NO. 21978

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

BRUCE K. NAKAMURA, Claimant-Appellant, v. STATE OF HAWAIʻI, UNIVERSITY OF HAWAIʻI, Employer-Appellee, Self-Insured.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 96-736, 2-95-41530)

MEMORANDUM OPINION
(By: Burns, C.J., Lim, J. and Circuit Judge Simms, in place of Watanabe, recused)

Claimant-appellant Bruce Nakamura (Nakamura) appeals the Labor and Industrial Relations Appeals Board's (the Board) August 12, 1998 Decision and Order, that affirmed the Department of Labor and Industrial Relations (DLIR) Disability Compensation Division Director's November 25, 1996 Decision denying workers' compensation benefits for Nakamura's psychological stress injury.

Nakamura, *pro se*, alleges that he sustained a psychological stress injury on September 15, 1995, as a result of "'long term inhumane treatment as in unjust harassment [and] game playing [without] solution in long history of [management] problems. Last incident involved the State's participation of wage garnishment[.]'"

Employer-appellee State of Hawaiʻi, University of Hawaiʻi (Employer), contends that workers' compensation benefits

were properly denied because a psychological stress injury resulting from its compliance with an IRS levy did not arise out of and in the course of Nakamura's employment, and therefore is not covered under Hawai'i's workers' compensation statutes.

We vacate and remand for determination of the amount of compensation in favor of Nakamura because Employer failed to produce substantial evidence to rebut the presumption of compensability established by Hawai'i Revised Statutes (HRS) § 386-85(1).

I. BACKGROUND.

A. The Board's Findings of Fact and Conclusion of Law.

The Board made the following findings of fact in its August 12, 1998 decision and order:

> 1. In April of 1992, Claimant was hired by STATE OF HAWAII, UNIVERSITY OF HAWAII [Employer] to work as a painter's helper.
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> 2. Claimant initially joined a work crew that was supervised by Danny Chung. Claimant had trouble working under Mr. Chung. Claimant felt discriminated against when Mr. Chung extended his probationary period and gave him an unsatisfactory job performance evaluation. Claimant felt pressured and uncomfortable while working for Mr. Chung.
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> 3. Claimant complained to the union about Mr. Chung. Because of his complaints, Claimant was transferred to another work crew that was supervised by Ron Yoshioka. Claimant was warned that he may clash with Mr. Yoshioka because of their personalities, but Claimant insisted on the transfer.

4. Claimant developed difficulties while working under Mr. Yoshioka. Claimant complained that Mr. Yoshioka frequently swore and yelled at him, threatened him with bodily harm, taunted him, and berated him in front of others. Mr. Yoshioka apparently swore and yelled at almost everyone around him. Claimant complained about Mr. Yoshioka to the union.

5. Because of Claimant's complaints about Mr. Yoshioka, Claimant was transferred again to work under another supervisor, Henry Sakai. The transfer to Henry Sakai occurred in or around May of 1995.

6. Claimant did not have any problems working under Mr. Sakai between May and September of 1995. However, on one day, while he was working under Mr. Sakai, Claimant had an encounter with Mr. Yoshioka, who came to Claimant's job site that day to confront him about a comment that Claimant had made to a coworker about Mr. Yoshioka. According to Claimant's testimony, he was painting a restroom near the music building on campus, when Mr. Yoshioka appeared and accused him of causing trouble. Claimant testified that Mr. Yoshioka then drove him to another work site to discuss the matter. Claimant stated that after Mr. Yoshioka drove him back to the music building, Mr. Yoshioka threatened to shoot him with his gun. Claimant testified that he was disturbed by Mr. Yoshioka's threat of bodily harm.

7. Claimant further testified that even when he was working for Mr. Sakai, he had to work with or alongside Mr. Yoshioka's crew on two to three occasions when the job required more than one crew. Except for the incident at the music building, Claimant did not testify about any other problems that he had with Mr. Yoshioka while he was under Mr. Sakai's supervision between May and September of 1995.

8. Except for the incident that occurred when Claimant was working at the

music building, we find that Claimant's problems with Mr. Yoshioka occurred while he was working under him. Our finding is also supported by the trial testimony of Henry Sakai, who stated that once Claimant was transferred to him, Claimant worked under him exclusively and that he did not observe any problems between Claimant and Mr. Yoshioka during the time that Claimant worked under him except for the one incident at the music building.

9. Claimant worked under Mr. Sakai from May 1995 to September 15, 1995. On September 15, 1995, Claimant received his paycheck at work. He noticed that the amount of his wages was reduced to $185.00, which was significantly less than what he usually earned.

10. Claimant's wages were reduced due to garnishment by the Internal Revenue Service [IRS]. The IRS garnished Claimant's wages due to his alleged failure to file income tax returns for the past ten years or so.

11. Claimant was enraged by the garnishment of his wages. After receiving his paycheck, Claimant left work and has not returned since.

12. On September 18, 1995, Claimant informed Employer that he sustained a psychiatric stress injury at work on September 15, 1995, due to long term harassment and "inhumane" treatment by management. According to Claimant, the last incident of harassment was Employer's participation in the wage garnishment.

13. On September 20, 1995, Claimant saw his internist, Dr. Francis Pien, for complaints of stress and depression that developed after the IRS garnished his paycheck. Claimant told Dr. Pien that he felt like shooting people. Dr. Pien referred Claimant for an emergency psychological consultation with Dr. Annette Shimizu, Ph.D.

14. Later that same day, Claimant saw Dr. Shimizu, for complaints of depression, anxiety, irritability, anger, and homicidal ideation. According to Dr. Shimizu's notes, she discussed with Claimant the stress factors that led to his condition. Those factors were not identified in Dr. Shimizu's notes for the September 20, 1995 visit. Dr. Shimizu diagnosed Claimant with "depression, not otherwise specified."

15. At a follow-up appointment with Dr. Shimizu on September 28, 1995, Claimant discussed in detail with the doctor about his work stress. According to Dr. Shimizu's notes for this visit, Claimant told her about his supervisor swearing at him, and his belief that the federal government was conspiring against him.

16. At Claimant's October 18, 1995 visit with Dr. Shimizu, Claimant told Dr. Shimizu that the garnishment of his wages on September 15, 1995, was the "straw that broke the camel's back" and that the incident culminated three years of harassment by Employer.

17. Dr. Shimizu's WC-2 reports described Claimant's injury as "garnishing of check without approval causing stress and depression."

18. On January 5, 1996, Claimant was evaluated by Dr. Danilo Ponce, a psychiatrist. Dr. Ponce prepared a report dated January 26, 1996, summarizing his findings and conclusions.

At the evaluation, Claimant gave a history of a work-related stress claim in 1988, when he was employed by the federal government. Claimant stated that, at that time, he heard voices, had homicidal thoughts, and believed that the federal government was developing technology to control people's minds. Claimant told Dr. Ponce that he treated with Dr. Gordon Trockman for the 1988 work injury.

Claimant also told Dr. Ponce about the work environment when he became employed by Employer. Claimant stated that he was verbally abused and threatened by his supervisors from the time he began to work in April of 1992. Claimant told Dr. Ponce that because he needed the job, he "took all the abuses" and repressed his anger. He stated that the garnishment was the "last straw" and that resulted in his filing a claim.

Dr. Ponce's review of Claimant's medical records corroborated Claimant's history of a stress claim in 1988. According to Dr. Ponce, the records indicated that Dr. Trockman had diagnosed Claimant with paranoid psychosis because of hallucinations and "ideas of reference". Claimant was treated with therapy and anti-psychotic medication until May 4, 1989, when Dr. Trockman released him to as needed care only.

Dr. Ponce diagnosed Claimant's current condition as schizophrenia, paranoid type, episodic, with inter-episode residual symptoms. Dr. Ponce opined that Claimant had this paranoid disorder as early as 1988, that this condition did not resolve or remit entirely, as he continued to experience difficulties with various supervisors in his job, and that this psychiatric condition was exacerbated by the garnishing of his wages by the IRS on September 15, 1995.

19. On February 20, 1996, Claimant was administered an MMPI personality test by Dr. William Tsushima, Ph.D. According to Dr. Tsushima, the MMPI personality profile showed that Claimant was not psychotic, but did have behavioral and interpersonal problems. Dr. Tsushima's impression was adjustment disorder with mixed emotional features.

20. In an October 28, 1996 report, Dr. Shimizu responded to Dr. Ponce's findings and conclusions. While she concurred with Dr. Ponce that Claimant had a history of a paranoid disorder in 1988, for which he received treatment with Dr. Trockman, she

disagreed with Dr. Ponce's diagnosis of a continuing psychotic disorder. Dr. Shimizu opined that Dr. Tsushima's MMPI profile supports her opinion that Claimant is not currently psychotic.

21. At trial, Dr. Shimizu testified that Claimant first presented to her on September 20, 1995. He was, at that time, agitated, upset, and angry. According to Dr. Shimizu, Claimant told her about the garnishment and the hostile work environment that he worked in for the past three years. Dr. Shimizu stated that it appeared that Claimant was particularly upset with one individual at work, who, according to Claimant, frequently used profanity at him.

Dr. Shimizu opined at trial that Claimant had a preexisting psychiatric condition that was exacerbated by the IRS garnishment. Dr. Shimizu did not clearly identify the preexisting condition. Dr. Shimizu acknowledged, however, that while Claimant may have been stressed about his work environment prior to September 15, 1995, he was able to work up until the day his wages were garnished. She identified Claimant's current diagnosis as depression and a mixed adjustment disorder.

22. Although there is a difference in opinion as to the diagnosis of Claimant's current condition, we credit the opinions of Dr. Ponce and Dr. Shimizu, the description of the industrial injury in Dr. Shimizu's WC-2 reports, and Claimant's testimony that the garnishment was the "last straw", to find that the IRS garnishment on September 15, 1995, exacerbated a preexisting psychiatric condition on that date that prompted Claimant to leave work and seek treatment.

While Dr. Shimizu did not identify the preexisting condition, we find, based on Dr. Ponce's opinion and his review of Dr. Trockman's records, that Claimant was suffering from a preexisting psychotic disorder that did not remit entirely since

the 1989 discharge from regular to "as needed" treatment by Dr. Trockman.

23. Our finding that the IRS garnishment on September 15, 1995, was the event that triggered Claimant's need for treatment and inability to work is supported by the record.

The record shows that while Claimant may have experienced work stress as a result of conflicts with his supervisors, the bulk of that stress occurred while Claimant was working under Mr. Chung and Mr. Yoshioka prior to May of 1995. Claimant did not have trouble working under Henry Sakai between May and September 15, 1995. Claimant was disturbed when Mr. Yoshioka confronted him one day while he was working under Mr. Sakai, but other than that incident, Claimant did not describe any other incidents of work stress between May and September of 1995. The record shows that despite the work stress that Claimant claimed began in April of 1992 and continued through September of 1995, he did not seek medical treatment and was able to work up through the date of the garnishment.

24. The IRS garnishment was not an incident of Claimant's employment as a painter.

The Board crowned its findings of fact with the following conclusion of law:

Based on the foregoing, we conclude that Claimant did not sustain a personal injury on September 15, 1995, arising out of and in the course of employment. The IRS garnishment is not an incident of Claimant's employment as a painter. Any psychiatric injury that occurred as a result of the garnishment, is, therefore, not related to Claimant's employment.

B. Procedural History.

On October 24, 1995, Employer filed form WC-1, Employer's Report of Industrial Injury, in which Employer denied liability for Nakamura's psychological stress injury. On December 11, 1995, Employer informed the DLIR Disability Compensation Division that Nakamura's compensation claim should be denied, and requested a hearing to address the issue of compensability.

On October 30, 1996, the DLIR Disability Compensation Division Director held a hearing on the matter, and on November 25, 1996, denied Nakamura's claim for compensation. In its Decision, the DLIR stated that

> Claimant's psychiatric injury was clearly caused by IRS' garnishment of his wages effective September 15, 1995. . . . The employer should not be penalized or made liable for an employee's emotional distress or psychiatric injury arising from wages garnished as the employer was merely in compliance with IRS' Notice of Levy on Wages, Salary and Other Income dated August 25, 1995. Claimant's contention that his injury and disability were caused by management's harassment, abuse, threats, etc., between 1992 through 1995, is not supported by the medical records. The medical records were devoid of any complaints against management prior to or on September 15, 1995. . . .

On December 3, 1996, Claimant filed his notice of appeal of the Director's decision.

The Board held a hearing *de novo* on the matter on March 13, 1998. Nakamura appeared *pro se*.

On April 20, 1998, Dr. Shimizu submitted, on behalf of Nakamura, a medical report dated April 16, 1998, an MMPI profile performed by Dr. William Tsushima dated February 20, 1996 and a letter from the U.S. Department of Labor dated March 15, 1989. On that same day, Employer filed its objection to the submission of Dr. Shimizu's April 16, 1998 medical report.

On August 12, 1998, the Board filed an order striking Dr. Shimizu's medical report dated April 16, 1998 and the letter from the U.S. Department of Labor dated March 15, 1989, because the medical reports deadline of January 16, 1998 and the discovery deadline of February 6, 1998 had both passed.[1]

Also on August 12, 1998, the Board filed its decision and order affirming the Director's decision.

On September 11, 1998, Nakamura filed a Motion to Reopen with the Board on the basis that some of the Board's findings of fact and its conclusion of law were incorrect.

On September 14, 1998, the Board denied Nakamura's motion to reopen, finding that Nakamura had not presented any basis for reopening its August 12, 1998 decision and order.

On October 14, 1998, Nakamura filed a timely notice of appeal.

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[1] The MMPI profile by Dr. Tsushima had been previously submitted and was already a part of the Board's record on appeal.

II. STANDARD OF REVIEW.

> Judicial review of administrative agency decisions, in particular the decisions of the Board, is governed by HRS § 91-14 (1993). Under HRS chapter 91, appeals taken from findings set forth in decisions of the board are reviewed under the clearly erroneous standard. Thus, this court considers whether such a finding is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.
>
> A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is left with the definite and firm conviction that a mistake has been made. On the other hand, a conclusion of law is not binding on an appellate court and is freely reviewable for its correctness. Thus, this court reviews conclusions *de novo* under the right/wrong standard.

Bocalbos v. Kapiolani Medical Center, 93 Hawai'i 116, 124-25, 997 P.2d 42, 49 (App. 2000) (footnote, citations, emphasis, brackets, ellipsis, internal quotation marks). HRS § 91-14(g) (1993) provides:

> Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:
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> (1) In violation of constitutional or statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In addition, the Hawai‘i Supreme Court has stated that

> [appellate] review is "further qualified by the principle that the agency's decision carries a presumption of validity and appellant has the heavy burden of making a convincing showing that the decision is invalid because it is unjust and unreasonable in its consequences."

Mitchell v. State, Dept. of Educ., 85 Hawai‘i 250, 254, 942 P.2d 514, 518 (1997) (quoting Sussel v. Civil Serv. Comm'n, 74 Haw. 599, 608, 851 P.2d 311, 316, reconsideration denied, 74 Haw. 650, 857 P.2d 600 (1993); Bragg v. State Farm Mut. Auto. Ins. Co., 81 Hawai‘i 302, 304, 916 P.2d 1203, 1205 (1996)).

III. DISCUSSION.

A. The Board Improperly Denied Nakamura's Workers' Compensation Claim Because Employer Failed to Carry Its Burden of Demonstrating that Nakamura's Employment Did Not Contribute to His Injury.

The sole issue on appeal is whether the Board properly denied compensation for the psychological stress injury Nakamura allegedly sustained on September 15, 1995. HRS chapter 386 governs workers' compensation claims.[2]

HRS § 386-3 (1993), provides, in pertinent part, that

> [i]f an employee suffers personal injury either by accident arising out of and in the course of the employment or by disease proximately caused by or resulting from the nature of the employment, the employee's employer or the special compensation fund shall pay compensation to the employee or the employee's dependents as hereinafter provided.

In addition, HRS § 386-85(1) (1993) provides that "[i]n any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary . . . [t]hat the claim is for a covered work injury[.]"

The Hawai'i Supreme Court has explained that

> HRS § 386-85 clearly dictates that coverage will be presumed at the outset, subject to being rebutted by substantial evidence to the contrary. This is so in all claims proceedings, regardless of the existence of

[2] Hawai'i Revised Statutes (HRS) § 386-1 (1993) defines "work injury" as "a personal injury suffered under the conditions specified in section 386-3."

> conflicting evidence, as the legislature has determined that where there is a reasonable doubt as to whether an injury is work-connected, it must be resolved in favor of the claimant. *Akamine [v. Hawaiian Packing & Crating Co.*, 53 Haw. 406,] 409, 495 P.2d [1164], 1166.

Flor v. Holguin, __ Hawai'i __, __ P.3d __ (May 30, 2000), reconsideration granted in part on other grounds, __ Hawai'i __, 6 P.3d 809 (2000), (quoting Chung v. Animal Clinic, Inc., 63 Haw. 642, 650-51, 636 P.2d 721, 726-27 (1981)). "[This] presumption has been described as one of the 'keystone principles' of our workers' compensation plan." Id. at __, __ P.3d at __ (citing Iddings v. Mee-Lee, 82 Hawai'i 1, 22, 919 P.2d 263, 284 (1996)(Ramil, J., dissenting)).

> In addition to the presumption of compensability, the broad humanitarian purpose of the workers' compensation statute read as a whole requires that all reasonable doubts be resolved in favor of the claimant, . . . for diseases arising from the nature of the employment are among the costs of production which industry must bear. . . . Thus, an injury is compensable if it reasonably appears to have resulted from the working conditions.

Id. at __, __ P.3d at __ (quoting Lawhead v. United Air Lines, 59 Haw. 551, 560, 584 P.2d 119, 125 (1978)) (internal quotation marks and citations omitted).

The supreme court has further held that

> [f]or an injury to be compensable under a workers' compensation statute, there must be a requisite nexus between the employment and the injury. The nexus requirement is

> articulated in Hawai‘i, as in the majority of jurisdictions, on the basis that, to be
>
> compensable, an injury must arise out of and in the course of employment.

Id. at __, __ P.3d at __ (quoting Tate v. GTE Hawaiian Telehone Co., 77 Hawai‘i 100, 103, 881 P.2d 1246, 1249 (1994) (footnote omitted)). In determining whether an injury meets this criterion,

> the court has adopted a "unitary" test that considers whether there is a sufficient work connection to bring the accident within the scope of the statute. . . . [T]he work connection approach simply requires the finding of a causal connection between the injury and any incidents or conditions of employment.

Id. at __, __ P.3d at __ (citations omitted).

Furthermore,

> [the statutory] presumption imposes upon the employer the burden of going forward with the evidence and the burden of persuasion. . . . The employer may overcome the presumption only with substantial evidence that the injury is unrelated to the employment. . . . Evidence, to be substantial, must be credible and relevant.

Tate, 77 Hawai‘i at 107, 881 P.2d at 1253 (citations omitted).

The supreme court has explained that

> [t]he claimant must prevail if the employer fails to adduce substantial evidence that the injury is unrelated to employment. The term "substantial evidence" signifies a high quantum of evidence which, at the minimum, must be "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."

Flor, __ Hawai‘i at __, __ P.3d at __ (quoting Akamine 53 Haw. at 408-09, 495 P.2d at 1166).

With that said, the question before us is, did the Employer adduce substantial evidence to rebut the presumption that a causal connection existed between Nakamura's injury and his employment?

We conclude that Employer did not.

Nakamura claims he sustained stress-related depression and anxiety due to "long term inhumane treatment as in unjust harassment [and] game playing [without] solution in long history of [management] problems. Last incident involved the State's participation of wage garnishment."[3]

Employer counters that Nakamura's alleged work injury of September 15, 1995 resulted solely from the garnishment of his wages pursuant to a Notice of Levy filed by the IRS, an incident unrelated to work.

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[3] We note the supreme court has recognized that

> an employee suffers a work-related injury within the meaning of HRS § 386-3 when he sustains a psychogenic disability precipitated by the circumstances of his employment. . . . [T]he burden is then placed on the employer to rebut the statutory presumption that a causal connection in fact exists between the [psychogenic disability] and the employment situation.

Royal State Nat'l Ins. v. Labor Bd., 53 Haw. 32, 38, 487 P.2d 278, 282 (1971) (citation omitted).

The Board indicated in its decision and order that it credited the medical opinions of two expert witnesses, Dr. Ponce and Dr. Shimizu, as well as "the description of the industrial injury in Dr. Shimizu's WC-2 reports, and Claimant's testimony that the garnishment was the 'last straw', to find that the IRS garnishment on September 15, 1995, exacerbated a preexisting psychiatric condition on that date that prompted Claimant to leave work and seek treatment."

Dr. Shimizu's WC-2 Physician's Report of Nakamura's initial visit on September 15, 1995 describes the work-related "accident" as "garnishing of check without approval causing stress & depression." Dr. Shimizu's notes of that same visit fail to include reference to any job-related harassment.

However, Dr. Shimizu's notes of their meetings on September 28, 1995, October 6, 1995, October 18, 1995, November 2, 1995, November 9, 1995 and November 28, 1995 reflect Nakamura's discussion at each of chronic harassment at work and work-related stress. In particular, Dr. Shimizu's notes of October 18, 1995 reflect that Nakamura described the garnishing of his paycheck as "'the straw that broke the camel's back' culminating 3½ yrs. of accumulated harassment."

During the investigation of the claim, Employer arranged for Nakamura to meet with Dr. Danilo Ponce, M.D., on January 5, 1996, for an independent medical (psychiatric)

evaluation. Dr. Ponce gleaned the following information, in pertinent part, from his interview with Nakamura:

> Mr. Nakamura claims that this current (September 15, 1995) industrial injury claim is his fifth Workers' Compensation claim. The first claim was "sometime in 1983," a back injury at the Pearl Harbor Naval Shipyard, where he was unable to go to work for about a month. The second Workers' Compensation claim was reported around 1984/1985 as a result of a "thoracic disc" injury at Hickam Air Force Base, where he was off work for about a month. The third claim was in 1986/1987 at Hickam Air Force Base, again for a thoracic disc injury, where he was off for about a month. The fourth claim was in 1988 as a result of "stress" at Hickam Air Force Base, for which he was off work about three weeks.
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> . . . .
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> [Nakamura] admits seeing Dr. Gordon Trockman, a psychiatrist, in 1988 because of the "stress" industrial injury claim at that time. During this care by Dr. Trockman, he admits, he had homicidal thoughts, "hearing voices," and believed that people in the television were talking to him and influencing his thoughts. He also believed that the United States military was developing a technology of controlling people's minds through what he called "harp (vibrational) technology."
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> [Nakamura] was diagnosed around July 1988 by Dr. Trockman as having "paranoid psychosis" because of hallucinations and ideas of reference. Dr. Trockman treated Mr. Nakamura with Prolixin and Stelazine, both anti-psychotic medications. Mr. Nakamura's care was discontinued by Dr. Trockman, and he was instructed to see Dr. Trockman on a PRN basis around May 4, 1989. During that time, Dr. Trockman took him off the anti-psychotic medications.

. . . .

Mr. Nakamura gives a history of longstanding use and abuse of substances (e.g., alcohol -- "I was an alcoholic;" marijuana; LSD; and cocaine), reportedly since the 1970s and "cutting down but not stopping somewhere around 1986 because I got sick -- my liver was not doing too well." His last ingestion of cocaine and alcohol was about "two or three months ago."

. . . .

The issue with [the] IRS that got him into trouble was that he allegedly has not filed for his income taxes for about ten years. . . . He said that he could understand the IRS going after him for not paying his taxes but that what he cannot understand is that the IRS reportedly is "taking seventy-eight percent of my salary, and that is inhumane. How can anybody subsist on $185 every two weeks?"

He then went on to rant and rave that the IRS cannot do this constitutionally without his permission, and he is very angry at the state (University of Hawaii) for colluding with the IRS to do something that is not "constitutional."

[Nakamura] states that he is willing to go back to work only under two conditions: (1) That his wages are not garnished. (2) That he not work under the same foreman, either by "firing the foreman or transferring me elsewhere" (e.g., Kapiolani Community College). If the University is unwilling to concede his wishes, then, he states, he will consider legal action.

Mr. Nakamura states that this current incident has started "since Day One of my employment (April 1992)." He claims that he was verbally abused, threatened, and "set up to be criticized" by the first foreman[.] . . . This other foreman, however, according to him, was "worse than

the first one, and this one was a nightmare." He then goes into the familiar catalog of complaints that he was called a liar and threatened with a beating-up. Because at that time he realized that jobs were scarce, he states that he just "took all the abuses" and did not complain. He states that when the IRS garnished his wages, that was the "last straw," and he filed an industrial injury claim.

His complaints against the foreman at the University of Hawaii were repeats of the troubles he got into at Pearl Harbor Naval Shipyard as well as Hickam Air Force Base and Bellows. He mentions the same pattern of abuse, verbal threats, and being "set up." When asked whether there was a possibility that there may have been something he was doing to provoke these reactions from the supervisors, he states that yes, there were, because, "I stand for what is right. I am not a trouble-maker. I just speak my mind, and they (the supervisors) cannot handle that." He keeps ranting and raving about the evilness and corruptness of the supervisors and does not consider at any time that he might be at fault.

He mentions being homicidal, but he takes great pains in explaining, "I'm a person who reacts to people's reactions. If I get threatened, then I fight back; but I may think of killing somebody, but I know I will not act it out. It is against my better judgment, and I have to answer to God. I am a very religious person, and I go to church."

. . . .

Mr. Nakamura is very insistent that "I'm not damaged. I'm not unstable. I am well and normal. I'm just standing up for what is right." He denies any significant neuro-vegetative system symptoms and states, "I just need to exercise more, as I'm gaining weight because I'm eating more." He states his "stress" right now is mostly financial, but even this is "not cause for alarm, as I

> know I will win in the end. I'm confident that I will win."
>
> He states that he is not hearing any voices at this time, and he denies any ideas of reference. . . . He still maintains, however, to this day, that the United States military is involved in a plot to control people's minds. He still admits to being homicidal, but as mentioned earlier, he makes the distinction that he "thinks about it" but is very sure that he is not going to "act on it."
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> He is oriented, and there are no significant or compelling evidences that there are any memory deficits or any other "organic" deficits. There are no other significant complaints at this time.

Dr. Ponce further opined that Nakamura has a preexisting condition, and mentions only the IRS garnishment as a recent exacerbating factor:

> History and review of records shows a diagnosis of paranoid disorder as early as 1988 by Dr. Trockman, his treating psychiatrist. It would appear that this condition did not really disappear or remit entirely, as he continued to have difficulties with supervisors under different work conditions. In summary, the diagnosis of schizophrenia, paranoid type, episodic, with inter-episode residual symptoms appears to be quite appropriate in this case. This condition was exacerbated by the garnishing of his wages by the IRS.
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> . . . .
>
> A diagnosis of schizophrenia, paranoid type, is clinically a more or less longlasting condition characterized by episodes of remission, but at this time Mr. Nakamura certainly is not stable, and he needs to be

> treated with a combination of anti-psychotic medication and behavioral cognitive therapy.
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> . . . .
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> At this time, unless a trial of anti-psychotic medication and behavioral cognitive therapy is tried, I do not think that he will be ready on January 22, 1996, to go back to his usual and customary job. In addition, he has made clear what his conditions are, in that if his wages are garnished and if he still continues to work under the same foreman, he absolutely will not go back to work. If the employer reportedly will not accede to his demands, then he will resort to a legal action.
>
> . . . .
>
> Mr. Nakamura needs anti-psychotic medication and behavioral cognitive therapy to deal with his impaired reality testing, delusions, ideas of reference and persecution, as well as ongoing hostility toward his supervisors and other persons of authority. The expected outcome of the anti-psychotic medications as well as the behavioral cognitive therapy should result[] in a diminution of his feelings of being persecuted, as well as a diminution in terms of his delusions[,] ideation, anger and hostility.

In a letter to the Employer dated October 28, 1996, Dr. Shimizu disagreed with Dr. Ponce's diagnosis of "schizophrenia, paranoid type, episodic, with inter-episode residual symptoms." Dr. Shimizu stated, in pertinent part, that

> Mr. Nakamura has not been observed by me to have psychotic features such as auditory or visual hallucinations, bizarre delusions, social withdrawal, deterioration in hygiene and grooming, unusual behavior.
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> Mr. Nakamura was administered the Minnesota Multiphasic Personality Inventory

(MMPI) on February 20, 1996, which was interpreted by Dr. William Tsushima, psychologist, at Straub Clinic[][.] The test results indicated that "He has major interpersonal problems and is often dwelling on his conflicts, feeling anger and frustrations. At times he has difficulty thinking clearly, but he is not psychotic presently." The diagnostic impression was "Adjustment disorder with mixed emotional features", with the recommendation of continued psychotherapy.

My diagnostic impression of Mr. Nakamura's case according to DSMIV guidelines are:

Axis I:	1. Depression, Not Otherwise Specified (311.0) 2. Adjustment Disorder with Mixed Emotional Features 3. History of paranoid disorder, secondary to work stress (1988)
Axis II:	No personality disorder
Axis III:	History of hepatitis
Axis IV:	4.5 (high)
Axis V:	50 (current Global Assessment of Functioning). 55 (Highest GAF in past year)

Mr. Nakamura's previous psychiatric history includes 6-month treatment (4-19-88 to 10-21-88) with Dr. Gordon Trockman, psychiatrist, for an industrial injury while working for the federal government. His diagnosis on Axis I was:

1) Paranoia (DSMIII-R 297.10) Persecutory type
2) Adjustment Disorder with Mixed Emotional Features and
3) Rule out Alcohol abuse.

He was treated with psychotherapy and antipsychotic medication (Prolixin) and returned to work.

> To my knowledge, Mr. Nakamura did not have any psychiatric contact prior to seeing Dr. Trockman in 1988 and in the interim since 1988 through 1995.
>
> I agree with Dr. Ponce that Mr. Nakamura would benefit from a combination of medication and behavioral cognitive treatment. However, Mr. Nakamura has not been able to obtain regular treatment from a psychiatrist. He has been seen on two occasions by Dr. Robert Hyman, and felt very relaxed after listening to stress tapes. However, because of the denial of his workers compensation case pending a hearing, Dr. Hyman requested that Mr. Nakamura obtain legal assistance, which Mr. Nakamura has not been able to obtain. His personal funds for seeking psychiatric treatment are depleted and he is in the process of obtaining public assistance.
>
> I continue to support Mr. Nakamura's claim that the work conditions he experienced at the Maintenance yard, specifically, the name-calling, verbal harassment and threats (incidents which are not delusional and appear to have actually occurred) along with the IRS garnishment of his wages on 9/15/95, led to his inability to continue to work in the work environment, which he perceives as hostile and mismanaged.
>
> I recommend that his condition be recognized as a work injury and that Mr. Nakamura be able to receive regular psychiatric and psychological treatment. Then more definitive plans could be made regarding returning to work functioning[.]

Dr. Shimizu also testified on behalf of Nakamura at the March 13, 1998 hearing before the Board. On direct examination, she and Nakamura had the following exchange:

> [NAKAMURA]: . . . [W]hat is your observance as far as my condition, when I first came to you?

> [DR. SHIMIZU]: You were very agitated. You were very upset. You were very angry. And you told me what had happened, not only with your paycheck being so small, because the -- I guess the state had agreed with the letter from the IRS that funds be garnished from your paycheck, so that was a very upsetting thing, as well as the rather hostile environment that you felt you were working in for the past three years with threats, and directed profanity towards you by various individuals. Well, particularly one individual.
>
> And you were also upset that despite your efforts to try to change that, those conditions by meeting with management, that you felt this individual's inappropriate behavior and threats were not taken care of.
>
> [NAKAMURA]: As far as your professional observance, do you feel that as far as my sessions with you in psychotherapy, do you feel that I was stressed out, and do you believe that these conditions were caused by my employer or my employment? In the course of my employment?
>
> [DR. SHIMIZU]: Yes, I do.

In response to Nakamura's question as to whether "my environment, my employer, management, and my co-workers caused these stressful matters to trigger off a stress adjustment[,]" Dr. Shimizu answered, "I think you did suffer a work injury at the University."

Dr. Shimizu further testified that she agrees with Dr. Ponce's conclusion that Nakamura has a preexisting condition, and that the garnishing of Nakamura's wages exacerbated the condition. Dr. Shimizu indicated that the garnishment of

Nakamura's wages affected his condition, and that "that was part of the whole injury." She also agreed that the garnishment triggered part of the injury because he was able to work and did not receive treatment until after the garnishment.

At the time of the hearing, Dr. Shimizu's diagnosis of Nakamura was depression and adjustment disorder, mixed. Dr. Shimizu described Nakamura's primary symptoms of depression, which included "irritability, sleep disorder, eating problems with weight gain. Difficulty concentrating, and following through on tasks. A negative mood, depressed mood."

Relying upon Dr. Ponce's opinion and his review of Dr. Trockman's records, the Board found that Nakamura was suffering from a pre-existing psychotic disorder that did not remit entirely since 1989. The Board further found that "the IRS garnishment . . . triggered [Nakamura's] need for treatment and inability to work[.]" The Board averred that this latter finding was "supported by the record[:]" first, that Nakamura experienced the bulk of his work stress prior to May 1995 while working under Mr. Chung and Mr. Yoshioka; second, that except for the one incident involving Mr. Yoshioka, Nakamura had no trouble while working for Mr. Sakai from May 1995 to September 15, 1995; and third, that despite the ongoing work stress he alleged, Nakamura "did not seek medical treatment and was able to work up through [September 15, 1995,] the date of the garnishment."

The Board finally concluded that the IRS garnishment was not an incident of Nakamura's employment, and that therefore "[a]ny psychiatric injury that occurred as a result of the garnishment, is, therefore, not related to [Nakamura's] employment."

Although Dr. Ponce did not explicitly opine that Nakamura's injury was not work-connected, his diagnosis suggests that Nakamura's psychological stress injury was largely a product of his preexisting psychotic disorder which, if recently exacerbated at all, was lit up by the IRS garnishment, and not the work stress.

It appears the Board erroneously relied on this diagnosis when it determined that Nakamura's injury was not causally connected to his employment.

In Akamine, 53 Haw. at 406, 495 P.2d at 1164, a case analogous to this one, the Hawai'i Supreme Court determined that a generalized medical opinion concerning the cause of an injury does not constitute sufficient "substantial evidence" to rebut the presumption of compensability. Id. at 410, 495 P.2d at 1167.

In that case, the claimant died after collapsing while pushing a loaded hand truck at work. His dependents filed a claim for worker's compensation. His employer presented evidence in the form of medical testimony that his preexisting pathological condition was the sole cause of death. The Board denied compensation based on this evidence, reasoning that his

death was due to preexisting cardiovascular disease and was thus not attributable to his employment.

The supreme court reversed because the net weight of the medical testimony did not amount to substantial evidence sufficient to rebut the presumption of compensability:

> For a medical man may give a generalized opinion that there was no connection between an incident at work and a heart attack, and, in his own mind, may mean thereby that a pre-existing pathological condition was the overwhelming factor in bringing about the attack and that the part played by the work was insignificant. But, while it may be sound medically to say that the work did not 'cause' the attack, it may be bad law, because, in general, existing law treats the slightest factor of aggravation as an adequate 'cause'.

Id. at 410, 495 P.2d at 1167 (internal quotation marks and citations omitted). The supreme court went on to specify the kind of evidence required to rebut the presumption of compensability in preexisting-condition cases:

> The primary focus of the medical testimony should have been a discussion on whether the employment effort, whether great or little, in any way aggravated Mr. Akamine's heart condition which resulted in his death.

Id. at 412, 495 P.2d at 1168. As stated again elsewhere in the opinion: "[t]he only consideration should have been whether the attack in fact was aggravated or accelerated by his work activity[.]" Id. at 413, 495 P.2d at 1169.

In this case, Dr. Ponce's report failed to address the question raised by the Board's findings of fact which, per

Akamine, was required to be addressed expressly, directly and specifically: whether the work stress engendered by Nakamura's employment in any way exacerbated his injury.

Furthermore, in cases where the testimony of two doctors directly conflict on the issue of an injury's causal connection to the claimant's employment activity, the legislature has decided that the conflict should be resolved in the claimant's favor. Chung, 63 Haw. at 652, 636 P.2d at 727.

The Board was "clearly erroneous" in failing to resolve the conflict of medical opinions in Nakamura's favor when it in effect adopted Dr. Ponce's conclusion, upon an independent psychiatric examination, that Nakamura was suffering from a preexisting psychotic disorder which was not exacerbated by an event or events incidental to his employment. Dr. Shimizu, Nakamura's treating physician, presented evidence and an opinion to the contrary and in favor of compensability; hence Chung mandates that hers should have been the conclusion adopted.

Moreover, even though Dr. Ponce and Dr. Shimizu both agreed that Nakamura was suffering from a preexisting disorder of some kind, evidence of a preexisting condition, standing alone, does not rebut the presumption of a causal connection between injury and employment conditions.

The Hawai'i Supreme Court in Royal State Nat'l Ins. v. Labor Bd., 53 Haw. 32, 487 P.2d 278 (1971), held that "[u]nder identical working conditions some employees may be predisposed to

heart attacks, some may be more careless around machinery, and some may be susceptible to mental breakdowns. The employer must take the employee as he finds him." Id. at 39, 487 P.2d at 282 (emphasis added). See also Chung, 63 Haw. at 651, 636 P.2d at 727 (the fact that the claimant had been jogging when his heart attack occurred was not, in and of itself, sufficient to defeat the presumption of a work connection even though one physician attributed the heart attack to pre-existing arteriosclerosis and physical exertion from jogging, where another physician cited long work hours and other business-related stress as generating substantial mental and emotional stress linked to heart disease).

Therefore, evidence of Nakamura's preexisting condition, without more, carries little probative weight under relevant precedent.

Dr. Shimizu's opinion established that Nakamura's psychiatric stress injury was exacerbated, at least in part, by the circumstances of his employment. If Nakamura's preexisting condition was exacerbated in any wise by his employment conditions, the abundant Hawai'i Supreme Court precedent previously cited concludes that a causal connection has been established.

For example, in discussing a workers' compensation claim for a heart attack, the Hawai'i Supreme Court held that

> [i]t is legally irrelevant, in determining the question of work-connection, whether [claimant's] attack might have occurred at

> home, on the street or elsewhere while tending to his private affairs. The only consideration should have been whether the attack in fact was aggravated or accelerated by his work activity[.]

Akamine, 53 Haw. at 413, 495 P.2d at 1169.[4] See also Flor at __, __ P.3d at __.

The court in Chung, supra, similarly emphasized that "[t]he primary focus of medical testimony for the purposes of determining legal causation should be whether the employment situation in any way contributed to the employee's injury." Chung, 63 Haw. at 652, 636 P.2d at 728 (citation omitted and emphasis added).[5]

In conformance with Akamine and Chung, Dr. Shimizu explicitly, directly and specifically addressed whether or not

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[4] The Hawai'i Supreme Court in Akamine v. Hawaiian Packing & Crating Co., 53 Haw. 406, 413, 495 P.2d 1164, 1169 (1972), held that

> if the effort or strain which in fact precipitates or contributes to the attack, occurs during the course of the employment and as an ordinary or usual incident of the work, the resulting disability or death is compensable.

[5] Although Akamine, supra, and Chung v. Animal Clinic, Inc., 63 Haw. 642, 636 P.2d 721 (1981), discuss causal connection to conditions of employment in terms of a physical injury, the same principles apply in the case of a mental injury, for

> [disabilities resulting from mental pressures] are as much a cost of the production process as physical injuries. The humanitarian purposes of the Workmen's Compensation Law require that indemnification be predicated not upon the label assigned to the injury received, but upon the employee's inability to work because of impairments flowing from the conditions of his employment.

Royal, 53 Haw. at 38, 487 P.2d at 282 (citations and footnote omitted).

the employment situation contributed to Nakamura's injury. Because Dr. Ponce failed to similarly do so, his report did not amount to substantial evidence overcoming the presumption that the injury is related to the employment.

Even though the IRS garnishment undisputedly "triggered" his separation from employment, Nakamura presented evidence that the conditions of his employment, i.e., long-term stress due to conflict with his supervisors, contributed to his psychological stress injury. Accordingly, his treating physician opined that Nakamura suffered an employment-related injury. Indeed, Dr. Shimizu described the precipitating event of the wage garnishment as a "part of the whole injury."

Therefore, the Board's failure to properly apply the statutory presumption of compensability mandated by HRS § 386-85(1) was "clearly erroneous."

Aside from Dr. Ponce's report of Nakamura's preexisting psychotic disorder, Employer also points to the testimony of some of Nakamura's co-workers that did not support his claims: "For example, Mr Hirazumi testified that Mr. Yoshioka did not threaten him with a gun. Tr. at 27, 80, 84. Mr. Dobashi recalled that Mr. Yoshioka yelled at all workers and did not single out Claimant. Tr. at 93-94."

However, other testimony was offered that generally supported the contention that there were "problems" related to

Mr. Yoshioka's behavior, and that Mr. Yoshioka yelled, swore at, and threatened others around him.

Employer also asserts, and the Board found, that Nakamura "did not have trouble working under Henry Sakai between May and September 15, 1995."

However, it is undisputed, and the Board found, that at some point during the time Nakamura worked for Mr. Sakai, Mr. Yoshioka confronted Nakamura at his work site about a comment he had made to a co-worker.

Nakamura testified that Mr. Yoshioka drove him to another work site to discuss the matter, and that Mr. Yoshioka threatened him with bodily harm. The Board further found that Nakamura was "disturbed" by this encounter.

In light of the whole record, the fact that only one disturbing incident occurred during the last several months of Nakamura's employment fails to support a conclusion that the conditions of his employment did not aggravate or contribute to his psychological stress injury, particularly in light of the medical testimony and opinions credited by the Board.

Moreover, the Board acknowledged that Nakamura "may have experienced work stress as a result of conflicts with his supervisors," although "the bulk of that stress occurred while [he] was working under Mr. Chung and Mr. Yoshioka prior to May of 1995."

The Board, in effect, assumed that Nakamura's complaints of work stress were valid. Yet, the Board failed to explicitly consider and determine the issue of exacerbation due to work-related stress, as required under Chung and Akamine. It appears the Board relied upon the dubious assumption that etiological factors necessarily manifest themselves immediately in completely disabling injury. Hence the Board's conclusion that "despite the work stress that [Nakamura] claimed began in April of 1992 and continued through September of 1995, he did not seek medical treatment and was able to work up through the date of the garnishment." And hence the Board's exclusive focus upon the triggering event of IRS garnishment.

Employer also argues that Nakamura did not make a formal report of harassment to Employer's campus security until "May 31, 1996, some eight months after he walked off the job[,]" and that "Captain Dawson, chief of Employer's campus security, in his memorandum regarding Claimant's visit to campus security, stated that he came away with the impression that Claimant 'was making his harassment complaint to get ready for an up coming Labor Board hearing.'"

Again, in light of the whole record, especially the medical testimony and opinions, Nakamura's delay in filing a report and Captain Dawson's skepticism do not amount to substantial evidence to rebut the presumption of a work-connected injury.

Employer has failed to present substantial evidence to rebut Dr. Shimizu's opinion that circumstances of Nakamura's employment contributed to his injury, and hence has failed to rebut the presumption of compensability.

Even if we were to ignore the specific facts and holdings of the governing Hawai'i Supreme Court cases cited and discussed, their overarching principle, adumbrated at the beginning of our discussion, mandates that we reach the same conclusion. That overarching principle provides, quite simply, that any reasonable doubt as to compensability must be resolved in favor of the claimant. Flor at __, __ P.3d at __; Chung, 63 Haw. at 651, 636 P.2d at 727; Lawhead, 59 Haw. at 560, 584 P.2d at 125; Akamine, 53 Haw. at 409, 495 P.2d at 1166.

The Board's own findings of fact, when subjected to that principle, must yield the conclusion of compensability.

The Board credited the medical opinions of Dr. Ponce and Dr. Shimizu. Both doctors agree that Nakamura suffered a preexisting psychotic condition. Both doctors agree that the condition was in remission at least to some degree before Nakamura was hired by Employer. Both doctors agree that Nakamura still suffers from a psychiatric disorder, although Dr. Shimizu disagrees with Dr. Ponce that Nakamura presently suffers from a psychosis. Both doctors agree that Nakamura needs treatment for his psychological disorder.

However, Dr. Ponce identifies only one exacerbating factor related to Nakamura's employment, the IRS garnishment, whereas Dr. Shimizu considers it merely a culminating factor on top of the longer-term exacerbation stemming from Nakamura's hostile working environment. Because Dr. Shimizu's opinion, if adopted, would result in compensation, a doubt as to compensability is raised by the Board's findings of fact.

Given the Board's other findings; that Nakamura had problems with his supervisors, both in general and in a specific incident with one especially hostile and profane supervisor; that Nakamura felt, at various times as a result of the problems, "discriminated against," "pressured and uncomfortable" and "disturbed"; that Nakamura twice complained to the union about the problem; that Nakamura "experienced work stress as a result of conflicts with his supervisors, the bulk of [which] occurred while [he] was working under Mr. Chung and Mr. Yoshioka"; that Nakamura several times attributed his psychological stress injury to his long-term exposure to the hostile work environment he described; and that Nakamura considered the IRS garnishment a mere culminating event; the doubt as to compensability raised by the Board's findings of fact cannot be considered as anything but reasonable.

Under the general principle given us by the Hawai‘i Supreme Court to govern workers' compensation cases, that reasonable doubt should have been resolved in favor of Nakamura,

in the absence of the kind of substantial rebutting evidence defined by the relevant supreme court precedents.

IV. CONCLUSION.

Accordingly, we hold that the Board's ultimate conclusion, that Nakamura did not sustain a compensable personal injury on September 15, 1995, was "clearly erroneous" in light of the reliable, probative, and substantial evidence in the whole record.

Our holding is in accordance with well-established case law governing workers' compensation claims. Our courts have "traditionally construed HRS § 386-3 liberally in favor of conferring compensation because our legislature has decided that work injuries are among the costs of production which industry is required to bear[.]" Flor at __, __ P.3d at __ (internal quotation marks and citations omitted). See also Ostrowski v. Wasa Elec. Services, Inc., 87 Hawaii 492, 496, 960 P.2d 162, 166 (App. 1998); Mitchell, 85 Hawai'i at 255, 942 P.2d at 519; Chung, 63 Haw. at 649, 636 P.2d at 726; Akamine, 53 Haw. at 409, 495 P.2d at 1166.

We therefore vacate and remand for a determination of the amount of compensation in favor of Nakamura.

DATED: Honolulu, Hawaii, September 26, 2000.

On the briefs:

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