the first time
9 on appeal. *See Fredenburgh*, 1968-NMSC-174, ¶ 4 (holding that the appellant could
10 not “be allowed to take advantage of [the] appellee’s proof for the first time on
11 appeal”).

12 {34} The City highlights that, after the trial, both parties tendered findings of fact
13 and conclusions of law addressing Section 52-3-10(B)(4). In the Order, the WCJ
14 explained that “[a]ny tendered findings not expressly adopted herein are hereby
15 rejected” and that “[a]ny tendered [c]onclusions of [l]aw not expressly adopted
16 herein are hereby rejected.” Typically, when a decision-maker declines to adopt a
17 proposed finding of fact, it is effectively making a negative finding on that point,
18 which, in this case, is a ruling that this Court may review. *See Hill v. Cmty. of*
19 *Damien of Molokai*, 1996-NMSC-008, ¶ 41, 121 N.M. 353, 911 P.2d 861 (“Failure
20 to adopt a proposed finding of fact is in effect a negative finding with respect to that

fact, which binds this Court on appeal.”). However, here, the WCJ could not have ruled on an affirmative defense the City did not plead, and without a ruling on a fairly invoked issue, nothing is preserved for our review. Furthermore, the City’s tenders marked the first time it asserted Section 52-3-10(B)(4) as an affirmative defense to Widow’s claim. And tendering a defense for the first time in the requested findings submitted at the close of a case is too late to raise the issue. *See Fredenburgh*, 1968-NMSC-174, ¶ 4 (holding that it “was too late [for the respondent] to raise [an] issue” because “the requested finding was, so far as the record disclose[d], the first intimation regarding this defense”).

{35} Lastly, the City asserts that the WCJ “underwent an analysis” of *Schirmer v. Homestake Mining Co.*, 1994-NMSC-095, 118 N.M. 420, 882 P.2d 11, in the Order, and that *Schirmer* “squarely discusses the application of . . . Section 52-3-10 to death claims under the ODDL.” Whatever *Schirmer* discusses, the Order’s citation to it was explicitly tied to Section 52-3-14(H), not Section 52-3-10(B)(4).

{36} The City has not identified any other instances in which it raised the Section 52-3-10(B)(4) argument below, and this Court is “not obligated to search the record on a party’s behalf to locate support for [the] propositions a party advances.” *See Muse v. Muse*, 2009-NMCA-003, ¶ 42, 145 N.M. 451, 200 P.3d 104. We therefore conclude the issue is unpreserved and decline to consider it. *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (“There is a presumption of

1 correctness in the district court’s rulings. Accordingly, it is [the d]efendant’s burden
2 on appeal to demonstrate any claimed error below.” (alterations, internal quotation
3 marks, and citation omitted)).

4 **IV. Section 52-3-14(D) Limits the Total Duration of Disablement and Death**
5 **Benefits to 700 Weeks**

6 {37} The City’s final argument concerns the total duration of all benefits payable
7 under the ODDL. The City contends that Section 52-3-14 places an aggregate limit
8 of 700 weeks on *all* collective benefits under the ODDL. The City submits that under
9 Section 52-3-14(D), because Worker received 492 weeks of disability benefits,
10 Widow’s death benefits should be limited to the remaining 208 weeks. Conversely,
11 Widow contends that her death benefit claim is independent of Worker’s disability
12 claim and is not reduced by the disability benefits Worker received during his life.
13 The WCJ agreed with Widow, awarding a separate and distinct 700 weeks of death
14 benefits. For the following reasons, we agree with the City and hold that the WCJ
15 erred on this point.

16 {38} Consistent with our canons of statutory construction, we begin by examining
17 the language of Section 52-3-14(D). Section 52-3-14(D), which was added to the
18 ODDL by a 2015 amendment, provides:

19 In no event shall the duration of any combination of disablements,
20 whether temporary or partial disablements, and death be payable for a
21 period in excess of seven hundred weeks.

1 The use of the word “and” clearly indicates a conjunctive meaning. *See*
2 *Conjunctive/Disjunctive Canon, Black’s Law Dictionary* (12th ed. 2024) (“The
3 doctrine that in a legal instrument, *and* joins a conjunctive list to combine items,
4 while *or* joins a disjunctive list to create alternatives.”). According to the rules of
5 grammar and common usage, “‘and’ links independent ideas.” *State v. Lopez*, 2023-
6 NMSC-011, ¶ 15, 529 P.3d 893 (emphasis omitted). Accordingly, “any
7 combination” encompasses both “disablements” and “death,” joined by the
8 conjunction “and,” leaving no doubt that both categories of benefits fall within the
9 700-week aggregate limit. Section 52-3-14(D). Further, the phrase “[i]n no event”
10 precludes exceptions to the 700-week aggregate limit. *Id.* In addition, the limit is
11 expressed as a “period in excess of seven hundred weeks,” a durational limit
12 measured in the same unit used to pay disability and death benefits. *See id.*

13 {39} In the Order, the WCJ reasoned that the term “death” in Section 52-3-14(D)
14 applies only to the death benefits described in Section 52-3-14(H)(1). Section 52-3-
15 14(H)(1) addresses the death benefits payable when a worker dies without
16 dependents. *See* § 52-3-13 (defining “dependents” under the ODDL). These death
17 benefits include funeral expenses not exceeding \$7,500, medical and hospital
18 expenses for the deceased, “together with such other sums as the deceased may have
19 been paid for disablement.” Section 52-3-14(H)(1). The WCJ reasoned that these are
20 death benefits “not tied to an independent recipient’s entitlement.” On that basis, the

1 WCJ concluded that the 700-week aggregate limit in Section 52-3-14(D) does not
2 apply to the weekly death benefits payable to surviving dependents under Section
3 52-3-14(H)(2).

4 {40} The WCJ's reasoning appears to rest on the premise that Section 52-3-14(D)
5 should not be read to reduce death benefits payable to Widow based on disability
6 benefits already paid to Worker; both being separate and independent benefits to
7 each recipient. This reasoning is not sound because Section 52-3-14(D) does not
8 distinguish among recipients. The provision limits "the duration of any combination
9 of disablements . . . *and* death." Section 52-3-14(D) (emphasis added). It does not
10 state that "any combination of benefits payable to the same recipient." Nor does it
11 limit its reach to benefits flowing to the worker alone. Rather, it addresses the total
12 duration of *all* collective benefits under the ODDL, regardless of the recipient.

13 {41} We also disagree with the WCJ's conclusion that "death" in Section 52-3-
14 14(D) applies only to the benefits listed in Section 52-3-14(H)(1). Section 52-3-
15 14(H)(1) contains three components. The first two are lump-sum payments without
16 a durational component. *See* § 52-3-14(H)(1), (2)(d). Therefore, these components
17 cannot be what Section 52-3-14(D) measures when it limits a "period in excess of
18 seven hundred weeks." The third component is "such other sums as the deceased
19 may have been paid for disablement," which Section 52-3-14(H)(1) bundles with the
20 phrase "together with." Even accepting, for the sake of argument, that these "such

1 other sums” may have a durational component, they are not new benefits awarded
2 to the worker or a surviving dependent after death. *See* § 52-3-14(H)(1). Instead,
3 Section 52-3-14(H)(1) references the benefits the worker has already received over
4 their life. It clearly describes those “such other sums” as amounts the deceased
5 worker “may have [already] been paid for disablement.” *Id.* A worker must be alive
6 to receive disability benefits. Thus, Section 52-3-14(H)(1) provides that if death
7 proximately results from the disablement within the two-year period, and the worker
8 has no surviving dependents, “the compensation shall be limited to” the lump-sum
9 payments, “together with” disability payments paid to the worker while they were
10 alive. Section 52-3-14(D) already captures those durational benefits paid to a worker
11 while still alive under the term “disablements.” If “death” in Section 52-3-14(D)
12 referred only to Section 52-3-14(H)(1), it would add nothing beyond what
13 “disablements” already covers. *See Katz v. N.M. Dep’t of Hum. Servs.*, 1981-NMSC-
14 012, ¶ 18, 95 N.M. 530, 624 P.2d 39 (explaining that a “statute must be construed
15 so that no part of the statute is rendered surplusage or superfluous”). For “death” to
16 have independent meaning in Section 52-3-14(D), it must refer to a category of
17 benefits that “disablements” does not cover. That category is the weekly death
18 benefits paid to surviving dependents under Section 52-3-14(H)(2).

19 {42} Widow relies heavily on *Buchanan v. Kerr-McGee Corp.*, 1995-NMCA-131,
20 121 N.M. 12, 908 P.2d 242. In *Buchanan*, this Court held that a surviving

1 dependent's right to death benefits under the ODDL is independent of the worker's
2 disability benefit claim. *Id.* ¶ 7. The surviving dependent's claim is "a new and
3 separate claim and is not derivative of the worker's claim." *Id.* This Court also
4 observed that at that time, the ODDL "d[id] not provide for a deduction, credit, or
5 setoff against an employer's liability to dependents for death benefits on account of
6 payments to a worker during [their] lifetime." *Id.* ¶ 11.

7 {43} We do not disturb the core holding of *Buchanan*. A surviving dependent's
8 right to death benefits remains independent of the worker's claim, and a worker's
9 settlement or release does not extinguish the surviving dependent's right. However,
10 *Buchanan* does not control the question before us. *Buchanan* was issued in 1995,
11 and our Legislature added Section 52-3-14(D) to the ODDL by amendment in 2015.
12 The 2015 amendment redesignated the subsequent subsections, so that what
13 *Buchanan* referred to as Section 52-3-14(G), *Buchanan*, 1995-NMCA-131, ¶ 11, is
14 now Section 52-3-14(H). When the *Buchanan* Court observed that the ODDL
15 contained no mechanism for deducting, crediting, or setting off disability payments
16 against death benefits, it was analyzing a version of the statute that did not include
17 what is now Section 52-3-14(D). *See Buchanan*, 1995-NMCA-131, ¶ 11. Simply
18 put, the 2015 amendment altered the statutory landscape. We cannot ignore it and
19 read Section 52-3-14(D) as though nothing has changed since we issued *Buchanan*
20 in 1995.

1 {44} The WCA reinforces this reading. Its death benefit provision, Section 52-1-
2 46, contains no equivalent to Section 52-3-14(D). In enacting and maintaining both
3 statutory schemes, our Legislature imposed an aggregate limit only in the ODDL.
4 We must infer that the difference is intentional. *Rael*, 2024-NMSC-010, ¶ 41.
5 Accordingly, Section 52-3-14(D) reflects a judgment by our Legislature specific to
6 cases involving occupational diseases.

7 {45} Widow argues that Section 52-3-14(H)(2) specifically provides that death
8 benefits “continue for the period of seven hundred weeks from the date of death of
9 such worker,” and that this specific provision should control over the general limit
10 in Section 52-3-14(D). This argument invokes the general-specific canon. Under this
11 canon, a specific statute ordinarily governs a general one when the two conflict. *See*
12 *State v. Arellano*, 1997-NMCA-074, ¶ 4, 123 N.M. 589, 943 P.2d 1042. If the
13 Legislature enacted the specific statute later, it was meant to create an exception to
14 the general statute. *See id.* ¶ 6. On the other hand, if the Legislature enacted the
15 specific statute earlier, it was intended to remain an exception unless the general
16 statute expressly or by implication repealed it. *See id.* We conclude, however, that
17 Section 52-3-14(D) and (H)(2) do not conflict. In fact, they work together.

18 {46} The key is in the text of Section 52-3-14(H)(2), which states that the weekly
19 death benefits payable to dependents are “subject to the limitations of the [ODDL].”
20 Section 52-3-14(D) is one of those limitations. As a result, there is no conflict to

1 resolve. Section 52-3-14(H)(2) sets the maximum duration of death benefits,
2 standing alone, at 700 weeks from the date of a worker's death, while Section 52-3-
3 14(D) limits the combined total of all collective benefits, including disability and
4 death, to a 700-week aggregate limit. This reading gives meaning and effect to every
5 part of the statute. *See High Ridge Hinkle Joint Venture*, 1998-NMSC-050, ¶ 5.

6 {47} Section 52-3-14(H)(2) provides further support for reading Section 52-3-
7 14(D) as an aggregate limit on all collective benefits under the ODDL. Section 52-
8 3-14(H)(2) includes within the death benefit calculation "such other sums as the
9 deceased may have been paid for disability." The Legislature's inclusion of prior
10 disability payments within the death benefit framework demonstrates an awareness
11 that the two benefit streams are related. It also shows that prior disability payments
12 are included in the overall calculation, especially when the phrase begins with the
13 inclusive "together with." Section 52-3-14(H)(2). This is consistent with reading
14 Section 52-3-14(D) as an aggregate limit that encompasses all collective benefits
15 under the ODDL.

16 {48} Widow notes that, under our reasoning, a worker who exhausts the full 700
17 weeks of disability benefits before dying would leave their surviving dependent(s)
18 with no durational death benefits. "We will not construe statutes to achieve an absurd
19 result or to defeat the intended object of the [L]egislature." *State v. Herrera*, 1974-
20 NMSC-037, ¶ 6, 86 N.M. 224, 522 P.2d 76. Given this, we do not interpret the result

1 expressed herein as doing so. The aggregate limit in Section 52-3-14(D) reflects a
2 legislative judgment to limit employers' total exposure, a "legitimate legislative
3 goal," per our Supreme Court in *Schirmer*, 1994-NMSC-095, ¶ 8. Unless there is
4 proof beyond a reasonable doubt that our Legislature has enacted an unconstitutional
5 statute, we will uphold the statute. *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064,
6 ¶ 10, 122 N.M. 524, 928 P.2d 250. "We will not question the wisdom, policy, or
7 justness of legislation enacted by our Legislature." *Id.* Here, our Legislature
8 determined that 700 weeks is the aggregate limit of all collective benefits under the
9 ODDL. That judgment applies evenhandedly, regardless of how the 700 weeks are
10 allocated between the worker and the worker's surviving dependent(s). The
11 aggregate limit does not eliminate death benefits; it limits how long they can be paid.
12 If no disability benefits have been paid during the worker's life, the surviving
13 dependent(s) receive(s) the full 700 weeks under Section 52-3-14(H)(2). If disability
14 benefits have been paid, the surviving dependent(s) receive(s) whatever remains of
15 the 700-week period. In either case, the aggregate limit is the same. The only thing
16 that changes is how the 700 weeks are divided between the worker and the surviving
17 dependent(s). That is the structure Section 52-3-14(D) creates.

18 {49} *The question under the absurdity canon is not whether the result in this case*
19 *is harsh, but whether it produces an absurd result or defeats the Legislature's*
20 *intended objective. See Herrera, 1974-NMSC-037, ¶ 6. The limit is itself the*

1 intended objective of the 2015 amendment. Enforcing it does not defeat the
2 Legislature’s objective—it gives effect to it. Widow’s reading, by contrast, would
3 allow almost twenty-three years of benefits (492 weeks of disability plus 700 weeks
4 of death benefits), totaling \$873,926.72, despite the words “[i]n no event shall the
5 duration . . . be payable for a period in excess of seven hundred weeks.” Section 52-
6 3-14(D). That reading would render Section 52-3-14(D) a nullity for any worker
7 who received disability benefits before death. It is Widow’s reading, not the City’s,
8 that would defeat the objective of the 2015 amendment and produce an absurd result.

9 {50} In practical terms, this means the following. Worker received 492 weeks of
10 disability benefits during his life. Widow’s death benefits are limited to the
11 remaining 208 weeks of the 700-week aggregate limit.

12 {51} To the extent the City relies on Section 52-3-14(B) in arguing this issue, we
13 deem that argument unpreserved. The City did not assert Section 52-3-14(B) as a
14 defense at any point during the pleading process. Widow, not the City, raised Section
15 52-3-14(B) at trial. The City’s response at trial overwhelmingly addressed Section
16 52-3-14(D), not Subsection (B). The City addressed Section 52-3-14(B) in its
17 proposed findings of fact and conclusions of law submitted posttrial. Applying the
18 same rationale as our analysis in Section III herein, any argument by the City
19 regarding Section 52-3-14(B) is unpreserved and unreviewable by this Court under
20 Rule 12-321(A).

1 **CONCLUSION**

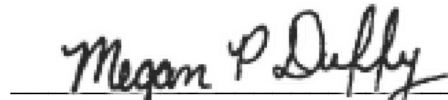
2 {52} We remand to the WCJ to enter an amended order awarding Widow death
3 benefits of \$733.16 per week for 208 weeks, commencing on the date of Worker's
4 death, June 2, 2021. We otherwise affirm.

5 {53} **IT IS SO ORDERED.**

6 
7 **GERALD E. BACA, Judge**

8 **WE CONCUR:**

9 
10 **J. MILES HANISEE, Judge**

11 
12 **MEGAN P. DUFFY, Judge**