

NO. 24213

IN THE SUPREME COURT OF THE STATE OF HAWAII

RALPH F. FERNANDEZ, Claimant-Appellant

vs.

STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION,
Employer-Appellee, Self-Insured

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 95-088 (2-93-41172))

SUMMARY DISPOSITION ORDER

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

Claimant-Appellant Ralph F. Fernandez (Claimant)

appeals from the decision and order of the Labor and Industrial Relations Appeals Board (the Board) filed on March 14, 2001 and the amended decision filed on March 30, 2001, reversing the April 24, 1998 supplemental decision of the Director of Labor and Industrial Relations (the Director) that Claimant's right hand carpal tunnel syndrome (CTS) was the result of his July 28, 1993 work injury, and affirming the Director's December 21, 1994 decision that Claimant is not entitled to permanent disability for the said work injury. On appeal, Claimant argues that:

(1) upon the finding of conflicting medical expert opinions, the Board was clearly erroneous in accepting the opinion of the physician of Employer-Appellee State of Hawai'i, Department of Transportation (Employer), Dr. John Endicott; (2) the Board erred by failing to properly consider and/or apply the statutory presumption of compensability to Claimant's injuries; and (3) the Board erroneously reached a legal conclusion that Claimant did not sustain any permanent disability attributable to his July 28, 1993 injury.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, duly considering and analyzing the law relevant to the arguments and issues raised by the parties, and having heard oral argument, we affirm the decision and order and amended decision and order of the Board, inasmuch as: (1) the Director's decision of December 21, 1994 refers to a right hand injury, but makes no reference to Claimant's right hand CTS; (2) Claimant did not object to the Board's identification of the issue to be determined on the Employer's appeal following the Director's April 24, 1998 supplemental decision as whether Claimant's right hand CTS is a result of the July 20, 1993 work injury; (3) Claimant agrees the only issue in the instant appeal before this court is from the adverse ruling of the Board as to that issue; (4) the Board concluded that Claimant's right hand

CTS is not the result of his July 28, 1993 work injury and, thus, is not compensable; (5) on review of the record, there was substantial evidence rebutting the presumption of HRS § 386-85(1) that the subject injury is causally related to the employment activity, see Akamine v. Hawaiian Packing & Crating Co., 53 Haw. 406, 495 P.2d 1164 (1972), consisting inter alia of (a) the testimony of Dr. Endicott, who first noted the presence of CTS, that (i) CTS symptoms should have appeared within two to eight weeks of the work injury if the symptoms were related to the work injury, (ii) Claimant told Dr. Endicott that symptoms did not develop until approximately July 1994, about one year after the work injury, (iii) other health conditions were more likely to be responsible for Claimant's right hand CTS than the work injury, (b) the testimony of Dr. Maxwell Urata, one of Claimant's physicians, that the right hand carpal tunnel symptoms should have developed within three to six months after the work injury in order for the condition to be related to the work injury, (c) the fact that the Director's supplemental decision of April 24, 1998 did not state that the Director had previously found Employer responsible for Claimant's right hand CTS, and (d) the lack of indications in Claimant's medical records of symptoms of right hand CTS until after Dr. Endicott examined him on October 18, 1994. Therefore,

IT IS HEREBY ORDERED that the Board's March 14, 2001 decision and order and its March 30, 2001 amended decision are affirmed.

DATED: Honolulu, Hawai'i, January 22, 2003.

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

Steve K. Miyasaka (Kathleen N.A. Watanabe with him on the brief) Deputy Attorneys General, for Employer-Appellee.