

NO. 22515

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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ALICE M. DAWSON, Claimant-Appellant

vs.

FLORENCE G. LUCE, Employer-Appellee, Delinquent

and

SPECIAL COMPENSATION FUND, Appellee

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APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(CASE NO. AB 97-061(H) (1-91-2641))

CONCURRING OPINION OF ACOBA, J.

I concur with the result reached in this case.

However, I object to what I view as an extension of the holding in Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 34 P.2d 16 (2001). In Korsak v. Hawaii Permanente Med. Group, 94 Hawai'i 297, 12 P.3d 1238 (2000), this court construed the statutory presumption of compensability in Hawai'i Revised Statutes (HRS) § 386-85(1) (1993) to include, not only the limited question of whether the injury was work-related, but also the consequences of a work-related injury. See id. at 305, 12 P.3d at 1246. In Igawa v. Koa House Rest., 97 Hawai'i 402, 38 P.3d 570 (2001), this court affirmed this principle, stating that the presumption of compensability also applies to the question of "whether the disability was a result of the work injury." Id. at 406, 38 P.3d at 575.

In Tamashiro, however, we qualified the general proposition adopted in Korsak and affirmed in Igawa, that the statutory presumption in HRS § 386-85(1) “applies in all proceedings conducted pursuant to the workers’ compensation chapter.” Tamashiro, 97 Hawai’i at 94, 34 P.3d at 24 (Acoba, J., concurring) (quoting Korsak, 94 Hawai’i at 306, 12 P.3d at 1247). In that case, the sole question before the Labor and Industrial Relations Appeals Board (the Board) was whether Tamashiro was able to resume work in his usual and customary position as an electrician after having sustained a work injury, and whether Tamashiro’s actual return to work prior to surgery indicated that he was, in fact, not temporarily totally disabled, pursuant to HRS §§ 386-31(b) (1993) and 386-32 (Supp. 2000).

Thus, the question was not the work-connectedness of the injury or the consequences of that injury, but whether Tamashiro could return to work. The Tamashiro majority carved out this exception because “issues relating to the work-connectedness of the injury were neither before the Board nor the Intermediate Court of Appeals (ICA) on appeal. Because the section 386-85(1) presumption of work-connectedness was neither applicable nor relevant to any issue on appeal, . . . the ICA erred in applying the presumption to the issue in this case.” Tamashiro, 97 Hawai’i at 92, 34 P.3d at 22 (emphasis added). I believe that this qualification was “limited to the question of

'whether [the claimant] was able to resume work between August 4, 1994 and July 15, 1995.'" Id. (emphasis added).

Here, the issues before the Board and this court are whether the consequences of Claimant-Appellant Alice Dawson's work injury, i.e., her on-going medical difficulties and subsequent surgery, are work-connected. Dawson contends that her subsequent medical problems are the consequences of her work injury, while her employer argues that an intervening injury establishes that they are not work-connected consequences of Dawson's 1991 work injury. Accordingly, this case is more analogous to Igawa and Korsak than to Tamashiro. Because Dawson maintains that her later medical needs are connected to the work injury sustained in 1991, the presumption of work-connectedness in HRS § 386-81(1) should apply under the rationale of Igawa and Korsak.

The majority, however, apparently limits the holdings in Igawa and Korsak to the work-connectedness of only the injury, rather than to the consequences of the injury. In doing so, the majority extends the Tamashiro holding, from the ability to resume work, and ignores the holdings in Igawa and Korsak, which specifically state that the presumption applies not only to the injury itself, but to the alleged consequences of the injury. See supra.

In applying the presumption, however, it appears from the record that Dawson's employer met her burden of producing substantial evidence. Accordingly, I concur with the result reached in this case.

DATED: Honolulu, Hawai'i, July 10, 2002.