

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 26652

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

WAYNE S. HESS, Claimant-Appellee, v.  
ALOHA AIRLINES, INC., and HAWAII INSURANCE GUARANTY ASSOCIATION,  
Employer/Insurance Carrier-Appellant, and  
SPECIAL COMPENSATION FUND, Appellee

NORMA T. YERA  
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STATE OF HAWAII

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APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(CASE NO. AB 2002-368) (2-96-01855)

SUMMARY DISPOSITION ORDER

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

In this workers' compensation case, Aloha Airlines, Inc. and its insurance carrier Hawaii Insurance Guaranty Association (collectively, Employer) appeal the May 4, 2004 decision and order of the Labor and Industrial Relations Appeals Board (the Board). The Board's decision and order affirmed the July 22, 2002 decision of the Director of Labor and Industrial Relations that denied Employer's request for apportionment of permanent partial disability benefits with the Special Compensation Fund. Employer also appeals the June 2, 2004 order of the Board that denied Employer's motion for reconsideration.

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 dispose of Employer's points of error on appeal as follows:

(1) Inasmuch as we are loath 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[,] "Igawa v. Koa House Rest., 97 Hawai'i 402, 410, 38 P.3d 570, 578 (2001) (citation and internal block quote format omitted), we conclude there was substantial evidence to support the Board's finding that there was no "previous permanent partial disability already existing prior to the injury for which compensation [was] claimed," Hawaii Revised Statutes (HRS) § 386-33 (Supp. 2004), and hence the Board did not clearly err in so finding. Igawa, 97 Hawai'i at 406, 38 P.3d at 574.

2. The Board's application of HRS § 386-33, as interpreted by the supreme court in Flores v. City and County of Honolulu, 67 Haw. 663, 668-69, 701 P.2d 1282, 1286 (1985), was correct. Keanini v. Akiba, 93 Hawai'i 75, 79, 996 P.2d 280, 284 (App. 2000).

3. The Board did not abuse its discretion in denying Employer's motion for reconsideration. Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002).

Therefore,

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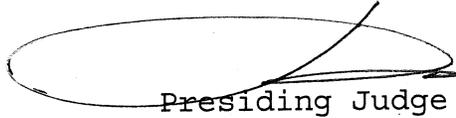
IT IS HEREBY ORDERED that the May 4, 2004 decision and order of the Board is affirmed along with its June 2, 2004 order denying Employer's motion for reconsideration.

DATED: Honolulu, Hawai'i, March 14, 2007.

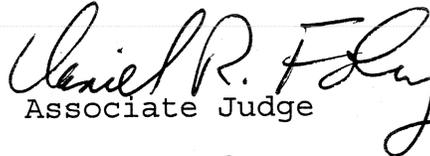
On the briefs:

Brian G.S. Choy and  
Keith M. Yonamine,  
for Employer/Insurance  
Carrier-Appellant.

Frances E.H. Lum,  
Deputy Attorney General,  
State of Hawai'i,  
for Appellee  
Special Compensation Fund



Presiding Judge



Associate Judge



Associate Judge