

NO. 24109

IN THE SUPREME COURT OF THE STATE OF HAWAII

FRANK K. AKINI,
Claimant-Appellant,

vs.

LAMME TEX CORP., dba TEX DRIVE IN,
and
WORKCOMP HAWAII,
Employer/Insurance Carrier-Appellee.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 98-463(H) (1-98-00024) (KONA))

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Ramil, JJ.;
and Acoba, J., Dissenting)

The claimant-appellant Frank K. Akini appeals from the amended decision and order of the Labor and Industrial Relations Appeals Board (LIRAB), filed on April 17, 2001, awarding Akini temporary total disability benefits (TTD) for the period between January 23, 1998 and August 31, 1998. Akini challenges the LIRAB's conclusion that his work-related injury did not result in a permanent disability on the bases that: (1) employer-appellee Lamme Tex Corp., dba Tex Drive In, failed to present "substantial evidence to overcome the presumption of [Akini's] claim," pursuant to Hawaii Revised Statutes (HRS) § 386-85(1) (1993); (2) certain of the LIRAB's findings of fact (FOFs) and conclusions of law (COLs), which were based on the reports and testimony of Maurice Nicholson, M.D., a neurosurgeon who evaluated Akini at Lamme's request, are "unsupported, inflammatory, contradictory and/or clearly erroneous"; and (3)

the LIRAB ruled "on medical matters outside the scope of its adjudicative competence[,]" by crediting the medical opinion of Dr. Nicholson over that of David A. Alanis, M.D.

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 affirm the amended decision and order of the LIRAB. The presumption articulated in HRS § 386-85(1) "relates solely to the work-connectedness of an injury" and not to the question of whether and/or when an employee is able to resume work. Tamshiro v. Control Specialist, Inc., 97 Hawai'i 86, 91, 34 P.3d 16, 21 (2001). "[T]he permanency and totality of the disability shall be determined on the facts." HRS § 386-31 (1993).

Thus, the question on appeal is whether the record contains "substantial evidence" supporting the [LIRAB's] determinations, and appellate review is thereby limited to assessing whether those determinations are supported by "credible evidence of sufficient quality and probative value." [In re]Doe,[]Born on May 22, 1976,] 84 Hawai'i [41,] 46, 928 P.2d [883,] 888 [(1996)] (citation omitted). In this regard, the testimony of a single witness, if found by the trier of fact to have been credible, will suffice.

In re Doe, Born on June 20, 1995, 95 Hawai'i 183, 196, 20 P.3d 616, 629 (2001) (some brackets added, some in original).

The LIRAB's FOFs and COLs that Akini challenges are based on the medical opinions expressed in Dr. Nicholson's reports and testimony. Dr. Nicholson's expert medical opinions, based on his examination of Akini, his medical records, and his thirty-two years of experience as a neurological surgeon, constituted "credible evidence of sufficient quality and probative value" from which the LIRAB could conclude that Akini's work-related injury resulted in a temporary, rather than a permanent, disability. Moreover, the LIRAB did not rule "on medical matters outside the scope of its adjudicative

competence[]” by crediting Dr. Nicholson’s medical opinion over that of Dr. Alanis. See Tamashiro, 97 Hawai’i at 92, 34 P.3d at 22 (“the credibility of witnesses and the weight to be given their testimony are within the province of the trier of fact and, generally, will not be disturbed on appeal”). Therefore,

IT IS HEREBY ORDERED that the LIRAB’s amended decision and order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai’i, October 7, 2002.

On the briefs:

Frank K. Akini,
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