

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1994 MTWCC 81**

**WCC No. 9408-7130**

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**SAMUEL J. GRENZ**

**Petitioner**

**vs.**

**FIRE AND CASUALTY OF CONNECTICUT**

**Respondent.**

**ORDER DENYING MOTION TO STAY PROCEEDINGS AND  
DISMISSING APPEAL**

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On August 24, 1994, the Court received and filed Mr. Samuel J. Grenz's (Grenz) Motion for Judicial Control and Combined Brief. The motion asks the Court to intervene in an administrative proceeding pending before the Department of Labor and Industry (Department). The Court treated the motion as a petition for judicial review and ordered Fire and Casualty of Connecticut to respond. Having received the response, I have determined that this Court lacks jurisdiction to intervene in or stay the proceeding below.

A historical preface to the present matter is found in this Court's prior decision in **Samuel J. Grenz v. Fire and Casualty of Connecticut**, WCC No. 9310-6922, decided April 21, 1994. Therein, Grenz appealed from the Department's summary dismissal of his claim for benefits under the Occupational Disease Act. This Court reversed the summary dismissal and remanded for further proceedings. Upon remand the Department scheduled an evidentiary hearing concerning the insurer's statute of limitations defense. That hearing is set for September 19, 1994.

The Department is vested with original jurisdiction to determine whether a claimant is eligible for benefits under the Occupational Disease Act. §§ 39-72-202, 403, 611 and 612, MCA. Its jurisdiction extends to controversies involving the statute of limitations applicable to Occupational Disease claims. § 39-72-403, MCA. The jurisdiction of this Court in such matters is appellate jurisdiction.

The Department has made no final determination concerning Grenz's claim. However, in prior cases involving issues arising under the Workers' Compensation Act, this Court has

held that it may review interlocutory orders meeting the criteria spelled out in the Montana Administrative Procedure Act, section 2-4-701, MCA, which provides:

**2-4-701. Immediate review of agency action.** A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

Without deciding whether this section can be invoked in appeals under the Occupational Disease Act, it is apparent from the face of Grenz's motion that he does not satisfy the criteria.

Initially, Grenz does not identify any agency action from which he is appealing other than the setting of a hearing. If he is appealing because he objects to an evidentiary hearing, then the answer to his appeal is found in this Court's April 21, 1994, decision, which found that the defect in the Department's summary dismissal was its *failure* to hold an evidentiary hearing. He has not set forth any facts which, if true, demonstrate that judicial review of a "final agency decision would not provide an adequate remedy." Therefore,

IT IS HEREBY ORDERED THAT the petitioner's Motion for Judicial Control and Combined Brief is **dismissed**. IT IS FURTHER ORDERED THAT his Motion for an Order to Stay Proceedings is **denied**.

DATED in Helena, Montana, this 14th day of September, 1994.

(SEAL)

/S/ Mike McCarter

JUDGE

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