
NO. 24794

IN THE SUPREME COURT OF THE STATE OF HAWAII

MATTHEW A. QUIOCHO, Claimant-Appellant

vs.

ALLIED MAINTENANCE SERVICES, INC. and RELIANCE INSURANCE
COMPANY, Adjusted by ADJUSTING SERVICES OF HAWAII, INC.,
Employer/Insurance Carrier-Appellees

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2000-181 (2-99-05962))

SUMMARY DISPOSITION ORDER

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

Claimant-Appellant Matthew Quiocho (Quiocho) appeals from the October 24, 2001 decision and order of the Labor and Industrial Relations Appeals Board (the Board) and the related order denying his request for reconsideration, entered on November 23, 2001.

On May 10, 1999, Quiocho suffered a back and neck injury while working as a maintenance man for Employer-Appellee Allied Maintenance Services, Inc. (Allied). Quiocho began receiving temporary total disability (TTD) payments of \$240.01 on May 13, 1999. Reliance Insurance Company (Reliance) and Allied (collectively, Appellees) notified Quiocho on January 11, 2000, that Allied was able to provide him with modified work duties. Quiocho reported to work on January 17, 2000 and worked for two-and-a-half hours, then left early, complaining of back, neck, and

hand pain. On January 18, 2000, Quiocho again left before the completion of his four-hour shift. On January 19, 2000, Appellees sent Quiocho a letter informing him of their intent to terminate payment of TTD. On January 25, 2000, Quiocho returned to work, worked for two hours, and then walked off the job without informing his supervisor. On January 25, 2000, Quiocho was terminated from his job at Allied for job abandonment.

On February 2, 2000, Quiocho requested a hearing regarding the termination of his TTD benefits. On February 14, 2000, Dr. Nicanor Joaquin, Quiocho's treating physician, requested that Quiocho be seen for a surgical consultation by Dr. Warren Ishida, which was denied by Appellees. On March 1, 2000, Quiocho requested a hearing regarding the denial of the surgical consultation.

On May 25, 2000, the Disability Compensation Division of the Department of Labor and Industrial Relations (DCD) decided that the February 2, 2000 termination of Quiocho's TTD benefits with respect to his neck and back injury was appropriate and denied the request for a surgical consultation. On June 1, 2000, Quiocho appealed the DCD decision to the Board.

Quiocho underwent cervical surgery on June 13, 2000 by Drs. Steven Hayashida and Morris Mitsunaga, and lumbar surgery on August 1, 2000 by Dr. Hayashida. The surgeries were paid for by Quiocho's private insurance carrier.

Following a hearing on June 25, 2001, the Board issued its October 24, 2001 decision. With regard to the issue of TTD benefits, the Board modified the date of TTD benefits termination, concluding "that [Quiocho] was entitled to TTD benefits through June 16, 2000, since he was in [vocational rehabilitation] during this period and there is no record of any objection by [Allied] to his eligibility for [vocational rehabilitation] services." The Board affirmed the DCD's decision with regard to the surgical consult.

On appeal to this court, Quiocho argues that (1) the Board erred in extending the termination date of Quiocho's TTD benefits from February 2, 2000 to June 16, 2000 without providing written notice; (2) the Board erred in terminating Quiocho's TTD benefits based upon his failure to perform light work at Allied; (3) the Board erred in affirming the DCD's denial of a surgical consultation; (4) there was insufficient evidence in the record to support a finding that his symptoms were non-compensable; and (5) the Board abused its discretion by denying Quiocho's motion for a continuance in order to secure the testimony of Dr. Hayashida.

We review agency decisions based on the standards set forth in Hawai'i Revised Statutes (HRS) § 91-14(g) (1993). This court applies a clearly erroneous standard of review to the Board's findings. "[A]ppeals taken from findings set forth in decisions of the Board are reviewed under the clearly erroneous

standard. Thus, the court considers whether such a finding is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Bocalbos v. Kapiolani Med. Ctr. for Women & Children, 93 Hawai‘i 116, 124, 997 P.2d 42, 50 (App.), cert. denied (2000) (citations, internal quotation marks, brackets, ellipses, and emphasis omitted). Also, this court looks to whether an agency’s exercise of discretion was arbitrary, or capricious, or characterized as an abuse of discretion or clearly unwarranted exercise of discretion. Potter v. Hawai‘i Newspaper Agency, 89 Hawai‘i 411, 422, 974 P.2d 51, 62 (1999).

As to Quiocho’s first point, the record contains evidence that Quiocho’s treating physician, Dr. Joaquin, released him for light duty on January 17, 2000, that Quiocho did return to work on January 17, 2000, that on January 19, 2000, Appellees provided Quiocho with written notice of their intent to terminate TTD benefits pursuant to HRS § 386-31, and that Quiocho’s TTD benefits were terminated two weeks after he received notice of Appellees’ intent to terminate the benefits. Thus, Quiocho’s TTD benefits were properly terminated in accordance with Hawai‘i Administrative Rules (HAR) § 12-10-26¹ and HRS § 386-31(b).²

¹ HAR § 12-10-26, entitled “Filing of Notice of Intent to Terminate Temporary Total Disability Benefits,” provides that

[w]ritten notice of intent to terminate payment of weekly temporary total disability benefits shall be sent by regular mail to the director and the employee in every case where the employer has determined that the employee is “able to resume work.” In the event the employee has returned to

(continued...)

Quiocho also argues that the modification of his TTD benefits termination date should have been subject to the notice requirements of HAR § 12-10-26. However, pursuant to HRS § 386-87 (1993),³ the Board had the authority to modify the termination of Quiocho's benefits.

As to Quiocho's second point, the Board found that Allied provided Quiocho with work that fit within the restrictions determined by Dr. Joaquin. The record contains the opinions of Drs. Joaquin, Stephen Hirasuna, and Ramon Bagby that Quiocho could perform "light duty with work restrictions

¹(...continued)

work, a notice need not be mailed and temporary total disability payments may be automatically stopped as of the date prior to the return-to-work day.

² HRS § 386-31(b) reads in pertinent part that

[t]he payments of temporary total benefits shall only be terminated upon order of the director or if the employee is able to resume work. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work the employer shall notify the employee and the director in writing of an intent to terminate such benefits at least two weeks prior to the date when the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that the employee may make a written request to the director for a hearing if the employee disagrees with the employer. Upon receipt of the request from the employee, the director shall conduct a hearing as expeditiously as possible and render a prompt decision as specified in section 386-86.

³ HRS § 386-87 provides in relevant part as follows:

(c) The appellate board shall have power to review the findings of fact, conclusions of law and exercise of discretion by the director in hearing, determining or otherwise handling of any compensation case and may affirm, reverse or modify any compensation case upon review, or remand the case to the director for further proceedings and action.

(Emphases added.)

consisting of no frequent bending and stooping," and that Quiocho's modified work was in conformance with these restrictions in that he was provided a chair to sit on while performing his duties so as to avoid any prolonged bending or stooping. Thus, there was reliable, probative, and substantial evidence in the record that Allied provided Quiocho with modified work duties that took into consideration the work restrictions provided by Drs. Joaquin, Hirasuna, and Bagby.

As to Quiocho's third argument, the Board found that Quiocho had a history of low back pain dating back to 1992, and that Quiocho received a settlement for 12% permanent partial disability for this back injury. There was evidence in the record to substantiate these findings, including Quiocho's medical records and a copy of the settlement disposition. Additionally, the Board noted that Dr. Bagby believed Quiocho's lumbosacral and cervical injuries "were due to the effects of his preexisting degenerative disc disease[,] " and that Dr. Hirasuna agreed with Dr. Bagby's assessment. Thus, there was probative, reliable, and substantial evidence in the record to support a finding that Quiocho had a pre-existing lower back injury.

As to Quiocho's fourth point, there was evidence that Drs. Hirasuna, Bagby, and Maurice Nicholson "opined that a surgical consultation was not medically indicated[,] " that Drs. Hayashida and Mitsunaga, the doctors who performed surgery on Quiocho, did not provide their opinions as to whether the

surgeries were required or necessitated by the May 10, 1999 injury, and that Quiocho "did not experience any significant improvement in his cervical and lumbar condition after the surgeries." Thus, there was probative, reliable, and substantial evidence in the record to support a finding that a surgical consultation would not be appropriate for the May 10, 1999 back injury.

As to Quiocho's final argument, the record shows that the Board set January 3, 2001 as the discovery deadline in a pre-trial order, that there is no evidence in the record that Quiocho attempted to extend this discovery deadline, either in a written motion or during the hearing before the Board. As the discovery deadline had passed, and Quiocho made no motion to extend the discovery deadline, a deposition of Dr. Hayashida would have been inadmissible upon objection. Quiocho's attorney stated that Dr. Hayashida was unwilling to testify at the trial; thus, arguably, a continuance would not have resulted in Dr. Hayashida's appearance at the hearing. Under these circumstances, it cannot be said that the Board abused its discretion in denying Quiocho's motion for a continuance.

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

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

IT IS HEREBY ORDERED that the Board's October 24, 2001 decision and order and its November 23, 2001 order denying reconsideration are affirmed.

DATED: Honolulu, Hawai'i, November 20, 2003.

On the briefs:

Richard C. Monks,
for claimant-appellant.

Robert C. Kessner and
Beverly S.K. Tom (Kessner,
Duca, Umebayashi, Bain &
Matsunaga) for employer/
insurance carrier-appellees.