

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))  
(1-91-36112 Hilo)  
(1-93-01704)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Ramil, JJ.;  
Acoba, J., Not Joining<sup>1</sup>)

Claimant-appellant Alice Dawson appeals from the May 4, 1999 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB), affirming the January 6, 1997 decision of the Director of the Department of Labor and Industrial Relations (DLIR). On appeal, Dawson claims that the LIRAB erred by:

(1) failing to apply the statutory presumption of Hawai'i Revised

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<sup>1</sup> A separate opinion will be filed subsequently.

Statutes (HRS) § 386-85 (1993) to her claim; (2) concluding that Dawson's May 17, 1991 injury, sustained while Dawson was working for employer-appellee Florence Luce, was a temporary aggravation of a preexisting underlying condition and not a permanent disability; (3) concluding that Dawson was not entitled to temporary total disability (TTD) benefits after December 17, 1991; and (4) concluding that Luce was not liable for Dawson's medical costs after June 30, 1992.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve each of Dawson's contentions as follows:

First, contrary to Dawson's contention, the LIRAB gave due deference to the statutory presumption as evinced by its affirmance of the Director's decision, awarding compensation benefits related to the May 17, 1991 work injury. Dawson argues that the statutory presumption should also have been applied to her claims that she was permanently disabled and entitled to additional disability and medical benefits. However, as we stated in Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 34 P.2d 16 (2001), "[i]f an injury is compensable, the subsequent question whether, as a result of the injury, the claimant is temporarily or permanently, or partially or totally disabled,

constitutes an entirely separate question" outside the purview of HRS § 386-85. Id. at 91, 34 P.2d at 21. We, therefore, hold that the LIRAB did not fail to apply the statutory presumption of compensability.

Second, with respect to the LIRAB's classification of Dawson's condition as a temporary aggravation of a preexisting condition, we conclude that the record contains substantial evidence that Dawson suffered from an underlying condition that predated the May 17, 1991 work injury. We, therefore, hold that the LIRAB did not err in concluding that Dawson failed to meet "her burden of showing that she sustained a permanent aggravation of her underlying low back condition on May 17, 1991," nor in classifying Dawson's compensable work injury as a "temporary aggravation of her preexisting lumbar disc condition."

Third, there is nothing in the record to substantiate Dawson's claim that she was unable to perform any work duties after December 17, 1991 because of her work injury. We, therefore, hold that the LIRAB did not err in concluding that Dawson's entitlement to temporary total disability benefits expired on December 17, 1991.

Finally, based on its assessment of the credibility of the witnesses and the evidence presented, the LIRAB concluded that the toy tripping incident constituted an independent

intervening injury that terminated Luce's liability for Dawson's medical costs. See Diaz v. Oahu Sugar Co., 77 Hawai'i 152, 154-57, 883 P.2d 73, 75-78 (1994) (where condition of workers' compensation claimant had improved and stabilized, employer was relieved of its responsibility to pay for medical costs after intervening injury, not causally connected to the initial injury, occurred). Even if this court were to ignore the toy tripping incident, there is nothing in the record to support a finding that medical costs incurred after June 30, 1992 (e.g., the spinal surgery Dawson underwent in 1997) were related to Dawson's May 17, 1991 work-connected injury.

The LIRAB also concluded, alternatively, that the worsening of Dawson's lower back problems was attributable to a subsequent aggravation of her underlying condition or a deterioration of her preexisting degenerative disc disease. Dawson failed to call any of her physicians, or any other witnesses, to testify in support of her contentions that her continuing back problems were related to her original work injury. We, therefore, hold that the LIRAB did not err in concluding that the need for further medical care after June 30, 1992 was required by an intervening injury or subsequent aggravation of her preexisting low back condition. Accordingly,

IT IS HEREBY ORDERED that the LIRAB's May 4, 1999  
decision and order is affirmed.

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

On the briefs:

James Ireijo,  
for claimant-appellant

Noralynne K. Pinao and  
J. Stanley Yoshimoto,  
for employer-appellee,  
delinquent

J. Gerard Lam and  
Frances E. H. Lum,  
Deputy Attorneys General,  
for appellee Special  
Compensation Fund