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

2 **PAUL ERWIN,**

3 Worker-Appellant,

4 v.

No. A-1-CA-36811

5 **MAINTENANCE SERVICES**

6 **SYSTEMS and THE HARTFORD,**

7 Employer/Insurer-Appellee.

8 **APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

9 **Shanon S. Riley, Workers' Compensation Judge**

10 Peter V. Culbert

11 Santa Fe, NM

12 for Appellant

13 Jeffrey Paul Stradling

14 Albuquerque, NM

15 for Appellee

16 **MEMORANDUM OPINION**

17 **ZAMORA, Judge.**

18 {1} Paul Erwin (Worker) set out the central issue on appeal variously as whether

19 the Worker's Compensation Judge (WCJ) failed to apply, violated, disregarded, or

1 ignored the uncontradicted medical evidence rule. [See DS 2, 10, 12, 14] Worker also
2 raised additional issues regarding payment of medical bills and temporary total
3 disability benefits. [DS 15] We issued a notice proposing to affirm. Worker filed a
4 memorandum in opposition, and Maintenance Services Systems and The Hartford
5 (Employer) filed a memorandum in support, both of which we have duly considered.
6 Remaining unpersuaded by Worker’s memorandum in opposition, we affirm.

7 {2} Worker continues to argue the WCJ failed to apply the uncontradicted medical
8 evidence rule and erred in discounting Worker’s expert medical testimony regarding
9 causation of Worker’s injury. [MIO 2] As we noted in our proposed disposition,
10 *Hernandez v. Mead Foods, Inc.*, 1986-NMCA-020, 104 N.M. 67, 716 P.2d 645,
11 provides exceptions to the uncontradicted expert testimony rule.

12 Uncontradicted testimony need not be accepted as true if (1) the witness
13 is shown to be unworthy of belief, or (2) his testimony is equivocal or
14 contains inherent improbabilities, (3) concerns a transaction surrounded
15 by suspicious circumstances, or (4) is contradicted, or subjected to
16 reasonable doubt as to its truth or veracity, by legitimate inferences
17 drawn from the facts and circumstances of the case.

18 *Id.* ¶ 14. [CN 3] Finding Worker’s testimony to be the basis for the expert opinion and
19 his testimony to be unreliable and inconsistent, the WCJ indeed determined, consistent
20 with the fourth exception, the expert’s opinion to be “subject to doubt by reasonable
21 inferences to be drawn from the facts” and therefore declined to accept the opinion.

22 [RP 162] In his memorandum in opposition, Worker raises two primary arguments

1 regarding the our proposed affirmance of the WCJ’s factual findings: this Court
2 misinterpreted the uncontradicted expert testimony rule [MIO 11] and should re-weigh
3 the evidence considering the uncontradicted expert opinion [MIO 16-20].

4 {3} Worker first argues the *Hernandez* exceptions to the uncontradicted expert
5 testimony rule do not apply to issues of causation. [MIO 13-14] We disagree. The
6 exceptions to the uncontradicted medical testimony rule set forth in *Hernandez* apply
7 specifically to the uncontradicted testimony rule, which applies only to causation. *See*
8 *id.* ¶¶ 13-14. We therefore reject Worker’s contention the WCJ did not have the
9 authority to reject Worker’s uncontradicted medical testimony under one of the
10 *Hernandez* exceptions.

11 {4} Second, Worker continues to argue his testimony and evidence were credible,
12 and this Court should undertake its own review of the credibility of Worker’s
13 testimony and the expert opinion upon which it was based. [MIO 15-17] While
14 Worker is correct in pointing out this Court engages in a whole record review [MIO
15 16, 18], as we noted in our notice of proposed disposition, we nonetheless do not
16 make assessments as to the credibility of witnesses and will not re-weigh evidence.
17 [CN 5] *See Samora v. Bradford*, 1970-NMCA-004, ¶ 4, 81 N.M. 205, 465 P.2d 88
18 (“An appellate court does not pass upon the weight of the evidence or the credibility
19 of the witnesses.”); *see also Sanchez v. Zanio’s Foods, Inc.*, 2005-NMCA-134, ¶ 11,

1 138 N.M. 555, 123 P.3d 788 (“Generally speaking, whole record review of WCJ
2 determinations is deferential.”); *cf. Tom Growney Equip. Co. v. Jouett*, 2005-NMSC-
3 015, ¶ 13, 137 N.M. 497, 113 P.3d 320 (“Where the testimony is conflicting, the issue
4 on appeal is not whether there is evidence to support a contrary result, but rather
5 whether the evidence supports the findings of the trier of fact.” (internal quotation
6 marks and citation omitted)). We therefore decline to reweigh the credibility of
7 Worker’s testimony, which formed the basis for the medical expert’s opinion.

8 {5} Because we affirm the district court’s determination regarding causation, we do
9 not consider his remaining issues regarding recovery for medical bills and temporary
10 total disability benefits.

11 {6} Accordingly, for the reasons explained in our notice of proposed disposition
12 and herein, we affirm.

13 {7} **IT IS SO ORDERED.**

14 _____
15 **M. MONICA ZAMORA, Judge**

16 **WE CONCUR:**

17 _____
18 **JULIE J. VARGAS, Judge**

1 **HENRY M. BOHNHOFF, Judge**