


FILED FEB 11 2011 

IN THE TRIBAL COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

CLERK OF COURT  
STATE OF MINNESOTA

Pranee Rose,

Employee,

vs.

SMSC Gaming Enterprise,

Employer,

and

Berkley Risk Administrators Company,

Administrator.

Court File No. 675-10

**Memorandum Opinion and Order**

**Introduction**

This Court's review in workers'-compensation appeals is very narrow. We may hear only appeals concerning "legal issues," and "there shall be no further review of factual decisions made by a hearing examiner."<sup>1</sup> Thus, to prevail, an appellant must demonstrate that the hearing examiner made an error of law. If the court finds such an error, it may remand the matter back to the hearing examiner for additional factual determinations.<sup>2</sup>

In this case, appellant—the employee, Ms. Rose—alleges that the error the hearing examiner committed was relying on the opinion of Dr. Joel Gedan, who served as an

<sup>1</sup> SMSC Workers' Compensation Ordinance, § F.8.

<sup>2</sup> *Id.*

independent medical examiner in this case.<sup>3</sup> The Respondents, the Gaming Enterprise and Berkley Risk Administrators, did not respond to Ms. Rose's appeal.<sup>4</sup> The Court concludes, however, that it is without jurisdiction to overturn the Hearing Examiner's finding of fact that Dr. Gedan's medical opinions were more credible than those of Ms. Rose's doctor, Sarah Benish.

### Factual Background

Ms. Rose works at the Gaming Enterprise as a slot service specialist, and has been employed with the Gaming Enterprise since 2000.<sup>5</sup> On October 28, 2007, a slot-machine door fell on the arch of her left foot.<sup>6</sup> She was treated for her injury, and received partial or complete disability payments from November 3, 2008 to June 6, 2009 (except for one week in March 2009).<sup>7</sup> After receiving many treatments for her injury and undergoing a "work hardening" program at Saunders Physical Therapy, she returned to her usual job at the Gaming Enterprise on June 7, 2009.<sup>8</sup>

---

<sup>3</sup> See Employee's Brief at 1. Ms. Rose represented herself in this appeal. She also requested review of the denial of coverage for her acupuncture treatments, particularly because she was not given prior notice and attended several acupuncture sessions before learning that they would not be covered and had to pay for them herself. These complaints, for treatments received in 2009, were not within the scope of the Enterprise's denial of her disability benefits from which she appealed, however, and therefore were not properly before the Hearing Examiner and are not within the scope of this appeal. Because those issues were not part of the denial of her claim, Ms. Rose may be able to take them up with the Enterprise informally now.

<sup>4</sup> The Court's scheduling order, giving the Respondents until January 12 to respond to Ms. Rose's opening brief, was mailed to Debra McAlister at Berkley Risk Administration and Kathy Klein at the SMSC Gaming Enterprise.

<sup>5</sup> Hearing Examiner's Findings & Order at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

After returning to work, Ms. Rose continued to experience pain in her foot that sometimes radiated up her leg, and began seeing neurologist Sarah Benish in January 2010.<sup>9</sup> In February 2010 Dr. Benish found that Ms. Rose's symptoms were "consistent with a complex regional pain syndrome, otherwise known as RSD."<sup>10</sup> She recommended job restrictions (limiting the amount of time Ms. Rose would be standing without a break), pain medication, and "to reinstate the acupuncture."<sup>11</sup>

Berkley hired Dr. Gedan as an independent medical examiner,<sup>12</sup> and he examined Ms. Rose in August 2010 and concluded that she did not have complex regional pain syndrome and did not require additional work restrictions, pain medication, or treatments for her injury.<sup>13</sup> Based on Dr. Gedan's report, the Enterprise denied any further benefits or job restrictions to Ms. Rose on August 24, 2010.<sup>14</sup> Ms. Rose appealed the Enterprise's denial of claims to Berkley, and the Hearing Examiner upheld the denial on September 29, 2010.<sup>15</sup>

### Analysis

As noted above, under Community law, this Court cannot second-guess the factual findings of the Hearing Examiner. But that is precisely what Ms. Rose has requested. She has asked the Court to find that the Hearing Examiner's decision to find Dr. Gedan's conclusions more credible than Dr. Benish's was wrong. She submitted comments made by

---

<sup>9</sup> *Id.*; see also Report of Dr. Sarah Benish (Jan. 21, 2010) at 1.

<sup>10</sup> Report of Dr. Sarah Benish (Feb. 5, 2010) at 1.

<sup>11</sup> *Id.*

<sup>12</sup> Under the Community's Workers' Compensation Ordinance, "[a]n injured Employee must submit to reasonable examinations by a physician or other health care provider if requested by the Administrator." Part D.8.

<sup>13</sup> Dr. Gedan's Report at 11-13.

<sup>14</sup> SMSC Notice of Denial at 3 ("Based upon [Dr. Gedan's] report, no further medical benefits will be paid on this claim. In addition, no further disability benefits, including Permanent Partial Disability benefits, will be paid on the claim.")

<sup>15</sup> See Findings & Order of the Hearing Examiner at 3.

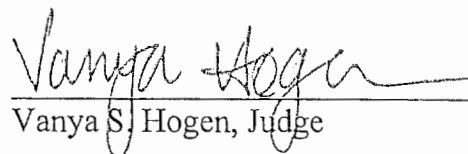
Dr. Gedan to an administrative law judge about a proposed change to the Minnesota Department of Labor and Industry's Permanent Partial Disability Schedule. She suggests that in his comment, Dr. Gedan notes that diagnosing complex regional pain disorder is "challenging and controversial," yet he only spent one hour examining her and was able to conclude that she did not have the disorder.<sup>16</sup> In contrast, she met with Dr. Benish, who diagnosed the disorder, five times.<sup>17</sup>

Credibility determinations are factual findings, however, and are therefore outside the Court's authority to review. The only power the Court has with respect to a hearing examiner's factual findings is to remand issues back to the hearing examiner if it determines that the factual record is inadequate.<sup>18</sup> That is not the case here. Ms. Rose does not complain that the hearing examiner failed to consider facts; she simply thinks he got them wrong when he chose to rely on Dr. Gedan rather than Dr. Benish. Under the Workers' Compensation Ordinance, however, even if the Court were to agree that this was so, it could not overturn the hearing examiner's findings of fact.

Accordingly, the decision of the hearing examiner is AFFIRMED and Rose's appeal is DENIED.

So ordered.

February 11, 2011

  
Vanya S. Hogen, Judge

---

<sup>16</sup> Employee's Brief at 1.

<sup>17</sup> See Reports of Dr. Benish's visits with Rose dated January 21, February 5, April 15, May 13, and July 13, 2010.

<sup>18</sup> Workers' Compensation Ordinance, § F.8.