NO. 24359

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

REYNOLD M. CRIVELLO, Claimant-Appellant,

vs.

GTE HAWAIIAN TELEPHONE CO., INC., Employer-Appellant, Self-Insured,

and

GTE HAWAIIAN TELEPHONE INSURANCE COMPANY, INC., Insurance Carrier-Appellee.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB -98-252(H))
(1-93-00389)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, and Nakayama, JJ., Intermediate Court of Appeals Associate Judge Lim, assigned by reason of vacancy, and Acoba, J., concurring separately)

Claimant-appellant Reynold Crivello appeals from the June 14, 2001 order of the Labor and Industrial Relations Appeals Board (LIRAB),[1] vacating the decision of the Director of Labor and Industrial Relations (Director) that held employer-appellee GTE Hawaiian Telephone Co., Inc. (Employer) liable for the

[1] The LIRAB had initially filed a "proposed decision and order" on May 29, 2001 and had afforded the parties ten working days to file written exceptions. There being no exceptions within the designated time period, the LIRAB formally adopted the proposed decision and order, which was filed June 14, 2001.

medical care provided to Crivello. On appeal, Crivello argues that: (1) the doctrine of res judicata required the LIRAB to affirm the Director's earlier decisions; and (2) the LIRAB erred in determining that Employer's liability for medical care was limited to remedial treatment for his 1993 compensable work injury.

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 resolve each of Crivello's contentions as follows.

Crivello's reliance on the doctrine of res judicata is misplaced. This court has held that

> [r]es judicata will bar relitigation where (1) the issue decided in the prior adjudication is identical with the one presented in the action in question, (2) there was final judgment on the merits, and (3) the party against whom res judicata is asserted was a party or in privity with a party to the prior adjudication.

Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P.2d 904, 909 (1999) (quoting Foytik v. Chandler, 88 Hawai'i 307, 315, 966 P.2d 619, 627 (1998)). Here, the issue on appeal to the LIRAB, i.e., whether Dr. Kurohara's proposed treatment plan was reasonably required by the nature of Crivello's work injury, was not identical to the issue in the unappealed 1994 decision, which fixed the paramerters of Employer's liability as a result of Crivello's compensable work injury. The Director's prior decisions established that Employer was liable, pursuant to

Hawai‘i Revised Statutes (HRS) §§ 386-21 and 386-26, for medical care, services, and supplies as required by the nature of his injury. Such determination, however, did not limit Employer's ability to challenge the proposed treatment plan submitted by Crivello's physician, nor its ability to appeal the Director's determination that the treatment plan was, in fact, required by the nature of Crivello's injury. See Hawai‘i Administrative Rules (HAR) §§ 12-15-32(d) and (e). The doctrine of res judicata is, therefore, inapplicable.

We also conclude that the LIRAB did not err when it reversed the Director's April 30, 1998 decision. Contrary to Crivello's assertions, the Director's 1993 and 1994 decisions did not establish that "Employer was liable for future medical care for [his] underlying disease." Rather, the Director's decisions established that, pursuant to HRS § 386-21, Employer could be held liable only for medical care and services that were required by the nature of Crivello's compensable injury. The LIRAB found that the proposed treatment plan was not required by his 1993 work injury, but by Crivello's longstanding coronary artery disease. There is substantial evidence in the record to support the LIRAB's finding, including testimony by Employer's medical experts, as well as testimony by Crivello's treating physician, that Crivello's heart muscle damage had healed and that they were unaware of any heart damage in progress.

Crivello's reliance on Little v. Penn Ventilator Co., 345 S.E.2d 204 (N.C. 1986), is misplaced. In that case, the preventive monitoring was required by the work injury. Here, the LIRAB's findings established that the preventive monitoring was required by the nature of Crivello's longstanding coronary artery disease. Because we are not left with a firm and definite conviction that a mistake has been made, we hold that the LIRAB's findings are not clearly erroneous. Korsak v. Hawai'i Permanente Medical Group, Inc., 94 Hawai'i 297, 302-04, 12 P.3d 1238, 1243-44 (2000) (citations omitted). Accordingly,

IT IS HEREBY ORDERED that the LIRAB's June 14, 2001 decision and order is affirmed.

DATED: Honolulu, Hawai'i, February 28, 2003.

On the briefs:

Herbert R. Takahashi and
Rebecca L. Covert (of
Takahashi, Masui &
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Stanford M. J. Manuia,
for employer/insurance
carrier-appellee

CONCURRENCE BY ACOBA, J.

I concur in the result.