

**NOT FOR PUBLICATION**

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NO. 25773

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

CHARLOTTE C. SANTOS, Claimant-Appellee, v.  
KYO-YA INSURANCE COMPANY, LTD.  
dba: SHERATON PRINCESS KAIULANI HOTEL and  
ACCLAMATION INSURANCE MANAGEMENT SERVICES  
Employer/Insurance Carrier-Appellant, and  
SPECIAL COMPENSATION FUND, Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(CASE NO. AB 2001-250 (2-98-12222))

SUMMARY DISPOSITION ORDER

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

In this workers' compensation case, employer Kyo-Ya Insurance Company, Ltd., dba Sheraton Princess Kaiulani Hotel, and its insurance adjuster, Acclamation Insurance Management Services (collectively, the Employer), appeal the February 7, 2003 decision and order of the Labor and Industrial Relations Appeals Board (the Board). The Board's decision and order affirmed the May 24, 2001 decision of the Director of Labor and Industrial Relations that denied the Employer's claim to apportionment of liability for a permanent partial disability award between the Employer and Appellee Special Compensation Fund. The Employer purports to also appeal the March 18, 2003 order of the Board that denied the Employer's February 26, 2003

motion for reconsideration.<sup>1</sup>

After a sedulous 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 decide that the Employer's primary point of error on appeal -- that the Board erred as a matter of law by misapplying Hawaii Revised Statutes (HRS) § 386-33 (Supp. 2004), as interpreted in Flores v. City and County of Honolulu, 67 Haw. 663, 666-70, 701 P.2d 1282, 1285-87 (1985) -- is without merit. The Board did not err as a matter of law. Bumanglag v. Oahu Sugar Co., Ltd., 78 Hawai'i 275, 282, 892 P.2d 468, 475 (1995) ("HRS § 386-1 (1985) defines disability as a 'loss or impairment of a physical or mental function[]' . . . for purposes of rating a preexisting disability"). See also HRS § 386-1 (1993) (definition of "disability"). Quite simply, the Board did not credit the apportionment opinion of John Sterling Endicott, M.D., M.P.H. (Dr. Endicott), upon which all of the Employer's apportionment opinions were based: "We do not credit Dr. Endicott's apportionment opinion, because there is no basis to support his opinion." As the supreme court has held, "It is well established

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<sup>1</sup> The Employer does not specify or argue error with particular respect to the March 18, 2003 order that denied the Employer's February 26, 2003 motion for reconsideration. Hence, we will not review and thus affirm the March 18, 2003 order. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2003); Wright v. Chatman, 2 Haw. App. 74, 76-77, 625 P.2d 1060, 1062 (1981); HRAP Rule 28(b)(7) (2003); Weinberg v. Mauch, 78 Hawai'i 40, 49, 890 P.2d 277, 286 (1995); In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401, 438 n.33, 83 P.3d 664, 701 n.33 (2004).

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that courts decline to consider the weight of the evidence to ascertain whether it weighs in favor of the administrative findings, or to review the agency's findings of fact by passing upon the credibility of witnesses or conflicts in testimony, especially the findings of an expert agency dealing with a specialized field. Therefore, we will not pass upon the doctors' relative credibility." Igawa v. Koa House Rest., 97 Hawai'i 402, 409-10, 38 P.3d 570, 577-578 (2001) (footnote, citation and block quote format omitted)). Cf. In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001) ("an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact" (quoting State v. Jenkins, 93 Hawai'i 87, 101, 997 P.2d 13, 27 (2000))).

Therefore,

IT IS HEREBY ORDERED that the February 7, 2003 decision and order and the March 18, 2003 order of the Board are affirmed.

DATED: Honolulu, Hawaii, January 26, 2005.

On the briefs:

Brian G.S. Choy and Keith M. Yonamine  
(Law Offices of Brian G.S. Choy), for  
Employer/Insurance Carrier-Appellant.

Acting Chief Judge

Frances E. H. Lum and  
Herbert B.K. Lau,  
Deputy Attorneys General,  
State of Hawai'i, for  
Appellee Special Compensation Fund.

Associate Judge

Associate Judge