

NOT FOR PUBLICATION

NO. 25331

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DAVID F. GOSSETT, Claimant-Appellant, v.
JOHN F. METZLER, dba: METZLER CONTRACTING CO.,
and FIRST INSURANCE CO. OF HAWAII, LTD.,
Employer/Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL
RELATIONS APPEALS BOARD
(CASE NO. AB 2001-041(WH) (9-98-00675))

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Foley and Nakamura, JJ.)

Claimant-Appellant David F. Gossett (Gossett) appeals the August 22, 2002 Decision and Order of the Labor and Industrial Relations Appeals Board (Appeals Board) in favor of Employer-Appellee John F. Metzler dba Metzler Contracting Co. (Metzler Corp.) and Insurance Carrier-Appellee First Insurance Co. of Hawaii, Ltd. (First Insurance) (collectively Metzler).

On appeal, Gossett contends (1) the Disability Compensation Division (DCD) erred (a) by admitting a 21-minute compilation videotape (the Video) of 14 hours of surveillance tapes of Gossett into evidence at the October 26, 2000 hearing before the DCD and using the Video as the basis for the hearing officer's decision and (b) by not providing him adequate time to review the Video before the hearing; and (2) the Appeals Board prohibited Gossett from conducting discovery and wrongfully

relied on the Video in denying Gossett's motions and arriving at its August 22, 2002 Decision and Order.

Upon careful review of 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 Gossett's point of error as follows:

(1) Gossett contends the Video entered into evidence at the DCD hearing was inadmissible because it was not an original, it was not relevant, and it was altered. Gossett waived any objection to the Video's admission by agreeing to let the Appeals Board review the entire file of the Director. Gossett received a hearing de novo before the Appeals Board. Hawaii Revised Statutes (HRS) § 386-87(b) (1993).

(2) Gossett contends that he was not provided an opportunity to review the Video prior to the DCD hearing or not provided adequate time to review the Video. This contention is without merit. The Video was played at the DCD hearing and was made part of the record by stipulation before the Appeals Board, where Gossett received a hearing de novo. HRS § 386-87(b).

(3) Gossett contends the Appeals Board wrongfully prohibited discovery. The answers to interrogatories and document production Gossett sought were from Metzler's attorney and sought information that was not relevant and did not appear reasonably calculated to lead to the discovery of admissible

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evidence. See Hawai'i Rules of Civil Procedure Rule 26. The Appeals Board did not abuse its discretion in prohibiting discovery from Metzler's attorney. HRS § 91-14(g) (6) (1993).

Therefore,

IT IS HEREBY ORDERED that August 22, 2002 Decision and Order of the Labor and Industrial Relations Appeals Board is affirmed.

DATED: Honolulu, Hawai'i, June 15, 2004.

On the briefs:

David F. Gossett,
claimant-appellant pro se.

Acting Chief Judge

Paul A. Brooke
(Law Offices of Dean Ochiai)
for employer/insurance
carrier-appellee.

Associate Judge

Associate Judge