IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 63A

WCC No. 9501-7224

SAMUEL J. GRENZ

Appellant

vs.

FIRE AND CASUALTY OF CONNECTICUT

Respondent.

ORDER DENYING MOTION FOR TRIAL/RECONSIDERATION

On August 29, 1995, the appellant, Samuel Grenz (Grenz), filed a Motion for Trial/reconsideration and Combined Brief. The time for respondent to file its answer brief has expired and no brief has been received. Nevertheless, since the motion fails to set forth meritorious grounds for granting a trial or reconsideration, the motion is **denied**.

Discussion

Grenz presents four grounds in support of his motion. The grounds will be discussed in the order he has presented them.

First, he argues that Court Rule 2.52.350 ARM and "title 53, chapter 9, subsection (6)" (capitalization omitted), require that a trial be held. The contention is without merit. Rule 2.52.350 (5) ARM specifically provides that the Court shall base its decision on the record below and, **if allowed**, any additional evidence presented to it. The taking of additional evidence is governed by Rule 2.52.350(4) ARM, which provides that additional evidence may be taken only where requested by motion and the requestor shows that the additional evidence is material and "that there were good reasons for failure to present it in the proceedings before the department." *See also* § 2-4-703, MCA. No motion was ever filed and Grenz did not show why additional evidence should be allowed. As to his citation to Title 53, chapter 9, that chapter pertains to crime victims' compensation and has no application to this Court.

The second ground contains a request for a "new trial." Grenz asserts that he was misled by this Court's first decision (*Samuel J. Grenz v. Fire and Casualty of Connecticut,* WCC No. 9310-6922, April 21, 1994), in which I said that the statute of limitations does not commence running until Grenz knew or had reason to know that his arthritis resulted from

an occupational disease. He asserts that the Court's latest decision, which found that he should have known more than two years prior to filing his claim that he suffered from an occupational disease, conflicts with the first decision. He asserts that had he known such conflict would arise he would have presented "the legal expert testimony of the Trieweiler Law Firm", which he says was representing him at the time the statute of limitations was triggered.

His argument is without merit. My initial decision in this matter held only that a material factual issue existed concerning when claimant knew or should have known of his occupational disease. The matter was remanded for a hearing to resolve that factual issue. Claimant was free to present whatever evidence he could muster in support of his assertion that he lacked knowledge of his occupational disease prior to the summer of 1990. He had his "day in court" and is not entitled to a new hearing merely because he misunderstood the Court's original Order or he failed to present all of the evidence he might have mustered.

As his third ground, Grenz argues that the Court overlooked his contention that the statute of limitations was tolled until 1991 because the insurer paid benefits with knowledge of claimant's arthritic condition. The contention was contained in Grenz's Notice of Appeal. However, the contention was not pursued in Grenz's briefs filed in support of his appeal and must be deemed waived.

Finally, Grenz alleges that section 39-72-403, MCA, is unconstitutionally vague. This is the first time he has made that contention and it is untimely.

ORDER

The Motion for Trial/Reconsideration is **denied**.

Dated in Helena, Montana, this 13th day of September, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

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