*** * * NOT FOR PUBLICATION * * ***

NO. 24110

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

NICANOR CASUMPANG, JR., Claimant-Appellant,

vs.

ILWU LOCAL 142 and WORKCOMP HAWAII INSURANCE COMPANY, adjusted by Adjusting Services of Hawaii, Employer/Insurance Carrier-Appellees.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 99-101(M))
(7-98-00700)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Claimant-appellant Nicanor Casumpang, Jr. appeals from the Labor and Industrial Relations Appeals Board's (Appeals Board) decision and order filed January 30, 2001, entered in favor of employer-appellee ILWU Local 142 (Employer) and insurance carrier-appellee WorkComp Hawai‘i Insurance Company. On appeal, Casumpang contends that the Appeals Board erred in concluding that Casumpang's injuries of February 19, 1996 and August 20, 1997 did not arise out of and in the course of employment. In other words, Casumpang argues that the two injuries were compensable.

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 decision and order of the Appeals Board.

With respect to the February 19, 1996 injury, the Appeals Board dismissed Employer and Industrial Indemnity Company/Industrial Insurance Company of Hawai‘i, Ltd., the insurance carrier for that injury, as parties in the appeal. The order of dismissal was filed on March 15, 2000 and the record indicates that Casumpang had knowledge of the dismissal on November 22, 2000. However, Casumpang did not appeal from the order of dismissal in a timely fashion[1] and does not challenge the order in the instant appeal. Accordingly, this court lacks jurisdiction to review the compensability of the February 19, 1996 injury.

With respect to the August 20, 1997 injury, the Appeals Board concluded:

> An injury arises out of and in the course of employment if there is sufficient work connection between the injury and any incidents or conditions of employment. Chung v. Animal Clinic, Inc., 63 Haw. 642 (1981). In this case, we have found no work connection between the alleged injury and any incident or condition of [Casumpang]'s employment. [Casumpang]'s involvement in the lawsuit was not an incident or condition of his employment. Furthermore, the claims and counterclaim in the subject lawsuit arose out of a personal conflict and nonwork-related acts. Accordingly, we conclude that any psychological injury that [Casumpang] may have sustained on August 20, 1997, as a result of Employer's reasonable and good faith disclosure of the lawsuit did not arise out of and in the course of employment.

(Emphasis added). The Appeals Board's findings of fact supporting the aforementioned conclusion of law states: "[Casumpang]'s alleged August 20, 1997 injury was not causally

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[1] Hawai‘i Revised Statutes § 386-88 (1993) allows parties to appeal from the Appeals Board's decisions or orders "within thirty days after [the] mailing of a certified copy of the decision or order[.]" (Emphasis added). In this case, the record on appeal did not indicate the date of mailing. We take this opportunity to remind the Appeals Board that the record must include the date of mailing, such that we can determine the time during which a party may timely appeal.

connected to any incident or condition of his employment." Inasmuch as Casumpang failed to challenge this finding of fact, it is binding on this court. See Kawamata Farms v. United Agric. Prods., 86 Hawai'i 214, 252, 948 P.2d 1055, 1093 (1997) ("[I]f a finding is not properly attacked, it is binding; and any conclusion which follows from it and is a correct statement of law is valid."). In determining whether an injury arises out of or in the course of employment, this court has adopted the unitary test, which "simply requires the finding of a causal connection between the injury and any incidents or conditions of employment." Tate v. GTE Hawaiian Tel. Co., 77 Hawai'i 100, 103, 881 P.2d 1246, 1249 (1994) (citing Chung v. Animal Clinic, Inc., 63 Haw. 642, 648, 636 P.2d 721, 725 (1981)). Based upon the Appeals Board's explicit and unchallenged finding of no nexus between Casumpang's alleged injury and any incident or condition of his employment, we hold that the Appeals Board's conclusion of law was a "correct statement of law." Accordingly,

IT IS HEREBY ORDERED that the Appeals Board's January 30, 2001 decision and order is affirmed.

DATED: Honolulu, Hawai'i, November 26, 2003.

On the briefs:

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