

***** NOT FOR PUBLICATION *****

NO. 24623

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LAWRENCE SMITH, JR., Claimant-Appellant,

vs.

CITY AND COUNTY OF HONOLULU, DEPARTMENT OF HUMAN RESOURCES,
Employer-Appellee, Self-Insured,

and

SPECIAL COMPENSATION FUND,
Appellee.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 99-466 (2-86-08688))

SUMMARY DISPOSITION ORDER

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

Claimant-appellant Lawrence Smith, Jr. (Smith) appeals from the Labor and Industrial Relations Appeals Board's (LIRAB's) June 21, 2001 proposed decision and order; July 10, 2001 order adopting the June 21, 2001 proposed decision and order; and the September 18, 2001 order denying Smith's motion for reconsideration. On appeal, Smith contends that the LIRAB erred in: (1) concluding that Smith's retirement disqualified him from receiving additional temporary total disability (TTD) benefits; (2) failing to address Smith's argument that the Employer-appellee City and County of Honolulu (City) waived its retirement

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defense because it failed to raise it in a prior hearing wherein Smith was awarded TTD after his retirement; and (3) adopting findings of fact 3,¹ 11,² and 12.³

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) Smith's workers' compensation case was closed after the Director of the Labor and Industrial Relations (Director's) December 12, 1994 decision and order awarding Smith TTD, permanent partial disability (PPD) of the whole person, PPD of his right leg, and compensation for disfigurement, which decision was final as it was not appealed by either party. See Hawai'i Revised Statutes (HRS) § 386-87 (1993) ("A decision of the director shall be final and conclusive between the parties, . . . unless within twenty days after a copy has been sent to each party, either party appeals therefrom. . . ."). Smith's request for additional TTD benefits in 1999 was in effect a request to reopen his case. The decision as to whether to reopen a workers' compensation case is within the discretion

¹ Finding of Fact 3 provides: "3. Claimant retired from regular service in October 1989."

² Finding of Fact 11 provides: "11. There was a medical certificate from Dr. Okamoto disabling Claimant from work for the period June 25, 1999 to July 16, 1999. There are no other certifications in the record for the period in question."

³ Finding of Fact 12 provides: "12. Claimant has not sought employment since his retirement in 1989."

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of the Director. See HRS § 386-89 (1993). The Director did not abuse his discretion when he denied Smith's request for additional TTD benefits. TTD benefits compensate a claimant for current loss of wages. See Curaisma v. Urban Painters, Ltd., 59 Haw. 409, 420, 583 P.2d 321, 327 (1978). Smith did not have a claim for current loss of wages in 1999 because he requested and was granted (a) regular service retirement in 1989 and (b) service-connected total disability retirement in 1994. Since he did not have a claim for current loss of wages in 1999, Smith was not eligible to receive additional TTD benefits; (2) the LIRAB did not err by not addressing Smith's argument that the City waived its "retirement defense" because he previously received post-retirement TTD. The TTD award Smith refers to occurred while his workers' compensation case was still open and has no bearing on the present matter which requires a reopening of his closed case; (3) findings of fact 3, 11, and 12 are not clearly erroneous because the findings of fact are supported by reliable, probative and substantial evidence in the record on appeal. Therefore,

IT IS HEREBY ORDERED that the LIRAB's June 21, 2001 proposed decision and order; July 10, 2001 order adopting the June 21, 2001 proposed decision and order; and the order denying

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Smith's September 18, 2001 motion for reconsideration are affirmed.

DATED: Honolulu, Hawai'i, September 23, 2004.

On the briefs:

Dennis W.S. Chang
for claimant-appellant
Lawrence Smith, Jr.

Paul K.W. Au,
Deputy Corporation Counsel,
for employer-appellee,
self-insured, City and
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