NO. 25816

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

BERT YOGI, Claimant-Appellant, v.
CITY AND COUNTY OF HONOLULU, DEPARTMENT OF FACILITY MAINTENANCE,
Employer-Appellee, Self-Insured, and
SPECIAL COMPENSATION FUND, Appellee
(Case No. AB 2000-320 (2-97-02279))

AND

BERT YOGI, Claimant-Appellant, v.
HAWAII NEWSPAPER AGENCY, and
TRAVELERS INSURANCE COMPANY, Employer/Insurance Carrier-Appellee
(Case No. AB 2000-385 (2-99-07218))

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

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

In this workers' compensation case, Bert Yogi (Yogi) appeals the April 9, 2003 order entered in a consolidated appeal before the Labor and Industrial Relations Appeals Board (the Board). The Board's order adopted, *in toto*, the February 13, 2003 decision and order proposed by its hearings officer, which affirmed the August 4, 2000 decisions of the Director of the Department of Labor and Industrial Relations (Director), one in Case No. 2-97-02279 and one in Case No. 2-99-07218.

In Case No. 2-97-02279, concerning the February 18, 1997 slip-and-fall accident Yogi suffered while working for the City and County of Honolulu, Department of Facility Maintenance, the Director denied Yogi's claims for (1) medical treatment of

his neck condition after July 30, 1997, (2) concurrent employment benefits, and (3) temporary total disability benefits after July 21, 1998.

In Case No. 2-99-07218, the Director denied Yogi's claim against his concurrent employer, Hawaii Newspaper Agency (HNA), because Yogi did not sustain a personal injury on February 20, 1998, arising out of and in the course of his employment with HNA.

After a meticulous 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 resolve Yogi's points of error on appeal as follows:

1. Yogi contends the Board ignored the Hawaii Revised Statutes (HRS) § 386-85(1) (1993) presumption -- that "the claim is for a covered work injury" -- in finding and concluding that he suffered, at most, a temporary rather than permanent aggravation of his preexisting neck condition in the February 18, 1997 work accident. See Igawa v. Koa House Rest., 97 Hawai'i 402, 407, 38 P.3d 570, 575 (2001) (in "a proceeding for compensation due to an allegedly compensable consequence of a work-related injury . . . . , whether the cause of Claimant's permanent disability was work-related was clearly at issue in the proceedings, and the HRS § 386-85 presumptions applied" (citations omitted)); Korsak v. Hawai'i Permanente Med. Group,

Inc., 94 Hawai'i 297, 306, 12 P.3d 1238, 1247 (2000) (because "work-relatedness is the issue in determining compensability of subsequent injuries, the presumption is applicable"). Yogi misapprehends the Board's decision. The passages Yogi points to on appeal to illustrate the Board's alleged emasculation of the presumption are simply the Board's determinations on the credibility of the witnesses and the weight of the evidence. The record nowhere suggests the Board ignored the presumption.

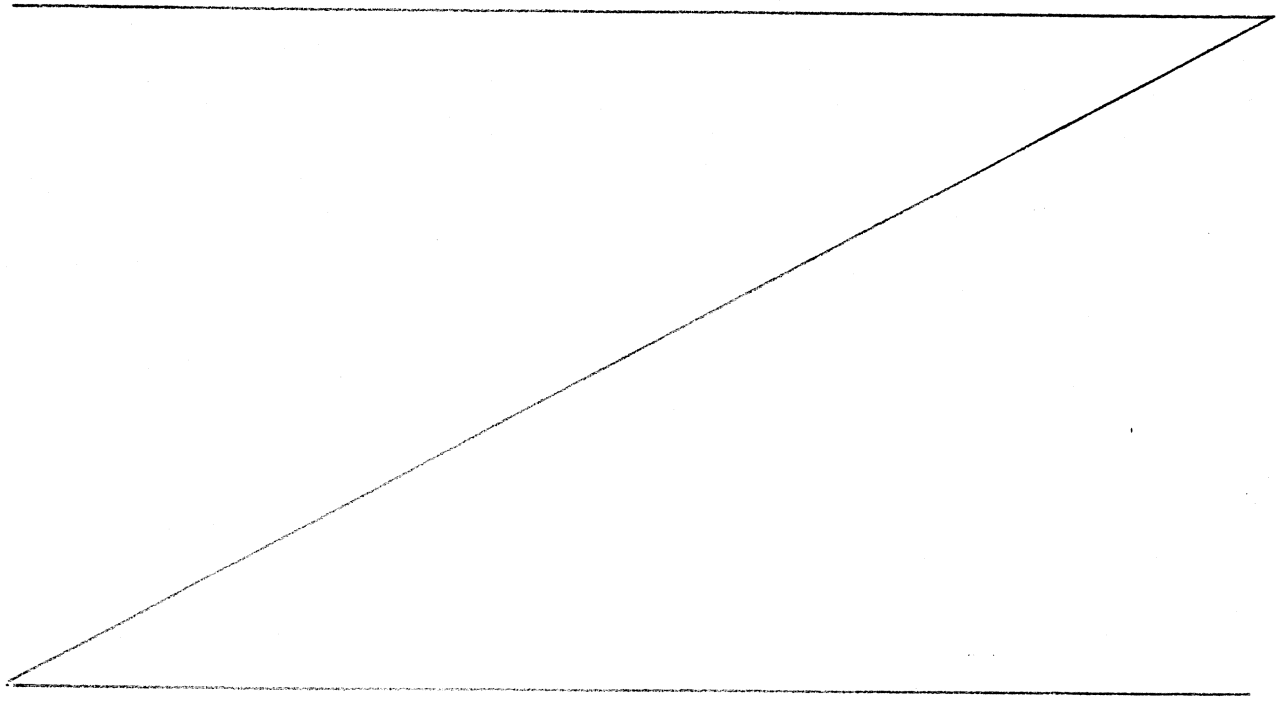
2. Yogi next contends the Board clearly erred in finding and concluding that the February 18, 1997 work injury temporarily, rather than permanently, aggravated his preexisting neck condition. We disagree. In so finding and concluding, the Board chose to credit and weight some witnesses and evidence, but not credit or weight other witnesses and evidence. It is well established 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, 97 Hawai'i at 410, 38 P.3d at 578 (footnote, citation and block quote format omitted). The Board's findings and conclusions were supported by substantial evidence. Korsak, 94 Hawai'i at 306, 12 P.3d at 1247 ("employer may overcome the presumption only with substantial evidence that the injury is unrelated to the employment" (citation and block quote format

omitted)). Hence, the Board did not clearly err. Igawa, 97 Hawai'i at 406, 38 P.3d at 574.

3. Finally, Yogi contends the Board clearly erred in finding and concluding that he did not suffer an industrial injury on February 20, 1998, while working at HNA. Yogi's contention is without merit. The Board's findings and conclusions in this connection were supported by substantial evidence, Korsak, 94 Hawai'i at 306, 12 P.3d at 1247, including Yogi's own admissions, and those made by others on his behalf, that he did not injure himself or aggravate any previous injury while working at HNA, and that his HNA claim was filed for strategic purposes only. Thus, the Board did not clearly err in this regard. Igawa, 97 Hawai'i at 406, 38 P.3d at 574.



Therefore,

IT IS HEREBY ORDERED that the April 9, 2003 order of the Board is affirmed.

DATED: Honolulu, Hawai'i, November 28, 2005.

On the briefs:

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Acting Chief Judge

Associate Judge

Associate Judge