

ARMENDARIZ V. BERNALILLO CNTY. DETENTION CTR.

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JULIAN ARMENDARIZ,
Worker-Appellee,
v.
**BERNALILLO COUNTY DETENTION,
CENTER and NEW MEXICO COUNTY
INSURANCE AUTHORITY,**
Employer/Insurer-Appellants.

No. 32,888

COURT OF APPEALS OF NEW MEXICO

April 8, 2014

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION, Terry S.
Kramer, Workers' Compensation Judge

COUNSEL

Law Offices of Jeffrey C. Brown, Jeffrey C. Brown, Albuquerque, NM, for Appellee

Hoffman Kelley, LLP, Phyllis Savage Lynn, Keith D. Drennan, Albuquerque, NM, for
Appellants

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, M.
MONICA ZAMORA, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Employer/Insurer appeals from the compensation order entered by the workers' compensation judge (WCJ). On appeal, Employer/Insurer contends that the WCJ erred in concluding that Worker did not voluntarily remove himself from the workforce when Worker was terminated from the Bernalillo County Detention Center, and therefore also erred in concluding that Worker was entitled to temporary total disability benefits (TTD) and modifier benefits. This Court issued a calendar notice proposing to reverse, and Worker filed a memorandum in opposition. While this case was pending on the summary calendar, this Court issued its opinion in *Hawkins v. McDonald's*, ___-NMCA-___, ___ P.3d ___ (No. 32,635, Dec. 17, 2013), *cert. denied*, 2014-NMSC-002 (No. 34,511, Feb. 12, 2014). We therefore issued a second calendar notice, this time relying on *Hawkins*, and proposed to affirm. Employer/Insurer has filed a memorandum in opposition to this Court's second notice of proposed disposition. In its memorandum in opposition, Employer/Insurer concedes that "[i]f the interpretation of law put forth in *Hawkins* adequately balances the interests of the worker and the employer, Worker will be entitled to PPD and statute-based modifier benefits." [2dMIO 1] However, Employer/Insurer argues that *Hawkins* "strikes an unfair balance against Employer[.]" [2dMIO 1] To the extent Employer/Insurer is asking this Court to reconsider *Hawkins*, we decline to do so. Given that *Hawkins* is the latest pronouncement from this Court on this issue, we apply the holding in *Hawkins* and affirm for the reasons stated in our second notice of proposed disposition.

{2} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

M. MONICA ZAMORA, Judge