

NO. 26369

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LANI CAPUA, Claimant-Appellant,
v.
WEYERHAEUSER COMPANY, Employer-Appellee, Self-Insured

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APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2001-230 (2-92-15704))

SUMMARY DISPOSITION ORDER

(By: Nakamura, and Fujise, JJ.,
and Foley, Presiding Judge, dissenting)

In this workers' compensation case, Claimant-Appellant Lani Capua sought vocational rehabilitation benefits after she was issued a permanent partial disability award for a low back injury. The Labor and Industrial Relations Appeals Board (LIRAB) denied Capua's claim for vocational rehabilitation benefits based on Hawaii Administrative Rules (HAR) § 12-14-36, which provides in relevant part:

(a) An employee who has been issued a permanent partial disability award by the [D]irector [of the Department of Labor and Industrial Relations] . . . is determined to have waived the right to rehabilitation.

On appeal, Capua argues that LIRAB erred in relying on HAR § 12-14-36 in denying her request for vocational rehabilitation benefits because the regulation "is invalid as inconsistent with the Hawaii Workers' Compensation Law," HRS Chapter 386.¹ We disagree with Capua and affirm the LIRAB's decision.

I.

Capua was employed as a fibreboard handler for Employer-Appellee Weyerhaeuser Company. On July 8, 1992, Capua

¹ In response to our request, the Attorney General of the State of Hawaii submitted an amicus curiae brief on the validity of Hawaii Administrative Rules (HAR) § 12-14-36.

sustained a low back injury at work, but she continued to work until September 1992, when her doctor ordered that she rest. Weyerhaeuser gave Capua temporary light-duty work upon her return to work in November 1992, and she gradually worked her way back to full-time status. As a result of her low back injury, Capua's physician imposed permanent lifting restrictions that prevented her from performing the usual and customary duties of her pre-injury position.

On December 4, 1996, the Director of the Department of Labor and Industrial Relations (the Director) issued a decision awarding Capua permanent partial disability (PPD) benefits for an eight percent impairment of the whole person, as well as temporary total disability benefits and temporary partial disability benefits. Thereafter, Capua continued to perform light-duty work on a full-time basis for Weyerhaeuser. In 1996 or 1997, Weyerhaeuser advised Capua that it would not be able to provide her with light-duty work indefinitely. Weyerhaeuser reiterated that advice in a letter to Capua dated July 9, 1999, and offered to provide her with vocational rehabilitation services so that she could secure employment elsewhere. Between July of 1999 and July of 2000, Capua did not follow up on Weyerhaeuser's offer of vocational rehabilitation services. Weyerhaeuser extended the time for Capua to make a decision on its offer to October 18, 2000, but then terminated Capua on October 16, 2000, and denied any liability for vocational rehabilitation services.

II.

We reject Capua's claim that HAR § 12-14-36 "is invalid as inconsistent with [HRS Chapter 386]." At the time Capua's injury became manifest, HRS § 386-72 (1993) provided in relevant part that the Director "shall make rules, not inconsistent with [HRS Chapter 386], which the [D]irector deems necessary for or

conducive to its proper application and enforcement.

HAR § 12-14-36 implements HRS § 386-25 (1993), which provided in relevant part:

(a) The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner.

"It is axiomatic that an administrative rule cannot contradict or conflict with the statute it attempts to implement." Hyatt Corp. v. Honolulu Liquor Comm'n., 69 Haw. 238, 241, 738 P.2d 1205, 1206 (1987) (quoting Agsalud v. Blalack, 67 Haw. 588, 591, 699 P.2d 17, 19 (1985)). A well established rule of statutory construction provides that

where an administrative agency is charged with the responsibility of carrying out the mandate of a statute which contains words of broad and indefinite meaning, courts accord persuasive weight to administrative construction and follow the same, unless the construction is palpably erroneous.

Hyatt, 69 Haw. at 242-43, 738 P.2d at 1208 (citations omitted) (quoting, Treloar v. Swinerton & Walberg Co., 65 Haw. 415, 424, 653 P.2d 420, 426 (1982)) (citations omitted); see also Sam Teague, Ltd. v. Hawai'i Civil Rights Comm'n., 89 Haw. 269, 276 n.2, 971 P.2d 1104, 1111 n.2 (1999).

HAR § 12-14-36 establishes a reasonable deadline -- measured by the employee's acceptance of compensation for PPD -- for an employee who has suffered a PPD to obtain vocational rehabilitation services.² The regulation filled the void left by the statute's silence on the time by which an employee with a PPD would have to obtain vocational rehabilitation services. The requirement that an employee secure vocational rehabilitation services before accepting a PPD award is rationally related to the statutory purposes of vocational rehabilitation, which is to

² The United States Supreme Court has recognized that while "[d]eadlines are inherently arbitrary," they are "often essential to accomplish necessary results." United States v. Boyle, 469 U.S. 241, 249 (1985); United States v. Locke, 471 84, 94 (1985).

restore the employee's earning capacity and to return the employee to work in an expeditious and a cost-effective manner.

Especially as applied to Capua, HAR § 12-14-36 was consistent with HRS Chapter 386. For Capua to receive PPD benefits, it was necessary for her medical condition to have stabilized to the point where no further improvement could reasonably be expected so that her PPD impairment could be rated. Capua's PPD award was issued more than four years after she had been injured and had returned to work. Thus, Capua had ample time to seek vocational rehabilitation services before obtaining her PPD award. By virtue of HAR § 12-14-36, she was also on notice that by obtaining the PPD award, she was waiving her rights to vocational rehabilitation. We conclude that the LIRAB did not err in relying on HAR § 12-14-36 in denying Capua's claim for vocational rehabilitation benefits. See Hyatt, 69 Haw. at 242-43, 738 P.2d at 1208.³

III.

We affirm the LIRAB's Proposed Decision and Order filed on November 19, 2003, and its Order Adopting Proposed Decision and Order filed on December 30, 1993.

DATED: Honolulu, Hawai'i, September 27, 2007.

On the briefs:

Dennis W.S. Chang
for Claimant-Appellant

Ronald Y.K. Leong
Dan Ko Obuhanych
for Employer-Appellee

Dorothy Sellers
State Solicitor General
for Amicus Curiae


Associate Judge


Associate Judge

³ The other points of error raised on appeal by Claimant-Appellant Lani Capua (Capua) are rendered immaterial by our decision on her principal issue. We thus decline to address them. The amicus curiae suggests that Employer-Appellee Weyerhaeuser Company's offer to provide Capua with vocational rehabilitation services, which Weyerhaeuser was not obligated to provide under the Hawai'i Workers' Compensation Law (Hawaii Revised Statutes Chapter 386), was nevertheless supported by consideration and enforceable under contract law. We do not reach this issue because it was not raised by Capua on appeal.