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

7 **LYNN ROBERTSON,**

8 Worker-Appellee/Cross-Appellant,

9 v.

NO. 30,924

10 **EMBROIDERY USA and**
11 **STATE FARM WORKERS'**
12 **COMPENSATION,**

13 Employer/Insurer-Appellants/Cross-Appellees.

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

16 James Rawley
17 Albuquerque, NM

18 for Appellee

19 David L. Skinner
20 Albuquerque, NM

21 for Appellants

22 **MEMORANDUM OPINION**

23 **VIGIL, Judge.**

24 Employer contends that the award of 434 weeks of 27% permanent partial
25 disability (PPD) benefits based on secondary mental impairment from March 4, 2008,

1 forward was error as a matter of law under NMSA 1978, Section 52-1-42(A)(4)
2 (1990), where the secondary mental impairment was the result of a physical injury to
3 the knee with a 150-week maximum period for payment of benefits under NMSA
4 1978, Section 52-1-43(A)(30) (2003). [Employer DS 2] Worker contends that the
5 Workers' Compensation Judge's (WCJ) decision to subtract sixty-six weeks from the
6 Worker's five hundred-week period was error as these weeks were temporary total
7 disability (TTD) for Worker's physical injury (forty-four weeks) and not for the
8 secondary mental impairment (twenty-two weeks). [Worker DS 2]

9 This Court's calendar notice proposed to affirm on Employer's issue on appeal
10 and proposed to reverse and remand on Worker's issue on cross-appeal. [Ct. App.
11 File, CN1] Worker has filed a memorandum in support of the proposed disposition.
12 [Ct. App. File, MIS] Employer has not responded to the calendar notice and the time
13 for doing so has passed.

14 For the reasons set forth in this Court's calendar notice, we affirm the WCJ on
15 the issue raised in Employer's appeal. With regard to Worker's cross-appeal, because
16 Worker's PPD benefits should have been reduced by twenty-two rather than forty-four
17 weeks, we reverse and remand to the WCJ for a recalculation of Worker's PPD
18 benefits.

19 **IT IS SO ORDERED.**

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MICHAEL E. VIGIL, Judge

1 **WE CONCUR:**

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3 **JAMES J. WECHSLER, Judge**

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5 **LINDA M. VANZI, Judge**