

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 70

WCC No. 9901-8127

SAMUEL J. GRENZ

Appellant

vs.

FIRE & CASUALTY OF CONNECTICUT

Respondent.

ORDER ON APPEAL

¶1 Petitioner, Samuel J. Grenz, suffers from severe degenerative arthritis. He claims that his arthritis is work related and has been involved in litigation over his claim for over a decade. Various aspects of his claim have been the subject of numerous Court decisions. Those decisions are itemized in an appendix to the present decision.

¶2 The present case is a second appeal with respect to Grenz's request for occupational disease (OD) benefits under his original, August 27, 1984 claim for compensation. In the first appeal, this Court reversed the Department's initial determination that the claim is barred by the doctrine of res judicata. *Grenz v. Fire and Casualty of Connecticut*, WCC No. 9701-7693, Order on Appeal (July 7, 1997), aff'd on appeal, 1998 MT 35N.

Procedural History

¶3 Grenz has been pursuing benefits since 1984, when he filed a claim for an elbow injury. He later alleged that his elbow injury and subsequent microtrauma caused degenerative arthritis affecting numerous parts of his body. Those claims, pursued under the Workers Compensation Act, were rejected. *Grenz v. Fire and Casualty of Connecticut*, 250 Mont. 373, 820 P.2d 742 (1991) (*Grenz I*); *Grenz v. Fire and Casualty of Connecticut*, 260 Mont. 60, 857 P.2d 730 (1993) (*Grenz III*).

¶4 Grenz also pursued an OD claim based on alleged microtrauma occurring subsequent to his 1984 injury. That claim was rejected as untimely. *Grenz v. Fire and Casualty of Connecticut*, 278 Mont. 268, 924 P.2d 264 (1996) (*Grenz IV*).

¶5 Grenz then pursued his present case, alleging that he is entitled to OD benefits under his original 1984 claim. The Department dismissed the claim on res judicata grounds. I

reversed. Noting that Grenz's prior OD claim had alleged an OD arising subsequent to his 1984 claim, I held that the dismissal of that claim did not resolve his current claim for OD benefits under the 1984 claim. The Supreme Court affirmed in an unpublished decision. 1998 MT 35N (*Grenz V*).

¶16 My decision in the first appeal set out the issues to be decided upon remand, as follows:

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.

Grenz, July 7, 1997 Order on Appeal at 12.

¶17 As set forth above, the first issue to be determined upon remand was whether Grenz's 1984 claim presented "sufficient information indicating that an occupational disease may be involved." If the claim were determined sufficient, then the Department was to consider other defenses which might bar the claim, otherwise it was to hold an evidentiary hearing on the merits.

¶18 Following remand to the Department, the insurer moved for summary judgment. On December 16, 1998, a Department hearing officer granted summary judgment and this appeal followed.

Decision Below

¶19 In granting summary judgment, the hearing officer found that Grenz's 1984 claim did not state a sufficient claim for OD benefits. Based on that failure, and an alternative holding that Grenz is judicially estopped from asserting an OD claim under the rubric of his 1984 claim, the hearing officer once again dismissed his case. The present appeal followed.

Standard of Review

¶10 Since the decision below was one for summary judgment, the Court is in as good a position to judge the evidence as the hearing officer and judicial review is de novo. See *Schmasow v. Native American Center*, 1999 MT 49, ¶ 12.

Discussion

¶11 The first question the Court must address is whether Grenz's 1984 claim sufficiently states a claim for OD. If it does not, then he cannot pursue OD benefits under the 1984 claim.

¶12 The 1984 claim is found at Exhibit 1 of the insurer's exhibits. It is dated August 27, 1997, and states that Grenz "BUMPED HIS ELBOW ON STEEL RAILING ON THE HAND GUARD. IT BECAME EXTREMELY SENSITIVE." (Capitalization in original.) The claim unequivocally identifies a specific, single traumatic event involving claimant's elbow. In lay terms, he simply bruised his elbow.

¶13 In his prior petition to this Court, Grenz alleged that "a claim is a claim is a claim." *Grenz*, July 7, 1997 Order on Appeal at 2. Had his claim set forth facts and circumstances indicating something more than an elbow bruise, his argument might have some force. Certainly, he was not required to elect between the Occupational Disease Act and the Workers' Compensation Act, and the claim form did not provide for such election. But he was required to set out basic facts which gave the employer and insurer reasonable notice that his condition may involve an OD. As stated in my prior decision:

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)).

Grenz, July 7, 1997 Order on Appeal at 12. The 1984 claim did not provide any facts which remotely suggested the possibility that Grenz was suffering from an OD.

¶14 Moreover, Grenz's contention that his 1984 claim should be construed as encompassing a claim for OD benefits is disingenuous. As the Supreme Court noted in *Grenz v. Fire and Casualty of Connecticut*, 260 Mont. 60, 857 P.2d 730 (1993), prior to 1992 Grenz steadfastly maintained that his degenerative arthritis was attributable to the single event of bumping his elbow in 1984:

[D]uring the time in question [1984 to 1992], Grenz steadfastly maintained that his arthritis was caused by, and derivative from, his elbow injury of August 1984.

Indeed, in Grenz' statement of facts to this Court, he states that "the different way he performed his work in order to compensate for the bumped elbow may have been the cause of these other joint problems." In Grenz I, we quoted from Grenz' trial testimony in which he stated:

"Q. Your injury occurred in 1984?

"A. Right.

"Q. That's the only industrial injury you claim; is that right?

"A. Right ..."

Grenz I, 820 P.2d at 746. Therefore, although Grenz may have "informed" his employer that he was suffering from arthritis within the one-year period, he does not point to any evidence by which he informed his employer that he was suffering from arthritis caused by microtrauma injuries separate and apart from the elbow injury. He continuously maintained that the bumped elbow was the source of his arthritis.

260 Mont. at 63-64, 857 P.2d at 732.

¶15 I therefore find that Grenz's 1984 workers' compensation claim did not encompass any claim for OD benefits. Accordingly, he cannot pursue OD benefits under that claim. In light of my finding, it is unnecessary for the Court to consider the hearing officer's alternative holding that Grenz is judicially estopped from pursuing OD benefits under the 1984 claim.

ORDER

¶16 1. The decision of the Department of Labor and Industry is affirmed.

¶17 2. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

¶18 3. Any party to this dispute may have 20 days in which to request an amendment or reconsideration from this Order on Appeal.

DATED in Helena, Montana, this 9th day of November, 1999.

(SEAL)

\\s\ Mike McCarter

JUDGE

c: Mr. Samuel J. Grenz - Certified Mail

Mr. Neil S. Keefer

Date Submitted: June 22, 1999

Appendix of Grenz Cases

APPENDIX

A brief review of WCC records and SC records show the following cases. This may not be an inclusive list.

Samuel J. Grenz Cases in Workers' Compensation Court:

Grenz v. American Timber Co. WCC No. 8408-2619
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 8811-4977
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 8904-5266
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 9005-5811
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 9103-6111
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 9202-6378
Grenz v. Fire & Casualty of Conn. WCC No. 9202-6384
Grenz v. Fire & Casualty of Conn. WCC No. 9310-6922
Grenz v. Fire & Casualty of Conn. WCC No. 9408-7130
Grenz v. Fire & Casualty of Conn. WCC No. 9501-7224
Grenz v. Fire & Casualty of Conn. WCC No. 9501-7225
Grenz v. Fire & Casualty of Conn. WCC No. 9701-7693
Grenz v. Fire & Casualty of Conn. WCC No. 9901-8127

Samuel J. Grenz Workers' Compensation Cases in Montana Supreme Court:

Grenz v. Fire & Cas. of Conn., 1998 MT 35N (decided February 18, 1998)
Grenz v. Fire & Cas. of Conn., 278 Mont. 268, 924 P.2d 264 (1996)
Grenz v. Fire & Casualty of Conn., 260 Mont. 60, 857 P.2d 730 (1993)
Grenz v. Fire & Casualty of Conn., 255 Mont. 121, 841 P. 2d 494 (1992)
Grenz v. Fire & Casualty of Conn., 250 Mont. 373, 820 P.2d 742 (1991)

Samuel J. Grenz District Court Cases in Montana Supreme Court:

Grenz v. Orion Group, Inc., 243 Mont. 486, 795 P.2d 444 (1990)

Grenz v. Prezeau, 244 Mont. 419, 798 P.2d 112 (1990)

Grenz v. Medical Management Northwest, 250 Mont. 58, 817 P.2d 1151 (1991)

Various Supreme Court Orders Dismissing Samuel J. Grenz Cases

Grenz v. EBI/Orion Group, 89-283, Nonciteable, unpublished - 9/1989

Grenz v. EBI/Orion & American Stud Co., 89-432, Premature appeal - 10/1989

Grenz v. Stangl, 91-195, Nonciteable, unpublished - 9/24/91

Grenz v. Fire & Casualty of Conn., 91-429, Not an appealable Order -9/24/91

Grenz v. Fire & Casualty of Conn., 98-313, Original Proceeding - 6/16/98