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CARRIE L. SVENDAHL  
CLERK OF COURT

TRIBAL COURT OF THE

SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Earlman David,	)	Case No.: 385-99
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
Shakopee Mdewakanton Sioux	)	
	)	
(Dakota) Community, and Berkley	)	
	)	
Administrators,	)	
	)	
Defendant	)	

SUMMARY

This appeal was filed on July 19, 1999 from a decision of Hearing Examiner Tamara G. Garcia, dated June 22, 1999. The Court upon review of the Hearing Examiner's Findings, Order and Memorandum, and the Appellant's Request for Appeal, the decision of the Hearing Examiner is affirmed.

FACTS

The Hearing Examiner found that the Appellant was employed by the Little Six, Inc., a corporation wholly owned by the Shakopee Mdewakanton Sioux (Dakota) Community, in the Casino Beverage Department as a porter. On or about August 27, 1998, the



employee sustained a work-related injury to his left knee arising out of and in the course and scope of his employment with the employer. The nature of the Appellant's injury to his left knee was a sprain. The Hearing Examiner found that Dr. Paul G. Johnson placed the employee at maximum medical improvement and rated no permanent impairment at the time of his examination on February 2, 1999. The Notice of Maximum Medical Improvement/Assessment of Permanent Impairment was served on the employee on February 26, 1999. The employee has offered no medical evidence to refute the opinion of Dr. Paul G. Johnson except that he disagrees with the opinion and indicates he is still in pain. The employee was found to have reached maximum medical improvement from his August 27, 1998 work related injury. The employee sustained no permanent impairment as a result of the August 27, 1998 work related injury. The Hearing Examiner based on the evidence presented ruled that Ordinance C.3. n. inapplicable and dismissed the Employee's Claim Petition dated March 4, 1999 with prejudice and denied Employee's claim in all respects.

#### CONCLUSIONS

The Hearing Examiner indicates in her Memorandum in the matter before her at the time that the employer and the administrator had the burden of proving the applicability of Ordinance C.3.n., which essentially sets forth circumstances under which no benefits are allowed. Ordinance C.3.n. states: "A pre-existing



condition, including a degenerative condition, established by medical evidence, whether pre or post injury, which significantly causes, aggravates or otherwise contributes to the disability or need for medical treatment." The Health Provider Report indicates the employee's alleged employment activity or environment solely caused the employee's injury or disease in his opinion. The Report does however indicate arthritic changes pre dating the work related injury and possible meniscal pathology which he recommended the employee undergo an MRI and or arthroscopy to which the employee declined further work-up. The Hearing Examiner because of the employee's declination for further work-up did not have the evidence necessary to conclude the employee's pre-existing arthritic changes in any way caused, aggravated, or otherwise contributed to the employee's August 27, 1998 work related injury. The Hearing Examiner was correct in her assessment that the medical evidence presented on whether or not Ordinance C.3.n. barred employee's claim for benefits to be inconclusive and therefore inapplicable. The employer and administrator did however make a good faith effort to achieve that burden of proof and had the employee cooperated in undergoing further work-up such burden may have been met. The Court must therefore agree that Ordinance C.3.n. is inapplicable.

The Hearing Examiner found that the Employee's Claim Petition should be dismissed with prejudice and the Employee's claim



should be dismissed in all respects due to the medical evidence presented that the employee was placed at maximum medical improvement as defined in Ordinance B.2. and that the employee sustained no permanent impairment as a result of said August 27, 1998 work related injury. The Hearing Examiner was correct.

On Appeal the employee attempts to explain his reasons for not pursuing further medical work-up by stating he feared retaliation and racial discrimination, abuses which he alleges have prevented him from medical examination from a "neutral physician" or having the Health Care Provider place him on work restrictions. The employee was given the opportunity to undergo further work up and according to him to even have work restrictions placed on his employment activities to which he admittedly declined. His arguments implying racial abuse are non sequitur in this context. Had he been denied further work up there might have been some logic to his allegation of discrimination.

However the Court is constrained to the review of the medical record and the findings of the Hearing Examiner based on such record in this hearing context. The factual record is adequate. Absent any medical evidence contradicting the finding of "Maximum Medical Improvement" or that the employee sustained no permanent impairment the Court must affirm the decision of the Hearing Examiner.

Dated this 30<sup>th</sup> day of October,  
1999

Robert Grey Eagle  
Robert Grey Eagle  
Judge Of Tribal  
Court