

FILED MAR 04 1997
DANIEL L. SVENDAHL
CLERK OF COURT

IN THE COURT
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

Marcia Brass,

Court File. 072-96

Plaintiff,

vs.

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

Employer,

and

Meadowbrook Insurance
Group,

Administrator.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the appeal by Ms. Marcia Brass an employee of SMSC/Little Six, Inc. from an Order of Dismissal initially issued November 1, 1996 and a subsequent Order of Dismissal filed on November 5, 1996.

Upon a review of the Orders of Dismissal the Court has determined the only change between the second order dated November 5, 1996, from the original order dated November 1, 1996, is the following language found in the November 5, 1996 Order:

“The decision of the hearing examiner on factual issues is final. A decision of the hearing examiner concerning legal issues is final unless either party files a written request for appeal (form attached) with the Shakopee Mdewakanton Sioux (Dakota) Judicial Court within thirty (30) days of the

date of the findings and order. The Judicial Court may remand the matter to the hearing examiner for additional factual determinations if the Judicial Court determines that the factual record is inadequate. The decision of the Judicial Court is final.”

The employer asserts in their Objection to the Request for Appeal that the claimant has not met the thirty (30) day filing period since the original order of dismissal is dated November 1, 1996 and the claimant filed her appeal December 3, 1996. The hearing examiner issued a subsequent order of dismissal on November 5, 1996 with only clerical differences from the original order of dismissal. The Court must rely on the record and therefore accepts the November 5, 1996 Order of Dismissal as the last and final order in this matter which would place the Request for Appeal within the thirty (30) day time for filing such a request. The Hearing Examiner for whatever reasons issued a subsequent order dated November 5, 1996 and for this reason the Court must give the claimant the benefit of the doubt that the thirty (30) day filing period tolls from the last order issued therefore the Request for Appeal filed within thirty (30) days of the final order was in fact filed in a timely basis.

As a second part of their Objection to the Request for Appeal, the employer further asserts the claimant’s Request for Appeal does not meet the requirement that only legal issues may be appealed and the claimant’s appeal is clearly a statement of factual issues as opposed to an appeal based on legal issues. Upon an examination of the filed Request for Appeal form and the language contained therein the Court agrees there are no legal

issues stated therein for the Court to consider. For all that is contained in the request is the following statement:

“The employee appeals the dismissal of her claim. She has a new attorney.

It further appears that the insurance company has received all the information that they requested. The employee wants an opportunity to present her claim.”

Even in the Court’s attempt to grant the claimant latitude in her appeal, upon examination of the Request for Appeal, the Court cannot determine or identify a legal basis for the appeal which is clearly a requirement outlined in the November 5, 1996 Order of Dismissal and the Request for Appeal form itself reads: “The specific legal issues being appealed and a brief recitation of the reasons for the appeal are as follows: ..”. There are no acceptable legal arguments or reasons put forth to support her appeal rather she simply states the fact that the claimant has a new attorney and “wants an opportunity to present her claim” which are in the Court’s opinion non-legal arguments. There are no legal issues or reasons stated countering the Order of Dismissal. The Court cannot accept the claimant’s appeal when there are no legal issues stated on appeal.

The third and final basis for the employer’s objection to the appeal is the Order of Dismissal issued by the Hearing Examiner was that her order was lawful and in accordance with the authority vested in her pursuant to the Shakopee Mdewakanton Sioux (Dakota) Community Ordinance F. 13. The Court upon an examination of the complete record in this matter concludes the Hearing Examiner diligently performed her duties and responsibilities in this matter.

The record is replete with correspondence to the claimant and her attorney regarding failure to abide by her requests for information and stating failure to respond to the reasonable discovery requests would result in dismissal. The record reflects repeated correspondence and warnings to the claimant and her attorney in which a deadline date of October 30, 1996 was set and the Hearing Examiner informed the parties that if the information was not received by that date that the Employee's Claim Petition would be dismissed.

The hearing examiner had to issue a finding that the Employee and her attorney did not comply with the request which then subsequently resulted in the dismissal of the Employee's claim. The aforementioned Ordinance at F.13 provides:

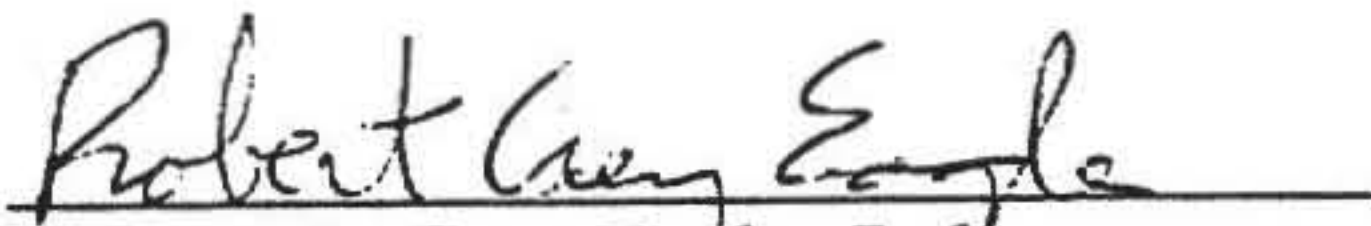
"In addition to the right of the Administrator to request and obtain authorizations from the Employee whether party may engage in pre-hearing discovery, including, but not limited to, requests for medical and employment records, depositions of parties or witnesses, requests for statements and identification of witnesses and exhibits expected at hearing. Such discovery shall be conducted in an informal manner. Refusal to respond to reasonable discovery request may result in the imposition of sanctions, including delay or dismissal of claims or defenses, in the discretion of the court."

The Examiner dismissed the Employee's claim based on her and her attorney's failure to respond to the request for information. Dismissal is clearly appropriate in this matter.

It is essential in order to proceed that the parties respond to the reasonable requests for information by the Examiner. The Employee's failure to respond to the reasonable requests for information by the examiner especially when forewarned that failure to respond would result in dismissal is an indication to the Court that dismissal is a consequence of which the parties were put on notice and despite repeated requests and warnings still failed to comply with the requests. The Employee cannot now be allowed to move forward with their claim on remand by this Court. Therefore the Court now affirms the Order of Dismissal the Request for Appeal is therefore denied.

BY THE COURT,

Date: March 4, 1997


Robert A. Grey Eagle, Judge