NO. 26886

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

ANGELA FITZGERALD, Claimant-Appellant,
v.
CHINA AIRLINES, LTD., and
FIRST INSURANCE COMPANY OF HAWAII, LTD.,
Employer/Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2003-085 (2-02-03319))

SUMMARY DISPOSITION ORDER
(By: Recktenwald, Chief Judge, Foley, and Nakamura, JJ.)

Claimant-Appellant Angela Fitzgerald was injured outside her work premises during her lunch hour while going to visit a doctor to seek treatment for a personal illness. The Labor and Industrial Relations Appeals Board (LIRAB) concluded that Fitzgerald's off-premises injuries were not work-related and denied her claim for workers' compensation benefits. Fitzgerald appeals from the LIRAB's August 3, 2004, Decision and Order and its September 9, 2004, Amended Decision and Order (collectively referred to as "the LIRAB's Decision"), which denied her claim for benefits.[1]

On appeal, Fitzgerald challenges the LIRAB's determination that her injuries were not work-related, arguing that the LIRAB erred in: 1) failing to apply the presumption of workers' compensation coverage under Hawaii Revised Statutes (HRS) § 386-85 (1993); 2) determining that her injuries occurred during her lunch break; and 3) applying the unitary test to conclude that her visit to the doctor was a personal mission that

[1] The Amended Decision and Order amended Finding of Fact No. 12 of the Decision and Order but otherwise did not change the Decision and Order.

was not work-related. For the reasons set forth below, we disagree with Fitzgerald and affirm the LIRAB's Decision.

I.

Fitzgerald was employed as a ticketing and reservation supervisor for China Airlines, Ltd. China Airlines had a written policy that employees be allowed to take a 30-minute lunch break and two 10-minute coffee breaks. It also had a long-standing unwritten policy of allowing employees to combine the two 10-minute coffee breaks with the 30-minute lunch break and of throwing in an extra 10 minutes so that employees could enjoy a one-hour lunch break. All the employees at Fitzgerald's office chose this option and took one-hour lunch breaks, during which they were allowed to leave the work premises and attend to personal matters without the permission or approval of China Airlines.

Fitzgerald sought workers' compensation benefits for injuries she sustained on November 27, 2001, the day on which she returned to work after being at home on personal leave for ten days. Fitzgerald had been ill for at least two days prior to her return to work, suffering from abdominal pains, and had a history of recurrent gastrointestinal or stomach problems spanning many years. During the six weeks prior to her return to work, she had been actively treated by her doctor, Dr. Walter Chang, on a weekly or biweekly basis for a stomach problem, including gastritis, and a urinary problem. On the night before her return to work, Fitzgerald took medication for her stomach and slept with a hot water bottle on her abdomen to ease the pain. Although not feeling well, Fitzgerald decided to go to work because she was not sick enough to stay home.

After arriving at work on November 27, 2001, Fitzgerald began to experience stomach pains and developed a headache. She called Dr. Chang and scheduled an appointment for noon, intending to return to work after the appointment. She punched out at 11:36 a.m. and drove her car to Dr. Chang's office, which was located in the physician's office building at St. Francis

Hospital. While descending stairs in the parking structure for that building, Fitzgerald fell and sustained injuries, including fracturing her arm. Because of her injuries, she was not able to return to work until January of 2002. Fitzgerald applied for workers' compensation benefits for the injuries she sustained in the fall, but her claim was denied by the Director of the Department of Labor and Industrial Relations and by the LIRAB, which affirmed the Director's decision.

II.

A.

Fitzgerald's primary argument on appeal is that the injuries from her fall were work-related because they occurred while she was engaged in an activity that was of benefit to her employer. Although conceding that she was on "a personal mission to relieve her of her ailments," Fitzgerald contends that her visit to the doctor benefitted China Airlines because she planned to return to work after obtaining relief from her illness.

The LIRAB, however, concluded that:

> the act of seeking medical treatment at an off-premises doctor's office for a condition that originated at home at least two days before was clearly not an essential part of [Fitzgerald's] work duties, and not incidental to her employment as an airline ticketing and reservations supervisor.

In support of its conclusion, the LIRAB noted that there was no evidence that China Airlines: 1) had ordered, directed, or even encouraged Fitzgerald to seek medical treatment; 2) had required or needed Fitzgerald to stay at work to finish her shift; or 3) would have denied Fitzgerald's request to take sick leave.

We hold that the LIRAB did not fail to apply HRS § 386-85(1), which creates a presumption "[t]hat the claim is for a covered work injury[,]" and did not err in applying the unitary test for work-relatedness. Davenport v. City and County of Honolulu, Honolulu Fire Department, 100 Hawai'i 481, 490, 60 P.3d 882, 891 (2002) (articulating the unitary test). We agree with the LIRAB's determination that the injuries Fitzgerald sustained while on a personal, off-premises mission to visit her doctor

during her lunch hour were not work-related. See Davenport, 100 Hawai'i at 492, 60 P.3d at 893 (considering the totality of circumstances in determining work-relatedness, taking into account the benefit to the employer and the employer's acquiescence in the activity); Tate v. GTE Hawaiian Telephone Co., 77 Hawai'i 100, 104, 881 P.2d 1246, 1250 (1994) ("Personal errands are not, by their nature, related to employment.").

B.

Fitzgerald argues that "the [LIRAB] erred by concluding that because the 20-minute coffee break is taken in conjunction with the 30-minute lunch break, the 20-minute coffee break looses its character as a coffee break and thus Fitzgerald's injury occurred during her 'lunch break[.]'" Whether Fitzgerald's injuries took place during her coffee break or lunch break is significant because in Pacheco v. Orchids of Hawaii, 54 Haw. 66, 502 P.2d 1399 (1972), the Hawai'i Supreme Court held that a worker who, during her 15-minute coffee break, was killed in a car accident while going to cash her paycheck was entitled to workers' compensation benefits. Id. at 67-70, 502 P.2d at 1400-02. Fitzgerald contends that Pacheco is controlling authority for her claim and that the LIRAB erred by relying on its determination that her injuries occurred during her lunch break in refusing to apply Pacheco. We disagree.

Lunch breaks are significantly longer in duration than coffee breaks and afford employees greater freedom of movement. As a general rule, injuries occurring while an employee has left the work premises for lunch are not considered to be work-related. 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law, § 13.05[1] (2007). The justification for this general rule is that "normally the duration of the lunch period, when lunch is taken off the premises, is so substantial and the employee's freedom of movement so complete that the obligations and controls of employment can justifiably be said to be in suspension during this interval." Id. at § 13.05[4].

We conclude that the LIRAB did not err in finding that Fitzgerald's two 10-minute coffee breaks lost their character as coffee breaks when she combined them with her 30-minute lunch break so she could enjoy an hour break for lunch. We further conclude that the LIRAB properly determined that Fitzgerald's injuries occurred during her lunch break and that Pacheco was inapposite.

C.

We reject Fitzgerald's claim that her injuries were work-related because it was conceivable that the stomach and neck pains which prompted her to visit the doctor were "the result of the stress of her position as supervisor." Supported by substantial evidence in the record, the LIRAB found:

> Based on [Fitzgerald's] trial testimony, the medical records from Dr. Chang, and the emergency room records from St. Francis, it is evident that [Fitzgerald's] abdominal pains preexisted November 27, 2001, and was a part of a recurrent personal problem for which she was actively seeking treatment. The evidence shows that [Fitzgerald] was suffering from abdominal pain at home for at least two days prior to November 27, 2001, and that the pain that she had on the morning of November 27, 2001, was similar to the stomach problems that she has had before. There was no medical evidence that work or work stress on November 27, 2001, caused or aggravated [Fitzgerald's] abdominal pain and headache.

In this regard, we note that "an ailment does not become [a work-related] occupational disease simply because it is contracted on the employer's premises." Flor v Holguin, 94 Hawai'i 70, 80, 9 P.3d 382, 392 (2000) (quoting Anderson v. General Motors Corp., 442 A.2d 1359, 1360 (Del. 1982)). Instead, an ailment becomes a compensable occupational disease if "the employer's working conditions produced the ailment as a natural incident of the employee's occupation in such a manner as to attach [to that occupation] a hazzard distinct from and greater than the hazzard attending employment in general." Flor, 94 Hawai'i at 80-81, 9 P.3d at 392-93 (quoting Anderson, 442 A.2d at 1361). Under this test, we do not believe that Fitzgerald's recurring and ongoing personal ailment which manifested itself on November 27, 2001, qualified as a work-related occupational disease.

III.

The LIRAB's August 3, 2004, Decision and Order, as amended by its September 9, 2004, Amended Decision and Order, is affirmed.

DATED: Honolulu, Hawai'i, August 30, 2007.

On the briefs:

Ronald G.S. Au
Ryan G.S. Au
for Claimant-Appellant

Paul A. Brooke
for Employer/
Insurance Carrier-Appellee

Chief Judge

Associate Judge

Associate Judge