

FILED JUN 16 1997

CARRIE L. SVENDAHL
CLERK OF COURT

Kenneth Brown,
Employee,

vs.

Shakopee Mdewakanton Sioux
(Dakota) Community/Little
Six, Inc.,
Employer,

and

Meadowbrook Insurance
Group,
Insurer,

File No. 074-97

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the appeal by Kenneth Brown, an employee of Little Six, Inc., from a decision the Hearing Examiner denying his claim petition for coverage under the worker's compensation plan of the Shakopee Mdewakanton Sioux (Dakota) Community.

Mr. Brown was assigned as a supervisor in the Mystic Lake Casino facility. His employment required him to walk considerable distances. On or about November 7, 1996, Mr. Brown complained of pain in his left foot. A substantial body of Mr. Brown's medical records appear in the claim file, but the only portion of the file which bears upon his claim is a chart note made by Dr. John Kipp,

X0860.050

on November 11, 1996, which states that "[w]ork relatedness is not clear".

The Administrator of the Employer's Worker's Compensation Plan initially denied Mr. Brown's claim on the ground that he has a pre-existing congenital condition of paralysis on the left side of his body, from which the Administrator decided the Employee's injury arose--an issue with respect to which the burden of proof is on the Employer, under the Community's Worker's Compensation Ordinance and Plan.

Mr. Brown sought review of the Administrator's decision; and, on February 27, 1997, Hearing Examiner Tamara G. Garcia denied coverage, noting Dr. Kipp's statement and holding that Mr. Brown had not proven that his injury was work-related. She did not reach the question of Mr. Brown's pre-existing condition.

In this appeal, and before the Hearing Examiner, Mr. Brown has asserted that he had never had any problems with his feet until he was obliged to do the required walking in his Mystic Lake Casino employment.

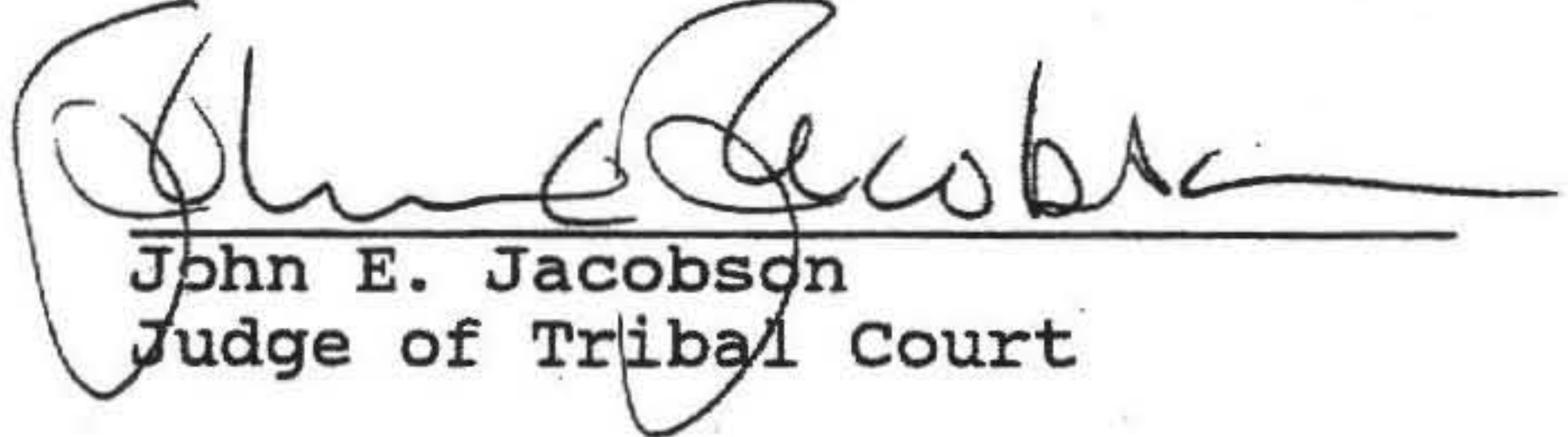
The Court agrees with the Hearing Examiner that the pertinent medical record here is barren. The Court is not satisfied, however, that the record could not usefully be supplemented. Mr. Brown suffered from plantar fasciitis, tendinitis. The record does not include information as to the medical causes for that ailment. It therefore is unclear, to the Court, whether the legal conclusion of the Hearing Examiner--that Mr. Brown has not proved work-relatedness--is correct.

It is significant, of course, that the only medical evidence pertinent to the question is a statement that work-relatedness is "unclear"; but it may be possible for additional clarity to be added, based on an examination of the nature of the Employee's injury, and a comparison between that nature and the Employee's job-related activities and his non-job-related activities.

ORDER

For the foregoing reasons, and based on all the files and materials herein, this matter is remanded to the Hearing Examiner for further findings with respect to the medically recognized causes of the Employee's injury, and with respect to the whether those causes add any significant evidence pertinent to the issue of whether the Employee's injury was work-related. If the Hearing Examiner concludes that, with the addition of such evidence, the Employee has met his burden of proving work-relatedness, then she should proceed to decide whether the Employer has met its burden of proving that the injury resulted from a pre-existing condition.

June 16, 1997


John E. Jacobson
Judge of Tribal Court