

**ENGLETT V. BEE HIVE ASSISTED LIVING**

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**LONA ENGLETT,**  
Worker-Appellant,  
**v.**  
**BEE HIVE ASSISTED LIVING and**  
**CHURCH MUTUAL INSURANCE**  
**COMPANY,**  
Employer/Insurer-Appellees.

No. 32,195 (consolidated with No. 32,262)

COURT OF APPEALS OF NEW MEXICO

February 6, 2013

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION, David L.  
Skinner, Workers' Compensation Judge

**COUNSEL**

James Rawley, Albuquerque, NM, for Appellant

Paul Koller, Albuquerque, NM, for Appellees

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, J.  
MILES HANISEE, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

Summary reversal was proposed for the reasons stated in the notice of proposed summary disposition. No memorandum opposing summary reversal has been filed and the time for doing so has expired.

For the reasons set forth in our notice of proposed summary disposition filed October 5, 2012, we REVERSE the workers' compensation judge's denial of Worker's motion for reconsideration. Further, we remand with instructions to the workers' compensation judge that unless a sanction should be applied pursuant to NMSA 1978, Section 52-1-54(F)(3) (2003) (governing employer's offers), Worker's attorney fees should have been split equally between Worker and Employer/Insurer. Subsection (F)(3) provides that "if the employer's offer was greater than the amount awarded by the compensation order, the employer shall not be liable for his fifty percent share of the attorney fees to be paid the worker's attorney[.]" However, in the case at bar, Employer's offer was not greater than the amount awarded to Worker, and therefore it did not obtain a more favorable result. Thus, the default provision in Section 52-1-54(J) applies.

**IT IS SO ORDERED.**

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**J. MILES HANISEE, Judge**