

LUCERO V. FIRST FLEET

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STAN LUCERO,
Worker-Appellee,
v.
**FIRST FLEET and FIDELITY
& GUARANTEE COMPANY,**
Employer/Insurer-Appellant.

No. 33,029

COURT OF APPEALS OF NEW MEXICO

December 3, 2013

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

COUNSEL

Dunn Law Offices, Rod Dunn, Rio Rancho, NM, for Appellee

Hale & Dixon, P.C., Timothy S. Hale, Albuquerque, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: CYNTHIA A. FRY, Judge, LINDA M. VANZI,
Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Employer/Insurer (Employer) appeals from the workers' compensation judge's (WCJ) compensation order finding Employer responsible for reasonable and necessary medical care related to Worker's neck and bilateral shoulder injuries and granting

Worker temporary total disability benefits from the date of the accident until July 20, 2010, but deferring determination of benefits subsequent to July 20, 2010, including temporary and permanent disability benefits, pending an independent medical examination. [RP 378-379] This Court issued a calendar notice proposing summary dismissal of the appeal. Employer has filed a memorandum in opposition to this Court's notice of proposed disposition, which we have duly considered. Unpersuaded, we dismiss.

{2} In our calendar notice, we proposed to dismiss for lack of a final, appealable order. [CN 3-4] Employer's memorandum in opposition does not point to any specific errors in fact or in law in our calendar notice. See *Hennessey v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

{3} Instead, Employer's memorandum in opposition recites the legal framework for determining finality found in *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 14, 113 N.M. 231, 824 P.2d 1033. Employer proceeds to list out the decretal language in the WCJ's order and states that "[f]indings of fact and conclusion of law that contain decretal language are appealable." [MIO 2] However, we remain unconvinced that "the judge's order fully disposed of all issues between the parties that were brought before the judge." *City of Albuquerque v. Sanchez*, 1992-NMCA-038, ¶ 9, 113 N.M. 721, 832 P.2d 412.

{4} For these reasons, and those in our calendar notice, we dismiss the appeal for lack of a final, appealable order.

{5} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

CYNTHIA A. FRY, Judge

LINDA M. VANZI, Judge