

NOT FOR PUBLICATION

NO. 25465

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

JOSE CRESPIN, Claimant-Appellant, v. A&B HAWAII, INC.,
dba: HAWAIIAN COMMERCIAL AND SUGAR COMPANY, and
ACCLAMATION INSURANCE MANAGEMENT SERVICES,
Employer/Insurance Adjuster-Appellee.

APPEAL FROM THE LABOR AND
INDUSTRIAL RELATIONS APPEALS BOARD
(Case No. AB 2001-132(M) (7-98-03222))

SUMMARY DISPOSITION ORDER

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

In this workers' compensation case, Jose M. Crespin, Jr. (Crespin) appeals the October 11, 2002 order of the Labor and Industrial Relations Appeals Board (the Board). The Board's order adopted, *in toto*, the August 23, 2002 proposed decision and order, authored by the Board's hearings officer, that affirmed the March 22, 2001 decision of the Director of Labor and Industrial Relations. The decision and order adopted by the Board ultimately stated: "We conclude [Alexander & Baldwin Hawaii, Inc. dba Hawaiian Commercial and Sugar Co. (Employer)] has presented substantial evidence to overcome the presumption that [Crespin] sustained a left shoulder injury as a compensable consequence of his work injury of September 13, 1998."

After a diligent review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we conclude that Employer did not present substantial evidence to

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rebut the presumption of compensability promulgated in Hawaii Revised Statutes § 386-85(1) (1993), because we view the doctors' reports touted by Employer and relied upon by the Board, "as failing expressly, directly, and specifically to rebut the presumption because the reports did not address whether [Crespin's left shoulder injury] could have, in any way, been exacerbated [by his work activity]." Korsak v. Hawaii Permanente Med. Group, Inc., 94 Hawai'i 297, 308, 12 P.3d 1238, 1249 (2000) (emphases omitted). See also Nakamura v. State, 98 Hawai'i 263, 269, 47 P.3d 730, 736 (2002).

Therefore,

IT IS HEREBY ORDERED that the October 11, 2002 order of the Board is vacated and the cause is remanded for determination of the workers' compensation benefits due Crespin for his left shoulder injury.

DATED: Honolulu, Hawai'i, September 22, 2004.

On the briefs:

Kevin H.S. Yuen,
for claimant-appellant.

Roland Q.F. Thom and
Jaurene R. Judy
(Char Hamilton Campbell & Thom),
for employer/insurance adjuster-appellee.

Chief Judge

Associate Judge

Associate Judge