*** * * NOT FOR PUBLICATION * * ***

NO. 23966

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

SHOYEI AJIFU, Claimant-Appellant,

vs.

STATE OF HAWAIʻI, DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, Employer-Appellee, Self-Insured.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS
(CASE NO. AB 96-440)
(2-97-41422)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Ramil,[*] and Acoba, JJ.)

Claimant-appellant Shoyei Ajifu appeals from the November 20, 2000 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB) that modified an open-ended award of temporary total disability (TTD) benefits by Director of the Department of Labor and Industrial Relations (Director) and concluded that Ajifu was entitled to benefits through November 26, 1998. On appeal, Ajifu contends that LIRAB reversibly erred in modifying his open-ended TTD award because it: (1) lacked statutory authority to terminate an open-ended award of TTD benefits; (2) failed to address Ajifu's ability to resume work; (3) failed to afford Ajifu adequate notice by failing to comply

[*] Associate Justice Ramil, who heard oral argument in this case, retired from the bench on December 30, 2002. See Hawaiʻi Revised Statutes (HRS) § 602-10.

with the notice requirements of Hawai‘i Revised Statutes (HRS) § 386-31(b)(1) (1993);[1] and (4) failed to give effect to the remedial nature of HRS § 386-31.

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[1] HRS § 386-31 (b) provides in pertinent part:

> The payment of [temporary total disability] benefits shall only be terminated upon order of the director or if the employee is able to resume work. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work, the employer shall notify the employee and the director in writing of an intent to terminate such benefits at least two weeks prior to the date when the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that the employee may make a written request to the director for a hearing if the employee disagrees with the employer. Upon receipt of the request from the employee, the director shall conduct a hearing as expeditiously as possible and render a prompt decision as specified in section 386-86.
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> (1) In any case where the director determines based upon a review of medical records and reports and other relevant documentary evidence that an injured employee's medical condition may be stabilized and the employee is unable to return to the employee's regular job, the director shall issue a preliminary decision regarding the claimant's entitlement and limitation to benefits and rights under Hawaii's workers' compensation laws. The preliminary decision shall be sent to the affected employee and the employee's designated representative and the employer and the employer's designated representative and shall state that any party disagreeing with the director's preliminary findings of medical stabilization and work limitations may request a hearing within twenty days of the date of the decision. The director shall be available to answer any questions during the twenty-day period from the injured employee and affected employer. If neither party requests a hearing challenging the Director's finding the determination shall be deemed accepted and binding upon the parties. In any case where a hearing is held on the preliminary findings, any person aggrieved by the director’s decision and order may appeal under section 386-87.

Upon reviewing the record and the briefs submitted, giving due consideration to the issues raised and the arguments presented, and having heard oral argument,[2] we resolve Ajifu's contentions as follows: (1) LIRAB was authorized to review the period of Ajifu's TTD benefits, see HRS § 386-87 (1993),[3] see also Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 34 P.3d 16 (2001); (2) based on the evidence presented, LIRAB did not err in determining that Ajifu was not entitled to TTD benefits after November 26, 1998, see HRS § 386-1 (1993);[4] (3) even assuming, arguendo, that HRS § 386-31(b)(1) is applicable to an appeal from the director's decision, in the instant case, Ajifu was afforded adequate notice through the appeals process before the LIRAB; and (4) based on the record, LIRAB's decision is not inconsistent with the remedial nature of our worker's compensation statutes. Accordingly,

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[2] Oral argument was heard on December 4, 2002.

[3] HRS § 386-87(a) provides,

> A decision of the director shall be final and conclusive between the parties, except as provided in section 386-89, unless within twenty days after a copy has been sent to each party, either party appeals therefrom to the appellate board by filing a written notice of appeal with the appellate board or the department. In all cases of appeal filed with the department the appellate board shall be notified of the pendency thereof by the director. No compromise shall be effected in the appeal except in compliance with section 386-78.

[4] HRS § 386-1 provides in pertinent part, that "'[t]otal disability' means disability of such an extent that the disabled employee has no reasonable prospect of finding regular employment of any kind in the normal labor market."

IT IS HEREBY ORDERED that LIRAB's November 20, 2000 decision and order is affirmed.

DATED: Honolulu, Hawai'i, May 19, 2004.

Danny J. Vasconcellos (Herbert R. Takahashi, Stanford H. Masui, and Rebecca L. Covert, of Takahashi, Masui & Vasconcellos, with him on the briefs), for claimant-appellant

Steve K. Miyasaka (Kathleen N. A. Watanabe, Deputy Attorney General, with him on the brief), Deputy Attorney General, for employer-appellee, self-insured