

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 43

WCC No. 9701-7693

SAMUEL J. GRENZ

Appellant

vs.

FIRE AND CASUALTY OF CONNECTICUT

Respondent.

ORDER ON APPEAL

Summary: In this latest of a series of cases commenced by Grenz, a pro se claimant, a hearing officer for the Department of Labor dismissed his latest claim for occupational disease benefits on the ground of res judicata. Claimant argues that his present contention is that a claim he filed in 1984 encompassed an occupational disease claim. He alleges this claim has not yet been litigated.

Held: Claimant has not yet litigated whether his 1984 claim for compensation encompassed an existing occupational disease. The DOL erred in dismissing the petition.

Topics:

Defenses: Res Judicata. WCC reversed DOL determination that res judicata barred pro se claimant from arguing that his 1984 elbow injury claim encompassed a separate and independent claim for occupational disease benefits. (Note: WCC affirmed in Grenz v. Fire and Casualty of Connecticut, 1998 MT 35N, No. 97-503 (Grenz V) (non-citeable opinion))

Appellant, Samuel J. Grenz (Grenz), appeals from a December 27, 1996 Order of the Department of Labor and Industry (Department) dismissing his latest claim for occupational disease benefits. As in recent cases, Grenz prosecutes this case pro sé (without an attorney).

Factual Background

I. Prior Cases.

This case is the latest in a series of cases commenced by Grenz. Grenz injured his elbow on August 24, 1984, while working for American Stud Company. He filed a claim for

compensation with respect to the injury and later alleged that his injury was the cause of degenerative arthritis affecting numerous parts of his body. In 1990, this Court determined that claimant's degenerative arthritis was not causally related to his 1984 injury and denied his claim for permanent total disability benefits. The Supreme Court affirmed. *Grenz v. Fire & Casualty of Connecticut*, 250 Mont. 373, 820 P.2d 742 (1991) (*Grenz I*⁽¹⁾).

Grenz then filed a new petition alleging that his degenerative arthritis was "caused [by] work-related micro-trauma separate and apart from, and **subsequent to**, the August 1984 injury." *Grenz v. Fire and Casualty of Connecticut*, 255 Mont. 121, 841 P.2d 494 (1992)(emphasis added) (hereinafter "*Grenz II*"). This Court dismissed the petition on *res judicata* grounds, citing *Grenz I*. On appeal the Supreme Court reversed, holding that the issue presented in the prior case was not the same issue as presented in the second petition. *Grenz II*. In the first case, the issue was the relationship of Grenz's arthritis to his August 1984 elbow injury. The petition in *Grenz II* requested compensation based upon alleged microtrauma occurring **after** the injury.

In *Grenz II* the Supreme Court remanded with instructions to determine whether the microtrauma claim was time barred. Upon remand this Court determined that indeed it was. The Supreme Court affirmed the determination in *Grenz v. Fire and Casualty of Connecticut*, 260 Mont. 60, 857 P.2d 730 (1993) (*Grenz III*).

At the same time he was pursuing his microtrauma claim under the Workers' Compensation Act, Grenz was also pursuing a companion claim for occupational disease benefits. That claim, which was also based on microtrauma occurring **subsequent** to the elbow injury, was presented to the Department, which concluded that it also was time barred. The Department's determination was affirmed by this Court. Once more, Grenz appealed. Again the Supreme Court affirmed. *Grenz v. Fire and Casualty of Connecticut*, 924 P.2d 264 (Mont. 1996) (*Grenz IV*).

II. The Latest Petition.

Undeterred by the prior decisions, on November 12, 1996, Grenz filed yet another petition with the Department. In his petition he alleges that he is entitled to occupational disease benefits under his **1984 claim for compensation**. His petition succinctly summarizes his legal theory for his latest action:

The department did not, in 1984, make a distinction between an occupational disease and an industrial injury for purposes [sic] of claim filing. The same claim form was utilized for both types of claims and still is. Insurers presented with a claim could elect to treat it as either an injury claim or a disease claim. A worker did not need technical legal knowledge about whether his condition was a disease or an injury in order to file a claim. He simply needed to file timely, which Grenz did on August 22, 1984, once a claim was filed, the difference between an injury and a disease could become important with regard as to what

benefits might be due, if there is a dispute, a claim submitted under one category can be determined to fit another category, after all "**a claim is a claim is a claim.**" [Quotes in original; emphasis added.]

DLI Record: Petition for Hearing at 3.

Decision Below

On December 4, 1996, the respondent insurer (insurer) moved to dismiss the latest petition on *res judicata* grounds. DLI Record: Motion to Dismiss Petition for Hearing. The insurer argued that *Grenz I* is *res judicata* since it determined that Grenz's arthritis was not causally related to his 1984 elbow injury. DLI Record: Motion to Dismiss Petition for Hearing at 11. It further argued that *Grenz III* is *res judicata* with respect to any occupational disease claim because the Montana Supreme Court determined in that appeal that "Mr. Grenz never informed his employer that he was suffering from arthritis or that his work was aggravating his degenerative condition." *Id.* at 12. Finally, the insurer requested that Grenz be enjoined from filing further complaints unless signed by an attorney.

On December 27, 1996, the Department's hearing officer dismissed the petition. In relevant part, the hearing officer held:

Simply put the claimant's elbow injury and occupational disease claim have be[en] litigated to death and are dead. No issue of material fact exists and the insurer is entitled to have this matter dismissed because the Court has already determined in Grenz v. Fire and Casualty of Connecticut, 53 St. Rep. 898,924 P.2d 264. (Decided 9-17-96) that the claimant's occupational disease claim is bared [sic] by the statute of limitations. In this latest petition, the claimant can not be allowed to approach this matter from a new angle indicating that he filed an occupational disease claim in 1984 or 1985 when he did not. The claimant cannot be allowed to approach and litigate this claim for benefits from any more angles. The claim appears to be as dead as dead can be. The motion to dismiss is properly granted.

The claimant, relying upon the decision in Grenz v. [F]ire and Casualty of Connecticut, WCC No 9310-6922, April 21, 1994, indicates in his Reply to Insurer's Motion to Dismiss Petition for Hearing that he is entitled to a hearing to "raise issues to combat the insurer's contention." (Reply p. 15) The claimant was provided a hearing on September 19, 1994 before the below signed hearing officer related to his claim for benefits under the Occupational Disease Act . That very hearing and the decision reached holding the claimant was bared [sic] by the statute of limitations applies in this case. Grenz v[.] Fire and Casualty of Connecticut, 53 St. Rep. 898, 924 P.2d 264. (Decided 9-17-96) **The claimant's occupational disease claim is bared [sic] by the statute of limitations.**

Id. at 3; underlining and bold in original. The hearing officer went on to grant the insurer's request that Grenz be enjoined from filing further petitions:

The claimant is additionally hereby enjoined from filing any further petitions for hearing with the Department relating to his elbow and degenerative arthritis condition as caused from or during employment with the insured unless such filing is signed by an attorney admitted to the Montana State Bar or the complainant obtains filing approval from the Hearing Bureau, Department of Labor and Industry.

Id. at 5.

Notice of Appeal

On January 21, 1997, Grenz filed his Notice of Appeal. The appeal sets out 15 separate grounds of alleged error. An Amended Notice of Appeal, filed January 28, 1997, amends the 15th ground and raises an additional, 16th ground.

Record on Appeal

The record on appeal consists of the Department's file, including some 25 exhibits contained in a separate section of the file. The Department's cover sheet for the exhibits states:

EXHIBIT LIST

CLAIMANT'S EXHIBITS 1-25

There is no indication by the Department as to when the exhibits were filed. However, Grenz's brief in opposition to the motion to dismiss refers to the exhibits, thereby indicating that they were filed by him in conjunction with his opposition to the motion. DLI Record: Claimant's Reply to Insurer's Motion to Dismiss Petition for Hearing.

Issues

Grenz raises a myriad of issues. As stated by him, they are:

1. The Occupational Disease Act requires a hearing, no hearing was had.
2. The DLI was required to give notice to Grenz of its intention to convert insurer[']s motion to dismiss into a motion for summary judgment, under Civ. Proc. Rules 12 (b), 56. [N]o notice was given.
3. Allowing insurer, who moves for summary judgment to raise new issues in its rebuttal brief was improper of the DLI, since Grenz had no opportunity to respond.
4. Insurer['s] rebuttal documents were to be limited to documents which explain, disprove, or contradict Grenz's evidence, insurer['s] rebuttal brief was not.
5. DLI improperly considered new issue which was first raised in insurer[']s reply brief, and improperly relied on that issue as basis for granting summary judgment.

6. Summary judgment movant, insurer, has the responsibility to determine what issues are susceptible to resolution by summary judgment, and to clearly state in its opening paper those issues upon which summary judgment is sought.

7. Unless right to hearing on [s]ummary judgment motion is specifically waived by all parties, either insurer or Grenz, are entitled to a hearing under Civ. Proc., Rule 56. [N]o hearing was had.

8. The question to be decided on a motion for summary judgment is whether there is a genuine issue of material fact and not whether Grenz is entitle[d] to approach his 1984 claim from "any more angles."

9. If there was any doubt as to the propriety of insurer's motion for summary judgment, it should have been denied. Civ. Proc., Rule 56.

10. On motion for summary judgment DLI was to review pleading and record in light most favorable to opposing party, Grenz, Civ. Proc., [R]ule 56. There is no evidence the DLI in its order that the pleading of Grenz or the record was even considered in this case.

11. DLI did not follow the requirements of § 2-4-623, MCA.

12. Justice was "denied" and "delayed" under Article II, Section 16, of the [C]onstitution of Montana.

13. Civ. Proc., Rule 56 (C) contemplates that the adverse part[y] can file opposing materials up to the day of the hearing, no notice was given, no hearing was had, Grenz was denied the right to present the material fact of his case to fact finder.

14. Summary judgment is proper when it appears that there is no genuine issue as to any material fact, in claimant's reply to insurer[']s motion to dismiss petition for hearing, Grenz raises genuine issue supported by material facts.

15. Under [s]ection 39-72-201, MCA[,] the DLI has no authority to deny a Montana [c]itizen of fundamental rights provided for under Article II, Section 16, of the Constitution of Montana.

16. If the DLI has the authority under section 39-72-201, MCA, to deny to a Montana citizen fundamental rights is the citizen entitled to a minimum of due process prior to being so deprived?

(Notice of Appeal at 1-2; Amended Notice of Appeal at 1-2.)

Standard of Review

This appeal is governed by section 39-72-612(2), MCA (1983), which provides:

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Discussion

The first eleven issues raised by Grenz, as well as issues 13 and 14, are procedural, however, while the eighth issue is phrased as a procedural one, Grenz argues under the auspices of that issue that the hearing officer incorrectly applied the doctrine of *res judicata* and the Court will consider the substance of his argument rather than the less than artful statement of the issue. The remaining issues are constitutional ones but claimant does not argue them in his brief and the Court deems them waived.

I. Jurisdiction.

Initially, the Court must address Grenz's contention, not mentioned in his Notice of Appeal or his Amended Notice of Appeal, but raised in his opening brief, that the Court is without jurisdiction to consider his appeal. (Appellant's Initial Brief at 5.) Since a lack of jurisdiction may be raised by any party, or *sua sponte* by the Court, at any time, *Sage v. Gamble*, 829 P.2d 822, 824 (Mont. 1996) ("It is a well-settled principle of law, however, that lack of subject matter jurisdiction cannot be waived, and may be raised at any stage of a judicial proceeding by a party or sua sponte by the court"), the issue must be addressed.

After all of the petitions and appeals Grenz has filed, and the seeming endlessness of his litigation, dismissing this appeal for lack of jurisdiction is certainly an attractive notion. Ironically, such dismissal would leave Grenz without further recourse since this Court could not review the Department's Order dismissing his claim. Lacking such review, the Supreme Court could not reach the issue, § 39-71-2904, MCA, thus the Department's decision would be final and evade review, much to Grenz's chagrin.

Grenz, however, is unsophisticated in legal matters. The Court must consider the thrust of his argument rather than the legal pigeon holes in which he attempts to thrust them. The jurisdictional contention is based upon the failure of the Department to hold a hearing, however, the crux of his argument is that the Department was required by law to hold an evidentiary hearing, thus its summary dismissal of his claim was error. The Workers' Compensation Court plainly has jurisdiction to review his contention.

II. Legal Authority of the Department to Summarily Dispose of a Contested Case.

Grenz spends much of his brief on appeal arguing that the Department's procedures were flawed. He argues that the effect of the Department's Order was to grant summary judgment and that in granting summary judgment the Department deprived him of his right to a hearing and, in any event, failed to follow the procedures applicable to summary judgment motions.

In contested case matters, the Department has adopted the model rules of procedure promulgated by the Attorney General. ARM 24.2.101 (adopting Attorney General Model Rules set out in ARM 1.3.205 through 1.3.233). The model rules do not contain any provision for summary disposition, without an evidentiary hearing, of contested case petitions. Similarly, the Montana Administrative Procedure Act does not contain such provision. It provides, merely, " Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved." § 2-4-612(1), MCA.

However, the power to summarily dispose of a case without hearing is inherent in the adjudicatory power of an agency. Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 8.3 (3d ed. 1994). As stated in Davis and Pierce's *Administrative Law Treatise*:

Even when an agency is required by statute or by the Constitution to provide an oral evidentiary hearing, it need do so only if there exists a dispute concerning a material fact. An oral evidentiary hearing is *never* required if the only disputes involve issues of law or policy.

In the 1996 supplement to the treatise, Davis and Pierce cite *Puerto Rico Aqueduct & Sewer Authority v. EPA*, 35 F.3d 600 (1st Cir. 1994), as a "particularly well-reasoned opinion upholding an agency's application of its summary judgment rules" Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 8.3 (3d ed. Supp. 1996). In the cited case, the First Circuit Court of Appeals said:

To force an agency fully to adjudicate a dispute that is patently frivolous, or that can be resolved in only one way, or that can have no bearing on the disposition of the case, would be mindless, and would suffocate the root purpose for making available a summary procedure.

35 F.3d at 605. In *Kenneth Culp Davis, Administrative Law Text* (3d ed. 1972), Davis cites a 10th Circuit case as setting out "the true principle" regarding evidentiary hearings:

[I]t is fundamental to the law that the submission of evidence is not required to characterize 'a full hearing' where such evidence is immaterial to the issue to be decided . . . Where no genuine or material issue of fact is present the court or administrative body may pass upon the issues of law after according the parties the right of argument.

§ 7.02 (quoting from *Producers Livestock Marketing Ass'n v. United States*, 241 F.2d 192, 196 (10th Cir. 1957), affirmed in *Denver Union Stock Yard Co. v. Producers Livestock Marketing Ass'n*, 356 U.S. 282 (1958)).

It is also an ancient maxim of jurisprudence that "[t]he law neither does nor requires idle acts." § 1-3-223, MCA. Where pleadings or undisputed facts require an agency to reach a particular result as a matter of law, a factual hearing is an idle act. I therefore conclude that the Department is not required to hold an evidentiary hearing in every case. In appropriate cases it may consider and grant motions to dismiss and summary judgment..

III. The Adequacy of Procedures Followed in this Case.

A motion to dismiss serves the solitary purpose of summarily disposing of actions which have no factual or legal merit. However, the deficiency **must** appear from the complaint or petition, as construed most favorably to the plaintiff or petitioner. *Farris v. Hutchinson*, 254 Mont. 334, 335, 838 P.2d 374, 375 (1992). The Court or agency cannot go beyond the petition or engage in fact finding. *Flemmer v. Ming*, 190 Mont. 403, 408, 621 P.2d 1038, 1041 (1980).

Grenz asserts that, in dismissing his petition, the hearing officer referred to facts outside of his petition and thereby converted the motion to dismiss into one for summary judgment. In dismissing the petition the hearing officer took notice of facts outside the four corners of the petition, specifically prior court decisions. (Grenz refers in his petition to one but not all of the Court decisions cited by the hearing officer.) Thus, the decision appears to be one granting summary judgment even though not captioned as such. In any event, in its answer brief on appeal, the insurer seems to concede that the hearing officer granted summary judgment, captioning its first argument as "**Summary Judgment Is Appropriate Under The Montana Occupational Disease Act (Addressing Arguments 1-8 in Mr. Grenz's Brief)**." (Fire and Casualty of Connecticut's Brief in Response to Claimant's Appeal at 5; bold, underlining and parenthesis in original.)

Grenz next argues that the procedures followed by the hearing officer were flawed. The motion filed by the insurer was to dismiss. The Department has no specific rule governing such motions. This Court has adopted the practice of borrowing from the Montana Rules of Civil Procedure when its own rules are silent on a matter, and that practice has been ratified by the Montana Supreme Court. *Murer v. State Compensation Mut. Ins. Fund*, 257

Mont. 434, 849 P.2d 1036, 1037 (1993). Since the Department has no rules regarding motions to dismiss or for summary judgment, and since the hearing officer did not declare in advance what procedures he intended to follow, the procedures followed by the hearing officer must be examined under the Montana Rules of Civil Procedure.

Under Rule 12(b), Mont. R. Civ. P., the Supreme Court has held that "ordinarily a district court must give notice to the parties that it intends to treat a motion to dismiss as one for summary judgment." *First Federal Savings and Loan Ass'n of Missoula v. Anderson*, 238 Mont. 296, 299, 777 P.2d 1281, 1283 (1989). "The reason for . . . [the] requirement is that opportunity is then given to the party opposing summary judgment or the motion to dismiss to produce additional facts by affidavit or otherwise which would establish a genuine issue of material fact and so preclude summary judgment under Rule 56." *Id.* However, as *First Federal* and other cases demonstrate, specific notice from the Court, or in this case from the agency, is not required in every case. In *First Federal* the Supreme Court excused such notice since the party opposing the motion to dismiss had "adopted from and relied on certain facts from the affidavit" filed by the moving party. *Id.* Thus, the objecting party was plainly aware that the motion involved facts outside of the pleadings and that the motion would be considered one for summary judgment. In *Bretz v. Ayers*, 232 Mont. 132, 136, 756 P.2d 1115, 1118 (1988), the Court held that where a party submits factual material in connection with a motion, that party cannot claim surprise when the Court treats the matter as one for summary judgment. In *American Medical Oxygen Co. v. Montana Deaconess Medical Center*, 232 Mont. 165, 167-68, 755 P.2d 37, 39 (1988), the court indicated that a motion captioned in the alternative as one to dismiss and one for summary judgment, and accompanied by affidavits and exhibits, was sufficient notice, without any specific statement by the court, that the motion would be treated as one for summary judgment.

In this case the only facts relied upon by the hearing officer were from prior court decisions involving Grenz's claims for benefits. When filing his petition with the Department, Grenz himself specifically requested the Department to take judicial notice of some of the prior proceedings. (DLI Record, Claimant's Motion for Judicial Notice, filed November 12, 1996.) In responding to the insurer's motion to dismiss, Grenz referred to the prior decisions. He submitted 25 exhibits, among them copies of some of the prior decisions. (DLI Record, claimant's reply brief.) He cannot now claim surprise that the hearing officer considered the prior decisions in formulating his Order.

Grenz also maintains that a hearing should have been held with respect to the motion, citing *Cole v. Flathead County*, 236 Mont. 412, 771 P.2d 97 (1989). In *Cole* the Supreme Court held that Rule 56, Mont. R. Civ. P. requires a hearing on a motion for summary judgment for the purpose of determining whether material facts are disputed and to provide an opportunity for oral evidence in that regard. *Id.* at 416, 771 P.2d at 99. 771 P.2d 97, 236 Mont. 412, *Cole v. Flathead County*, (Mont. 1989). However, the hearing

requirement does not apply where the opposing party concedes the material facts. *Aetna Life Ins. Co. v. Jordan*, 254 Mont. 208, 211-12, 835 P.2d 770, 772-73 (1992). In this case, the material facts relevant to the hearing officer's decision are set out in judicial decisions. They are not susceptible to dispute and a hearing would have therefore served no purpose. Nonetheless, in further proceedings, absent adoption of its own rules governing summary judgment, the Department will be well advised to follow the procedures provided by the Montana Rules of Civil Procedure and subjacent case law.⁽²⁾

IV. *Res Judicata* Determination.

The hearing officer concluded that *Grenz IV* is *res judicata* with respect to the present claim. That conclusion is a matter of law and is therefore subject to plenary review to determine if it was correct. *Steer, Inc. v. Department of Revenue*, 245 Mont. 470, 474-75, 803 P.2d 601, 603 (1990). I conclude that it was not.

In its motion below, the insurer did not invoke *Grenz IV* as the basis for its *res judicata* argument. However, it is unnecessary to determine whether it was error for the hearing officer to consider the effect of that case. The claim asserted in *Grenz IV* was whether an occupational disease claim filed by Grenz in 1991 was timely. The Department held that it was not. That decision was affirmed by this Court and thereafter by the Supreme Court.

The doctrine of *res judicata* requires that "(1) the parties or their privies must be the same; (2) the subject matter of the action must be the same; (3) the issues must be the same and relate to the same subject matter; and (4) the capacities of the persons must be the same in reference to the subject matter and to the issues." *Grenz II* at 122, 841 P.2d at 495. In this case, Grenz is not pursuing benefits under his 1991 claim. Rather, he asserts that his 1984 claim constitutes a claim for occupational disease benefits and that he may therefore pursue occupational disease benefits under the 1984 claim. The Supreme Court did not address that issue in *Grenz IV*. *Grenz I*, which is the basis for the insurer's argument, determined only that claimant's arthritis is not related to his elbow injury. Grenz's argument herein is that his 1984 claim encompassed not only an elbow injury but disease inducing microtrauma suffered at work prior to his injury. That contention was never addressed. The doctrine of *res judicata* is therefore inapplicable and the hearing officer erred in resting his decision on that ground.

The insurer correctly notes that in *Grenz I* the Supreme Court quoted testimony by Grenz that his elbow injury was the "only industrial injury" he claimed. *Grenz I*, however, did not consider whether the claim filed by claimant encompassed an occupational disease in addition to the claim for an elbow injury. Whether claimant's prior testimony and the positions he has taken in the prior litigation might estop him from litigating his present contention is not an issue presently before this Court.

Whether Grenz's theory concerning the scope of his 1984 claim is a viable theory, is also at issue but it was not addressed by the hearing officer. In his Order, the hearing officer stated, "In this latest petition, the claimant can not be allowed to approach this matter from a new angle indicating that he filed an occupational disease claim in 1984 or 1985 when he did not." (DLI Record, Order on Motion at 3.) That observation was made in connection with the hearing officer's determination that claimant's occupational disease claim had already been rejected in *Grenz IV*. The insurer did not argue that the 1984 claim was insufficient under the ODA, thus the remark of the hearing officer is dicta and does not confront the very issue raised by Grenz's present petition.

Grenz asserts in his latest petition that a "claim is a claim is a claim." This Court has previously held that a claim for compensation must provide sufficient information to inform the employer and insurer of the nature and basis of the claim. *Stan Guedesse v. Liberty Mutual Fire Ins. Co.*, WCC No. 9701-7690, Order Denying Motion for Partial Summary Judgment (March 6, 1997) (citing *Weigand v. Anderson-Meyer Drilling Co.*, 232 Mont. 390, 393, 758 P.2d 260, 261-62 (1988)). Thus, if the 1984 claim for compensation fails to provide sufficient information indicating that an occupational disease may be involved, Grenz's claim for occupational disease benefits under his 1984 claim fails. But since the sufficiency of the claim, and other potential defenses, were not argued by the insurer and not directly addressed by the hearing officer, the decision below must be reversed and the matter remanded for further proceedings. Upon remand, the hearing officer may consider other defenses raised by the insurer, including whether the 1984 written claim provides sufficient information to constitute a claim for occupational disease in addition to the claim for the elbow injury. If no defenses are established based upon the pleadings or undisputed material facts, then an evidentiary hearing on the merits must be held.

V. Injunction Prohibiting Further Filings.

Upon remand the hearing officer shall also reconsider his Order concerning future filings. Grenz's opposition to the insurer's motion was well taken. Whether his petition is so wholly without merit that, taken together with his prior litigation, he should be barred from further filings, is a matter that should be considered only after the hearing officer considers the merits of the latest petition. Whether the Department has the authority to enjoin further filings need not be considered at this time.

ORDER AND JUDGMENT

1. This Court has jurisdiction over this matter pursuant to section 39-72-612, MCA.
2. The Department's Order on Motion entered December 27, 1996, is **reversed**. This matter is **remanded** to the Department for further proceedings consistent with this decision.
3. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

4. Any party to this dispute may have 20 days in which to request an amendment or reconsideration of this decision.

DATED in Helena, Montana, this 7th day of July, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Samuel J. Grenz -- Certified Mail

Mr. Joe C. Maynard

Ms. Christine L. Noland

Mr. Brian McCullough -- E-mail

Submitted Date: May 7, 1997

1. The cited case is not the first of Grenz's cases in the Supreme Court. However, for the sake of convenience and brevity, the Grenz cases cited herein will be referred to as Grenz I, Grenz II and so on.

2. The Workers' Compensation Court has adopted its own rule regarding summary judgment. ARM 24.5.329. The rule adopts many but not all of the procedures of Rule 56, Mont. R. Civ. P.