

FILED

MAR 12 2008

LYNNEA A. FERGELLO
CLERK OF COURT

IN THE TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

<p>Tanya Moldenhauer, Employee, vs. Shakopee Mdewakanton Sioux Community, Employer, and Berkley Risk Administrators Company, Administrator.</p>	<p>Court File No. 591-07</p>
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Memorandum Opinion and Order

Tanya Moldenhauer suffered a work-related injury while employed by the Community. She was treated for the injury and received workers'-compensation benefits from the Community. A controversy later arose over whether Moldenhauer's continuing symptoms were the result of her work-related injury or a pre-existing back injury. After receiving evidence, including an independent medical examination ("IME"), the Hearing Examiner ruled that Moldenhauer's continuing symptoms were

the result of her pre-existing back injury¹ and therefore not covered by workers'-compensation benefits.²

Moldenhauer appealed the Hearing Examiner's ruling to this Court, claiming that she was unrepresented during the Hearing Examiner's review and did not have an opportunity to present testimony demonstrating that her ongoing symptoms (primarily groin pain) arose from her work-related injury rather than her pre-existing back injury. She makes this claim even though the Hearing Examiner gave her the opportunity to present written evidence regarding her groin pain and its source, and she did not present any.³ The Hearing Examiner determined—because Moldenhauer presented no evidence to contradict the IME findings—that a hearing was unnecessary, and decided the case on the written record.⁴

That decision was well within the Hearing Examiner's discretion. The Workers' Compensation Ordinance provides that a Hearing Examiner's decision on whether to hold a hearing is final,⁵ which means it is not appealable here. In fact, this Court's jurisdiction in workers'-compensation appeals is quite limited. The Court is prohibited from reviewing a Hearing Examiner's factual findings, although it can

¹ Hearing Examiner Findings and Order at 3. The IME was performed by Dr. Thomas Raih, who concluded that Moldenhauer's symptoms were caused by her pre-existing back condition.

² See Shakopee Mdewakanton Sioux (Dakota) Community Worker's Compensation Ordinance, § C.3 ("No benefits under this Ordinance shall be allowed for any injury or death caused by or arising out of . . . [a] preexisting condition . . .").

³ Hearing Examiner Findings and Order at 3 ("The Hearing Examiner wrote to the parties on May 21, 2007 requesting that the parties should address [Moldenhauer's] complaints of groin pain and provide any additional information to the Hearing Examiner by 6-8-07. No additional evidence or information was received by the Hearing Examiner . . .").

⁴ *Id.*

⁵ Worker's Compensation Ordinance at § F.7 ("The decision of the hearing examiner whether or not to grant an evidentiary hearing on the record shall be final.").

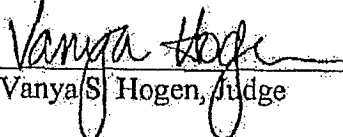
remand a matter to the Hearing Examiner for additional evidence if it determines that the factual record is inadequate.⁶ Essentially, then, the Court can only review the Hearing Examiner's legal conclusions.

Moldenhauer has failed to identify any legal issue on which her appeal is based. And while she claims the factual record is incomplete with respect to her groin symptoms, the record demonstrates that she was given an opportunity to supplement the record and did not avail herself of it. This Court has ruled on several occasions that a claimant who fails to make her factual case to the Hearing Examiner cannot use the appeal process to get a second bite at the apple.⁷ Moldenhauer's chance to prove that her symptoms derived from her work-related injury was before the Hearing Examiner, and because she missed it, the Court is without authority to overturn the Hearing Examiner's decision.

Accordingly, the decision of the Hearing Examiner is **AFFIRMED** and Moldenhauer's appeal is **DENIED**.

So ordered.

March 11, 2008


Vanya S. Hogen, Judge

⁶ *Id.*, § F.8.

⁷ *See, e.g., David v. Shakopee Mdewakanton Sioux Community*, 4 Shak. T.C. 17, 20 (Nov. 1, 1999); *Brass v. Shakopee Mdewakanton Sioux Community*, 3 Shak. T.C. 39, 43 (Mar. 4, 1997).