

NO. 24551

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LISA JOY TORRICER CABICO, Claimant-Appellant,

vs.

STRAUB CLINIC & HOSPITAL, INC., Employer-Appellee,

and

TRAVELERS INSURANCE COMPANY, Insurer-Appellee.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS
APPEALS BOARD
(AB 99-326)
(2-98-08071)

SUMMARY DISPOSITION ORDER

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

Claimant-appellant Lisa Joy Torricer Cabico (Appellant) appeals from the August 9, 2001 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB) that affirmed the May 7, 1999 decision of the Director of the Department of Labor and Industrial Relations (Director). The LIRAB found that Appellant's employer, Straub Clinic & Hospital, Inc. (Employer), had produced sufficient evidence to overcome the statutory presumption of Hawai'i Revised Statutes (HRS) § 386-85(1) (1993)¹

¹ HRS § 386-85(1) states that "it shall be presumed, in the absence of substantial evidence to the contrary . . . [that a workers' compensation] claim is for a covered work injury" (Emphasis added.)

and concluded that Appellant's alleged injury was not work-connected and, therefore, not compensable.

On appeal, Appellant appears to be arguing² that, in affirming the Director's denial of her claim, the LIRAB erred by: (1) failing to consider all of the evidence presented; (2) relying on altered medical records; (3) crediting the testimony of unreliable witnesses; and (4) failing to credit evidence Appellant believes was favorable to her claim. Appellant also claims that Employer presented insufficient evidence to overcome the statutory presumption or to establish that she was affected by a preexisting borderline personality disorder. Finally, Appellant appears to allege that fraud and misconduct on the part of Employer's counsel may have affected the outcome of her case.

² In reality, Appellant's opening brief fails to provide any legal argument and is not otherwise in conformity with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b). Appellant's non-compliance includes: 1) failure to provide a table of authorities, in violation of HRAP Rule 28(b)(1); 2) failure to provide a concise statement of the case, in violation of HRAP Rule 28(b)(3); and 3) failure to refer to the specific errors alleged and point out in the record where the alleged errors occurred and where they were brought to the attention of the LIRAB, in violation of HRAP Rule 28(b)(4). Although, as Employer urges, these failures present grounds for dismissal, this court favors a policy of affording pro se litigants "the opportunity to have their cases heard on the merits, where possible." Housing Fin. and Dev. Corp. v. Ferguson, 91 Hawai'i 81, 85-86, 97 P.2d 1107, 1111-12 (1999) (quoting Bettencourt v. Bettencourt, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995)). Appellant's brief consists of three pages with ten numbered paragraphs, each of which contains one or more questions, some of which are not relevant to the LIRAB's conclusion that Appellant's alleged work injury was not compensable. Here, we limit our discussion to those issues that flow directly from the LIRAB's decision and order denying Appellant's workers' compensation claim, which is the only proper subject of this appeal.

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 Appellant's contentions as follows.

It is well-settled that, in order to overcome the statutory presumption of work relatedness created by HRS § 386-85(1), an employer bears the initial burden of introducing "relevant and credible evidence of a quality and quantity sufficient to justify a conclusion by a reasonable person that an injury or death is not work connected." Nakamura v. State, 98 Hawai'i 263, 267-68, 47 P.3d 730, 734-35 (2002) (quoting Flor v. Holquin, 94 Hawai'i 70, 79, 9 P.3d 382, 391 (2000)) (brackets omitted). The record provides ample support for the LIRAB's conclusion that Employer overcame the statutory presumption and that Appellant's "inability to work was prompted not by events at work but by her longstanding preexisting borderline personality disorder."

Here, Employer introduced, among other things, the detailed reports of Appellant's treating psychologist, Joseph Rogers, Ph.D., and the reports of two independent psychiatric examiners, Mark Dillen Stitham, M.D., and Byron Eliashof, M.D. (Dr. Eliashof), both of whom also reviewed Appellant's extensive medical records. At the hearing before the LIRAB, Employer also introduced the oral testimony of Dr. Eliashof. In addition,

Employer presented the oral testimony of several of Appellant's co-employees as well as that of the director of the Appellant's office. We hold that the evidence introduced by Employer was of a quality and quantity sufficient to justify the LIRAB's conclusion that Appellant's alleged injury was not work-connected.

Moreover, the evidence was not rebutted by Appellant. Although the record contains evidence that Appellant was being treated by physicians affiliated with The Medical Corner, this evidence was insufficient to establish that Appellant's injury was work-connected. The LIRAB's determinations with respect to the weight of the evidence and the credibility of witnesses are entitled to deference and will not be reversed unless clearly erroneous. Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 92, 34 P.3d 16, 22 (2001). Although Appellant suggests that the evidence and testimony credited by the LIRAB was unreliable, she has failed to persuade us that either the evidence or the testimony was clearly erroneous.

As noted supra, Appellant also suggests that the medical records relied on by the LIRAB were fraudulently altered by Employer's counsel and that Employer's insurer was in default for failing to make payments in accordance with HRS § 386-31(b) (1993). We hold that Appellant's contentions are without merit. Accordingly,

IT IS HEREBY ORDERED that the LIRAB's August 9, 2001
decision and order is affirmed.

DATED: Honolulu, Hawai'i, November 7, 2002.

On the briefs:

Lisa Joy Torricer Cabico,
claimant-appellant,
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