

FILED MAY 29 1997

TRIBAL COURT OF THE

SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

CARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Jeffrey Bryan,

Court File No. 073-97

Plaintiff,

v.

ORDER

Shakopee Mdewakanton Sioux
(Dakota) Community, and
Meadowbrook Insurance Group,

Defendant.

JURISDICTION

This action arises from the Findings and Order issued by the Hearing Examiner on January 30, 1997. On February 24, 1997 the Meadowbrook Insurance Group Administrator, filed this appeal seeking to reverse the Hearing Examiner's Order. The appeal was timely filed pursuant to Section F.8 of the Community's Workers Compensation Ordinance, (Approved, SMSC Resolution 11-08-94-01, November 8, 1994) (hereinafter "Ordinance"), and is therefore properly before this Court.

FACTS

Jeffrey Bryan was employed by the SMSC/LSI as a blackjack dealer. Mr. Bryan claims to have incurred an injury to his arm, upper back and neck. Further, he claims that these injuries were the result of performing his duties as a blackjack dealer. This claim was submitted to the Hearing Examiner on August 28, 1996. A hearing was held on November 15, 1996. The

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record was left open until December 31, 1996. Mr. Bryan was represented by counsel at the hearing. The Hearing Examiner issued her Findings and Order on January 30, 1997 in which she sets forth and identified eight separate issues. In summary, Hearing Examiner found that Mr. Bryan sustained a work related injury and that he should be compensated for these injuries pursuant to the Ordinance. It is not necessary for purposes of this appeal to recite the Findings or the additional issues of the Order.

On appeal the Administrator asserts that Mr. Bryan's injury is a result of a degenerative pre-existing condition and as such the claim should be denied pursuant to Section C.3.n. of the Ordinance.

DECISION

This Court's review of Findings and Orders issued by the Hearing Examiner is narrow. The Ordinance, in Section F.8, sets forth the Court's authority as follows:

F.8. Appeal

There shall be no further review of factual decisions made by a hearing examiner. A decision by a hearing examiner concerning legal issues, whether the result of an evidentiary hearing or more, may be appealed by either party to the Shakopee Mdewakanton Sioux (Dakota) Judicial Court. The appeal must be filed with the Judicial Court in writing within 30 days of the date of the appeal and shall be served on all parties. 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 shall be final.

The Hearing Examiner under paragraph number 4 of the Issues, states as an issue, "whether the employee's claims are excluded under the pre-existing condition section of the Ordinance, C.3.n.". She then goes on to make the Finding in paragraph 4 that "[T]he Employee is not precluded from benefits under Ordinance C.3.n. on these facts."

It appears that the basis for Finding number 4 lies in the fact that neither Dr. Heller or

Dr. McGrail "do not opine a degenerative, pre-existing condition". Findings and Order p. 3.

Upon review of the record it appears that there was pre-existing back pain as disclosed by Mr. Bryan (See Progress Notes 8/1/96 and Page 3 Dr. Thomas Report dated September 23, 1996) Further, Dr. Mark Thomas, opines that Mr. Bryan's condition is a result of natural degenerative processes, are not work related and that it is considered a pre-existing condition. (See Dr. Thomas report p. 7). The report of Dr. Thomas was completed on September 23, 1996. The reports of both Dr. McGrail and Dr. Heller were made subsequent to the report of Dr. Thomas and both fail to address the opinion of Dr. Thomas relative to the pre-existing condition. In total, the record is inadequate to support the Hearing Examiner's Finding in paragraph 4.

IT IS HEREBY ORDERED:

1. That the factual record is inadequate to support the finding of no pre-existing condition;
2. That the request by Meadowbrook Insurance Group, Administrator to reverse the decision of the Hearing Examiner on the issues of Pre-existing condition is **GRANTED**; and
3. That the matter is remanded to the Hearing Examiner for further proceedings on the issue of degenerative, pre-existing condition.

BY THE COURT

Date:

5/29, ~~1996~~
1997


Henry M. Buffalo, Jr.