

***** NOT FOR PUBLICATION *****

NO. 23627

IN THE SUPREME COURT OF THE STATE OF HAWAII

JERRY D. WAGNON, Claimant-Appellee,

vs.

KOGA ENGINEERING AND CONSTRUCTION, INC.,
and EAGLE PACIFIC INSURANCE COMPANY,
Employer/Insurance Carrier-Appellant,

and

SPECIAL COMPENSATION FUND, Appellee.

APPEAL FROM THE LABOR AND INDUSTRIAL
(CASE NO. AB 99-542)
(2-97-13046)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Intermediate Court of Appeals Associate
Judge Foley, assigned by reason of vacancy)

Employer-appellant Koga Engineering & Construction,
Inc. and Insurance Carrier-appellant Eagle Pacific Insurance Co.
[hereinafter, collectively, Employer] appeal from an order
granting the Special Compensation Fund's (SCF) motion for summary
judgment and an order denying in part and granting in part
Employer's motion for summary judgment filed on July 14, 2000 by
the Labor and Industrial Relations Appeals Board (LIRAB).
Employer also appeals the order of dismissal, filed by the LIRAB
on July 19, 2000. Employer contends that the LIRAB erred in

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determining that Employer was liable for 104 weeks of compensation because, in the context of Hawai'i Revised Statutes (HRS) § 386-33(a)(1) (Supp. 1995), it is evident that the amount of the offsetting award should be based on the weeks of compensation rather than the dollar amount of the prior award.

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 hold that:

Pursuant to the Intermediate Court of Appeals' opinion in Crowley v. City and County of Honolulu, 100 Hawai'i 16, 58 P.3d 74, cert. dismissed, 100 Hawai'i 14, 58 P.3d 72 (2002), the meaning of the phrase "amount of the award," as it appears in HRS § 386-33(a)(1), clearly and unambiguously refers to the monetary amount of compensation to which a claimant is entitled as a result of a compensable injury. We, therefore, conclude that the LIRAB correctly applied the dollar method of offset computation to determine Employer's liability. Id. at 20, 58 P.3d at 78. Accordingly, IT IS HEREBY ORDERED that the LIRAB's order granting the SCF's motion for summary judgment and the order denying in part and granting in part Employer's motion for summary judgment, filed on July 14, 2000, as well as the order of dismissal filed on July 19, 2000 are affirmed.

Employer-appellant Koga Engineering & Construction, Inc. and insurance carrier-appellant Eagle Pacific Insurance Co.

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[hereinafter, collectively, Employer] appeal from an order granting the Special Compensation Fund's (SCF) motion for summary judgment and an order denying in part and granting in part Employer's motion for summary judgment, filed on July 14, 2000, by the Labor and Industrial Relations Appeals Board (LIRAB). Employer also appeals the order of dismissal, filed by the LIRAB on July 19, 2000. Employer contends that the LIRAB erred in determining that Employer was liable for 104 weeks of compensation because, in the context of Hawai'i Revised Statutes (HRS) § 386-33(a)(1) (Supp. 1995), it is evident that the amount of the offsetting award should be based on the weeks of compensation rather than the dollar amount of the prior award.

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 hold that:

Pursuant to the Intermediate Court of Appeals' opinion in Crowley v. City and County of Honolulu, 100 Hawai'i 16, 58 P.3d 74, cert. dismissed, 100 Hawai'i 14, 58 P.3d 72 (2002), the meaning of the phrase "amount of the award," as it appears in HRS § 386-33(a)(1), clearly and unambiguously refers to the monetary amount of compensation to which a claimant is entitled as a result of a compensable injury. We, therefore, conclude that the LIRAB correctly applied the dollar method of offset computation to determine Employer's liability. Id. at 20, 58 P.3d at 78.

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Accordingly, IT IS HEREBY ORDERED that the LIRAB's order granting the SCF's motion for summary judgment and the order denying in part and granting in part Employer's motion for summary judgment, filed on July 14, 2000, as well as the order of dismissal filed on July 19, 2000 are affirmed.

DATED: Honolulu, Hawai'i, March 14, 2003.

On the briefs:

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Special Compensation Fund