
NO. 24328

IN THE SUPREME COURT OF THE STATE OF HAWAII

DAVID I. SCOTT, Claimant-Appellant,

vs.

BORG-WARNER PROTECTIVE SERVICE CORPORATION
and KEMPER INSURANCE COMPANIES,
Employer/Insurance Carrier-Appellees.

APPEAL FROM THE LABOR AND INDUSTRIAL
RELATIONS APPEALS BOARD
(CASE NO. AB 98-455)
(2-97-16347 & 2-97-16348)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson and Nakayama, JJ.,
Intermediate Court of Appeals Associate Judge Lim,
in place of Acoba, J., who is unavailable, and
Circuit Judge Nakea, assigned by reason of vacancy)

Claimant-appellant David I. Scott, appearing pro se, appeals from the Labor and Industrial Relations Appeals Board's Decision and Order, filed February 13, 2001, and the order denying his motion for reconsideration, filed May 2, 2001, affirming in part and reversing in part the September 4, 1998 decision of the Director of Labor and Industrial Relations, which denied Scott's workers' compensation claims. On appeal, Scott argues, inter alia, that the LIRAB erred when it: (1) accepted as substantial evidence the testimony of two experts; (2) failed to give any weight or consideration to the evidence adduced by

Scott; and (3) "disregard[ed] the clear impeachment" of the testimony of one of Employer's witnesses.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented, we note that Scott has failed to include the transcript of the hearing before the LIRAB. See Lepere v. United Public Workers, Local 646, AFL-CIO, 77 Hawai'i 471, 474 & n.4, 887 P.2d 1029, 1032 & n.4 (1995) (appellant "had a duty to include the relevant transcripts of proceedings as a part of the record on appeal); see also Hawai'i Rules of Appellate Procedure Rule 10 (b) (1) (appellant's duty to provide transcript where point of appeal requires consideration of the oral proceedings before the agency appealed from). Scott, however, maintains that "all claims he has made on appeal to this Honorable Court are discernable as to their truth or falsehood by reference to the reports and other documentation in the record without need to cite directly to testimony in the transcript which would be unduly repetitious." We disagree.

Because the LIRAB's decision was "[b]ased on Dr. Stitham's opinion in his report dated May 18, 1998, and his trial testimony[,]" Finding of Fact No. 15, as well as Scott's own testimony, there is no basis upon which to rule on the merits of Scott's contentions on appeal. See State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). Therefore,

IT IS HEREBY ORDERED that the LIRAB's February 13, 2001 decision and order, as well as the May 2, 2001 order denying Scott's motion for reconsideration, are affirmed. See Okada Trucking Co., Ltd. v. Board of Water Supply, 97 Hawai'i 544, 554, 40 P.3d 946, 956 (2001) ("[A] presumption of validity is accorded to decisions of administrative bodies acting within their sphere of expertise.") (Citation and original emphasis omitted).

DATED: Honolulu, Hawai'i, May 9, 2003.

On the briefs:

David I. Scott,
claimant-appellant,
appearing pro se

Robert C. Kessner and
Sylvia K. Higashi (of Kessner
Duca Umebayashi Bain &
Matsunaga), for employer &
insurance carrier-appellee