CONCURRING OPINION BY WATANABE, J.

In light of the applicable supreme court precedent and the legislative history of Hawaii Revised Statutes (HRS) § 386-3(c) (Supp. 2000), I do not disagree with the majority's conclusion that the mental stress injuries suffered by Claimant-Appellant David K. Davenport (Davenport) as a result of his demotion and subsequent civil service appeal to challenge his demotion are compensable. I write separately to express my concern that prior decisions embracing the unitary test for compensability under the workers' compensation law appear to have ignored the requirement in HRS § 386-3 (1993 & Supp. 2000)[1] that to be compensable, a work-related injury suffered by an employee must arise "either by accident arising out of and in the course of the employment or by disease proximately caused by or

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[1] Hawaii Revised Statutes § 386-3(a) (Supp. 2000) provides as follows:

> **Injuries covered.** (a) If 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 provided in this chapter.
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> Accident arising out of and in the course of the employment includes the wilful act of a third person directed against an employee because of the employee's employment.

resulting from the nature of the employment [("occupational disease").]" (Emphases added.)

In Royal State Nat'l Ins. Co. v. Labor & Indus. Relations Appeal Board, 53 Haw. 32, 39, 487 P.2d 278, 282 (1971), for example, the Hawai‘i Supreme Court held that an employee who suffered a mental collapse due to work pressures was entitled to workers' compensation benefits as a matter of law, even though the employer adduced evidence that the employee had not been overworked or under any unusual exertion or strain at work. The supreme court did not analyze whether an "accident" or "occupational disease" caused the employee's mental collapse but instead focused on whether the employee's mental collapse arose from the employee's working conditions. In the process, the supreme court observed as follows:

> The legislature has chosen to treat work-related injuries as a cost of production to be borne by industry and, ultimately, through the consumption process, by the community in general. In today's highly competitive world it cannot be doubted that people often succumb to mental pressures resulting from their employment. These disabilities are as much a cost of the production process as physical injuries. The humanitarian purposes of the Work[ers'] 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 [or her] employment. We hold, therefore, that an employee suffers a work-related injury within the meaning of HRS § 386-3 when he [or she] sustains a psychogenic disability precipitated by the circumstances of his [or her] employment.

Id. at 38, 487 P.2d at 282 (citations and footnote omitted).

In Wharton v. Hawaiian Elec. Co., 80 Hawai'i 120, 906 P.2d 127 (1995), the supreme court was called upon to determine the entitlement to workers' compensation benefits of an employee who suffered a psychological stress injury as a direct consequence of disciplinary action imposed on him for altering his time cards. The supreme court stated that the dispositive issue was whether the employee's misconduct was "outside or within the bounds of his employment duties." Id. at 123, 906 P.2d at 130. If the misconduct involved an "unauthorized departure from the course of employment[,]" the misconduct was outside the course of employment and noncompensable. Id. (quoting Pacific Tel. & Tel. Co. v. Workers Comp. Appeals Bd., 112 Cal. App. 3d 241, 245, 169 Cal. Rptr. 285, 288 (1980)). If, on the other hand, the misconduct involved "the performance of a duty in an unauthorized manner[,]" i.e., the "violation of regulations or prohibitions relating to the method of accomplishing that ultimate work[,]" the misconduct remains within the course of employment and is compensable. Id. (emphasis added). Holding that the employee's "misconduct ha[d] nothing to do with the work [the employee] was hired to do, *i.e.*, maintaining and repairing electronic controls[,]" id. at 124, 906 P.2d at 131, the supreme court held that the employee's

misconduct of falsifying time cards was noncompensable because it was "outside the boundaries defining his ultimate work[,]" id. (internal quotation marks and brackets omitted) and, therefore, was an "unauthorized departure from the course of employment" as opposed to the "performance of a duty in an unauthorized manner." Id. at 123, 906 P.2d at 130. As in the Royal State case, the supreme court did not address in Wharton whether the disciplinary incident that led to the employee's stress injury constituted an "accident" or "occupational disease[.]"

In Mitchell v. Dep't of Education, 85 Hawai'i 250, 942 P.2d 514 (1997), Mitchell, a teacher, sought review of a Labor and Industrial Relations Appeals Board (LIRAB) decision that partially denied her workers' compensation benefits for a stress-related injury she suffered as a result of disciplinary action taken against her for violating a Department of Education rule prohibiting corporal punishment against students. Vacating LIRAB's decision, the supreme court stated:

> The dispositive question is whether the conduct that gave rise to the disciplinary action is conduct within or outside the course of employment. If the conduct for which an employee is disciplined falls within the course of employment, any stress-related injury caused by a disciplinary action for such misconduct is compensable.
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> The facts indicate that the disciplinary action was prompted by Mitchell's alleged use of corporal punishment during class. Whether Mitchell in fact administered corporal punishment is not essential to the determination of

> compensability because misconduct, even if willful, does not necessarily preclude workers' compensation recovery. Instead, we must determine whether Mitchell's alleged conduct, wrongful or otherwise, was related or incident to her duties as a teacher and, therefore, "in the course of employment."
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> Here, the incident occurred during school hours, in the classroom, and in an attempt to maintain order and discipline. As the classroom teacher, when [a student] became unruly, it became incumbent upon Mitchell to act in order to prevent further loss of control. In other words, Mitchell was performing her duty as a teacher to maintain classroom control. Even assuming, *arguendo*, that she did indeed effectuate this purpose by striking [the student], she was nonetheless performing a duty of her employment, albeit in an unauthorized manner. This is precisely the type of misconduct that is considered to be within the scope of employment under *Wharton*.
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> Accordingly, we hold that, even if Mitchell administered corporal punishment in violation of the work-rule prohibiting such conduct, thus warranting discipline, she nevertheless sustained a compensable injury because she was acting within the course of her employment at the time of the alleged misconduct.

Id. at 256, 942 P.2d at 520 (citations and footnotes omitted). The supreme court did not consider whether the disciplinary action in Mitchell constituted an "accident" or "occupational disease[.]"

In this case, while Davenport's stress injuries may have resulted from his work-related demotion and civil service appeal, I do not believe that such activities constituted an "accident" or "occupational disease" under HRS § 386-3(a). Therefore, were it not for the supreme court case law that

appears to have eliminated the "accident" or "occupational disease" statutory requirement for compensability and focused only on whether an injury was work-related, I would affirm that part of LIRAB's decision that concluded that Davenport's January 1994 claim for injuries arising out of his efforts to secure a promotion at work were not compensable.

Associate Judge