

NO. 27352

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PATRICK E. BOYLE, Claimant-Appellant,
v.
MARYL PACIFIC CONSTRUCTORS, INC.,
and
HAWAII INSURANCE GUARANTY ASSOCIATION,
Employer/Insurance Carrier-Appellee

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2002-355 (2-00-16298))

SUMMARY DISPOSITION ORDER

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

In this workers' compensation case, Claimant-Appellant Patrick E. Boyle appeals from the Decision and Order of the Labor and Industrial Relations Appeals Board (LIRAB) entered on May 17, 2005. The LIRAB ruled, pursuant to Hawaii Revised Statutes (HRS) § 386-21 (Supp. 2000),¹ that Boyle's employer, Maryl Pacific Constructors, Inc. (Maryl Pacific), was not liable for payment for Boyle's bilateral knee replacement surgeries because the surgeries were not reasonably necessitated by the nature of his August 10, 2000, work injury. In doing so, the LIRAB reversed the decision of the Director of the Department of Labor and Industrial Relations who had found Maryl Pacific liable for payment for Boyle's bilateral knee replacements.

¹ At the time that Claimant-Appellant Patrick E. Boyle suffered his work injury on August 10, 2000, Hawaii Revised Statutes (HRS) § 386-21 (Supp. 2000) provided in relevant part:

a) Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical care, services, and supplies as the nature of the injury requires.

On appeal, Boyle argues that the LIRAB erred in: 1) finding that the August 10, 2000, work accident did not result in Maryl Pacific being liable for Boyle's knee replacement surgeries; 2) failing to credit the testimony of Boyle and the opinions of his experts and instead crediting the opinions of Maryl Pacific's experts; and 3) failing to state in its decision whether or not it applied certain legal standards and found a work injury by disease. For the reasons discussed below, we affirm.

I.

Boyle was employed as a carpenter and cement contractor for most of his working life. On January 18, 1999, he was involved in a non-work motor vehicle accident and sustained back, neck, and bilateral knee injuries. Boyle was later diagnosed in 1999 as having osteoarthritis in both knees and a lateral meniscus tear in the left knee. An arthroscopy and chondroplasty were performed on Boyle's right knee in June 1999 and an arthroscopy and lateral partial meniscectomy on his left knee in August 1999. He remained symptomatic in his knees and back following the surgeries.

In about January 2000, Boyle began working for Maryl Pacific as a carpenter. On April 10, 2000, Boyle suffered a back injury at work from heavy lifting. He was disabled from work for a short period, then returned to work and placed on light duty for several weeks.

On August 10, 2000, Boyle injured both knees at work when he lost his balance and fell on his knees as he stepped off a ladder onto the ground. At the time of the August 10, 2000, accident, Boyle was still taking pain medication, seeing doctors, and undergoing physical therapy for his back. Boyle did not return to work after the August 10, 2000, accident. Boyle underwent knee replacement surgery on his left knee on June 18, 2001, and on his right knee on February 25, 2002, which were paid for by Boyle's personal medical insurer.

In concluding that Maryl Pacific was not liable for the knee replacement surgeries, the LIRAB credited the opinions of Maryl Pacific's medical experts, Dr. Kent Davenport and Dr. Bruce Hector, and did not credit the opinions of Boyle's medical experts, Dr. Kerry Hubbs and Dr. John Endicott. Maryl Pacific's medical experts opined that prior to the August 10, 2000, accident, Boyle already had an advanced bone-on-bone arthritic condition in both knees that required knee replacement surgery. These experts further opined that Boyle sustained a bone bruise or soft tissue injury from the August 10, 2000, accident that did not aggravate his pre-existing arthritic knee condition and did not accelerate or hasten the need for the knee replacement surgeries.

Boyle's experts agreed that Boyle's preexisting arthritic knee condition would eventually have required him to undergo knee replacement surgery on both knees. However, they opined that the August 10, 2000, accident permanently aggravated his arthritic knee condition, accounting for 20% of that condition, and hastened the need for the knee replacement surgeries. In support of their opinion, both doctors relied on the fact that Boyle had been able to work before the August 10, 2000, accident but did not return to work after the accident. The LIRAB considered this circumstance, but was not persuaded by it. The LIRAB noted that before and up to the August 10, 2000, accident, Boyle was having back and knee pain, was undergoing physical therapy for his April 2000 back injury, and was having difficulty working. The LIRAB found that:

In view of [Boyle's] concurrent back condition, his diminished capacity to perform construction work through August 10, 2000, his ongoing back and knee symptoms prior to August 10, 2000, and evidence of a bilateral end-stage arthritic knee condition that preexisted the August 10, 2000 injury, we are not persuaded that [Boyle's] failure to return to work after August 10, 2000, is, by itself, an adequate basis to show that the injury had aggravated [Boyle's] arthritis to the extent that bilateral knee replacement surgery was required.

Having chosen to credit the opinions of Maryl Pacific's experts and not the opinions of Boyle's experts, the LIRAB found that:

[Boyle] suffered a soft tissue injury or bone bruises on August 10, 2000, and that the injury did not, in any way, aggravate or accelerate [Boyle's] total loss of cartilage in the knees. Because bilateral knee replacement surgery was performed for the bone-on-bone arthritic condition, and since the August 10, 2000 injury did not impact or affect the arthritis in the knees, we find that the bilateral knee replacement surgery was not reasonably necessitated by the nature of the August 10, 2000 work injury.

II.

The essence of Boyle's argument on appeal is that the LIRAB clearly erred in its determinations regarding the weight and credibility of the evidence. In particular, Boyle contends that the LIRAB should have credited his testimony and the opinions of his medical experts instead of the opinions of Maryl Pacific's medical experts.² "However, the credibility of witnesses and the weight to be given their testimony are within the province of the trier of fact and, generally, will not be disturbed on appeal." Tamashiro v. Control Specialist, Inc., 97 Hawai'i 86, 92, 34 P.3d 16, 22 (2001).

We conclude that the opinions of Maryl Pacific's medical experts constituted substantial evidence to support the LIRAB's decision. The LIRAB did not err in crediting the opinions of Maryl Pacific's medical experts and in relying on those opinions in determining that Maryl Pacific was not liable for Boyle's knee replacement surgeries. See Nakamura v. State, 98 Hawai'i 263, 270, 47 P.3d 730, 737 (2002) (concluding that the LIRAB is not required to reconcile conflicting expert testimony in favor of the claimant).

Boyle argues that the LIRAB relied on erroneous factors in determining that his medical experts were not credible. Boyle contends that the LIRAB mistakenly found that Drs. Hubbs

² Boyle testified before the Labor and Industrial Relations Appeals Board (LIRAB) as did Dr. John Endicott, Dr. Kent Davenport, and Dr. Bruce Hector. The LIRAB also received the deposition testimony of Dr. Kerry Hubbs.

and Endicott: 1) did not review Boyle's Waianae Coast Comprehensive Health Care (WCCHC) records that pre-dated the August 10, 2000, injury; 2) were not aware of Boyle's symptomatic knee condition prior to the August 10, 2000, injury; and 3) were unable to show that the August 10, 2000, injury aggravated Boyle's preexisting arthritic condition. Boyle's contentions do not entitle him to any relief.

Except for reports related to Boyle's 1999 arthroscopic knee surgeries, Dr. Hubbs only reviewed another doctor's summary of the WCCHC records, and Dr. Hubbs rendered his opinion on the understanding that Boyle's knees were asymptomatic from the 1999 arthroscopic surgeries until the August 10, 2000, accident. The LIRAB did not err in discrediting Dr. Hubb's opinion based on his attenuated review of the WCCHC records and his belief that Boyle was asymptomatic prior to the August 10, 2000, injury. The LIRAB did err in stating that Dr. Endicott had not reviewed the WCCHC records and was not aware of Boyle's symptomatic knees. The LIRAB, however, cited other reasons for rejecting Dr. Endicott's opinion, including his inability to identify any objective findings from diagnostic testing to show that the August 10, 2000, fall aggravated Boyle's underlying arthritic knee condition. We conclude that the LIRAB's assessment of Dr. Endicott's opinion would have been the same had it known that Dr. Endicott had reviewed the WCCHC records and was aware of Boyle's symptomatic knees.

Boyle's argument that the LIRAB erred in finding that Drs. Hubbs and Endicott were unable to show that the August 10, 2000, injury aggravated Boyle's preexisting arthritic condition is simply a restatement of Boyle's claim that the LIRAB should have credited the opinions of Drs. Hubbs and Endicott instead of the opinions of Maryl Pacific's experts. We decline to overturn the LIRAB's credibility determinations and the weight it gave to the evidence. Tamashiro, 97 Hawai'i at 92, 34 P.3d at 22.

We reject Boyle's argument that the LIRAB erred in failing to state in its decision whether or not it applied

certain legal standards and found a work injury by disease. The LIRAB's decision was not rendered defective by its failure to state all the legal standards it applied. See Igawa v. Koa House Restaurant, 97 Hawai'i 402, 409 n.6, 38 P.3d 570, 577 n.6 (2001) (stating that the appellate courts presume the LIRAB applied the correct standards); Tate v. GTE Hawaiian Telephone Co., 77 Hawai'i 100, 107, 881 P.2d 1246, 1253 (1994) (holding that the issue is not whether the LIRAB referred to the statutory presumption in its decision but whether there was substantial evidence to rebut the presumption). The LIRAB was also not required in its decision to state matters that it did not find.

III.

The LIRAB's Decision and Order entered on May 17, 2005, is affirmed.

DATED: Honolulu, Hawai'i, October 18, 2007.

On the briefs:

Anson O. Rego,
for Claimant-Appellant

Wayne W.H. Wong,
for Employer/
Insurance Carrier-Appellee


Presiding Judge


Associate Judge


Associate Judge