NO. 23919

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

FRED FARZAMI, Plaintiff-Appellant, v. STATE OF HAWAIʻI, DEPARTMENT OF HEALTH, Employer-Appellee, Self-Insured

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 98-277 (2-94-42085))

SUMMARY DISPOSITION ORDER
(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

In this workers' compensation case, Claimant-Appellant Fred F. Farzami (Farzami) appeals, *in propria persona*, the September 12, 2000 decision and order of the Labor and Industrial Relations Appeals Board of the State of Hawaiʻi (the Board), and the Board's October 23, 2000 order denying Farzami's October 12, 2000 motion for reconsideration and for reopening to take further evidence.

After a hearing held on June 18, 1999, the Board, in its September 12, 2000 decision and order, affirmed the May 28, 1998 decision of the Director of Labor and Industrial Relations (the Director) that denied Farzami's claim for further temporary total disability (TTD) benefits for time periods after January 13, 1995, and his claim for unlawful termination under Hawaii Revised Statutes (HRS) § 386-142 (1993), both claims brought

against Employer-Appellee, self-insured, State of Hawai‘i Department of Health (the Employer).

We have sedulously reviewed 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 them as follows:

1. On appeal, Farzami first argues that he is "entitled to further temporary total [disability] benefits beyond Jan [(sic)] 13, 1995." On this issue, the Board found as follows:

> 1. [Farzami] was employed as an epidemiological specialist.
> 2. [Farzami] sustained a compensable psychological stress injury on September 29, 1994.
> 3. [Farzami's] treating psychologist, Dr. Duke Wagner [(Dr. Wagner)], certified his disability from work through November 23, 1994. Dr. Wagner released [Farzami] to work on November 24, 1994, with the recommendation that he be allowed to work in an area away from the coworkers with whom he had interpersonal conflicts.
> 4. [Farzami] was evaluated by [independent medical examiner] Dr. Jon Streltzer [(Dr. Streltzer)], a psychiatrist, on March 20, 1997. Dr. Streltzer opined that [Farzami's] psychological condition resolved by January of 1995. According to Dr. Streltzer, [Farzami] was not psychiatrically restricted from work.
> 5. Dr. Wagner indicated in his January 1995 WC-2 report that [Farzami] did not sustain any permanent defect from his September 29, 1994 industrial injury.
> 6. [Farzami] returned to work on January 3, 1995.
> 7. The record contains no medical certification of disability after January 13, 1995.
> 8. On appeal, [Farzami] has presented no medical evidence to support an award of additional TTD benefits after January 13, 1995.

The Board concluded thereon:

> 1. Based on the foregoing, including the fact

> that [Farzami] was released to work prior to January 13, 1995, that he returned to work on January 3, 1995, and that the record contains no medical certification of disability after January 13, 1995, we conclude that [Farzami] is not entitled to further TTD benefits after January 13, 1995.

"[I]n view of the reliable, probative, and substantial evidence on the whole record[,]" Igawa v. Koa House Restaurant, 97 Hawai'i 402, 406, 38 P.3d 570, 574 (2001) (citations and internal block quote format omitted), and in light of Farzami's concessions on appeal that, "[t]here is no dispute that [Farzami] was cleared to work by Dr. Wagner[,]" and that, "[t]here is no dispute that [Farzami] was physically permitted to return to work and was able to perform his duty," at the time in question, we conclude the Board's findings of fact on this issue were not clearly erroneous. Id. Because the Board's conclusion of law on this issue was "supported by the . . . findings of fact and by the application of the correct rule of law[,]" it will not be overturned on appeal. Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 93, 34 P.3d 16, 23 (2001) (citation omitted).[1]

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[1] [Hawai'i Revised Statutes (HRS)] § 386-31(b) (1995) provides in relevant part that "[w]here a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability . . . shall pay the injured employee a weekly benefit[.]"

. . . .

"'Total disability' means disability of such an extent that the disabled employee has no reasonable prospect of finding regular employment of any kind in the normal labor market." HRS § 386-1 (1993). By administrative rule, an employee is "totally disabled" if he or she is "unable to complete a regular daily work shift on account of a work injury." Workers' Compensation Related Administrative Rules § 12-10-21 (2000). Thus, if an employee is "capable of

Farzami's arguments on appeal, that the Employer did not comply with Dr. Wagner's recommendation to separate Farzami from his nemesis co-workers, that Farzami continues to suffer sequelae of his psychological stress injury, and that the Employer made it difficult for Farzami to utilize his sick leave and vacation leave to seek treatment for such sequelae, do not change our conclusion in this respect.

2. Farzami also contends the Employer "terminated [Farzami's] employment in violation of HRS § 386-142."[2] On this issue, the Board found as follows:

> 9. [Farzami] was a "limited term appointment" employee, which meant that his contract for employment

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> performing work in an occupation for which the worker has received previous training or for which the worker had demonstrated aptitude," he or she is not totally disabled. Workers' Compensation Related Administrative Rules § 12-10-1 (2000).

Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 92, 34 P.3d 16, 22 (2001) (some brackets and ellipsis in the original; footnote omitted).

[2] HRS § 386-142 (1993) provides:

> It shall be unlawful for any employer to suspend or discharge any employee solely because the employee suffers any work injury which is compensable under this chapter and which arises out of and in the course of employment with the employer unless it is shown to the satisfaction of the director that the employee will no longer be capable of performing the employee's work as a result of the work injury and that the employer has no other available work which the employee is capable of performing. Any employee who is suspended or discharged because of such work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the suspension or discharge and during the period thereafter until the employee secures new employment. This section shall not apply to the United States or to employers subject to part III of chapter 378.

> with Employer had a start and end date that was renewable at the end of the specified term.
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> 10. [Farzami's] term had an expiration date of June 30, 1996.
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> 11. In or around November of 1995, [Farzami], along with many other limited term appointment employees within Employer's department, were notified of Employer's decision not to renew their contract for employment when their upcoming terms expire.
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> 12. Employer's decision was based on an October 19, 1995 executive directive from the Governor that limited term appointments not be renewed due to the State's budget deficit.
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> 13. There is no evidence that [Farzami] was suspended, discharged, or otherwise disciplined solely because he suffered a work injury.
>
> 14. There is no evidence that the non-renewal of [Farzami's] limited term appointment occurred solely because he suffered a work injury.

The Board concluded thereon, in relevant part:

> We have found no evidence that Employer unlawfully suspended or discharged [Farzami] solely because of his work injury. In this case, [Farzami's] limited term appointment was not renewed at the end of the term due to fiscal constraints.
>
> Accordingly, we conclude that Employer did not violate HRS [§ 386-142].

"[I]n view of the reliable, probative, and substantial evidence on the whole record[,]" Igawa, 97 Hawai'i at 406, 38 P.3d at 574 (citations and internal block quote format omitted), and in light of Farzami's concessions on appeal that his appointment was a "limited term appointment[,]" that his employment beyond June 30, 1996 was possible only through renewal of the appointment, and that "there is absolutely no dispute that the governor through executive order of Oct/9/95 [(sic)] eleminated [(sic)] all [limited term appointment] positions by Jun/96 [(sic),]" we conclude the Board's findings of fact on this issue were not clearly erroneous. Id. Because the Board's conclusion of law on this issue was "supported by the . . . findings of fact and by

the application of the correct rule of law[,]" it will not be overturned on appeal. Tamashiro, 97 Hawai'i at 93, 34 P.3d at 23 (citation omitted). Farzami's allegation on appeal, that when the Governor reinstated the limited term appointments in Farzami's division, Farzami's was the only limited term appointment not filled because the division head was under investigation for financial improprieties and was therefore "doing everything to clean up the program from unsatisfied employees[,]" does not change our conclusion in this respect.

3. Farzami also appeals the Board's denial of his motion for reconsideration and for reopening to take further evidence. In his motion, Farzami urged the Board to take further evidence -- specifically, the March 1996 executive order from the Governor reinstating the limited term appointments in Farzami's division and various news media reports relating to that executive order -- and to reconsider its decision in light of that further evidence. On appeal, Farzami argues that the Board should have granted his motion because he "could present the new evidence which was not discovered before and could prove the unlawful termination by the [E]mployer." The Board denied Farzami's motion because "it has not been shown that the evidence that [Farzami] seeks to present is new and was not discoverable at the time of [the June 18, 1999] trial." We conclude the Board did not abuse its discretion in denying Farzami's motion. Cf. Amfac, Inc. v. Waikiki Beachcomber Investment Co., 74 Haw. 85,

114, 839 P.2d 10, 26-27 (1992) (applying the abuse of discretion standard to the trial court's denial of a motion for reconsideration, and holding that "[t]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion" (citations omitted)).

Therefore,

IT IS HEREBY ORDERED that the September 12, 2000 decision and order of the Board, and the Board's October 23, 2000 order denying Farzami's October 12, 2000 motion for reconsideration and for reopening to take further evidence, are affirmed.

DATED: Honolulu, Hawai'i, June 14, 2002.

On the briefs:

Fred Farzami,
plaintiff-appellant,
pro se.

Acting Chief Judge

Kathleen N.A. Watanabe and
Steve K. Miyasaka,
Deputy Attorneys General,
State of Hawaii,
for employer-appellee.

Associate Judge

Associate Judge