

DISSENTING OPINION OF MOON, C.J.

I respectfully dissent. Although the majority agrees with the Intermediate Court of Appeals (ICA) that Davenport's injuries are compensable, it grants certiorari because it believes that the ICA erred in (1) relying on Mitchell v. State Department of Education, 85 Hawai'i 250, 942 P.2d 514 (1997), to hold that psychological injuries arising out of non-disciplinary personnel actions are compensable under Hawai'i Revised Statutes (HRS) § 386-3 and (2) failing to apply the unitary test outlined in Tate v. GTE Hawaiian Telephone Co., 77 Hawai'i 100, 881 P.2d 1246 (1994), to determine whether the alleged injuries arose out of the claimant's employment. However, given that the ICA's opinion clearly and correctly notes that: (1) there is no express exception for non-disciplinary personnel actions; (2) there is a presumption of compensability; and (3) workers' compensation laws are construed liberally in favor of coverage, I do not believe the alleged errors addressed by the majority amount to grave errors of law or inconsistencies dictating the need for further appeal. See HRS § 602-59(b) (1993).

With respect to Justice Acoba's concurring opinion indicating his belief that the ICA retroactively applied HRS § 386-3 (2000), I do not believe, based on the ICA's analysis as a whole, that its citation to the subsequent version of HRS § 386-3 constitutes grave error or inconsistencies dictating the

need for further appeal. See HRS § 602-59(b) (1993). Justice Acoba concedes that the subsequent amendment to HRS § 386-3 (2000) "would not affect stress-related claims resulting from the non-disciplinary actions such as those filed by Davenport," but writes separately to clarify that the ICA erroneously applied the 1998 amendment. Unlike State v. Hanson, 97 Hawai'i 71, 34 P.3d 1 (2001), and Korsak v. Hawaii Permanente Medical Group, Inc., 94 Hawai'i 297, 12 P.3d 1238 (2000), I do not believe, based on the ICA's analysis in this case as a whole, that its citation to the subsequent version of HRS § 386-3 requires clarification of the state of the law. Accordingly, I would dismiss certiorari as improvidently granted.