

NO. 27518

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

EM. RIMANDO  
CLERK, APPELLATE COURT  
STATE OF HAWAII

2007 APR 10 AM 9:41

FILED

THOMAS LEPERE, Appellant-Appellant, v. ERNEST HANAKAMI,  
APPEALS OFFICER, EMPLOYMENT SECURITY APPEALS OFFICE,  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS; JOHN F.  
PEYTON, JR., DIRECTOR, DEPARTMENT OF PUBLIC SAFETY; and  
SHELLY NOBRIGA, Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(Civ. No. 04-1-2036)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Nakamura, JJ.)

This secondary appeal by Appellant-Appellant Thomas Lepere (Lepere) stems from his dismissal from employment as an Adult Corrections Officer III with the State of Hawai'i (the State), Department of Public Safety (DPS), effective January 8, 2004, for refusing or failing to comply with a DPS warden's order to report for a mandatory Medical Fitness for Duty Evaluation (MFDE).

Following his dismissal, Lepere filed a grievance through his union, challenging the dismissal as wrongful and seeking various remedies, including: (1) back pay and compensatory damages; (2) restoration of his employee rights, benefits, and status; and (3) injunctive relief to restore the status quo and prevent future recurring violations. Lepere also

filed a claim for unemployment benefits with the State Department of Labor and Industrial Relations (DLIR).

By a letter dated January 26, 2004, a DLIR claims examiner notified Lepere that, pursuant to Hawaii Revised Statutes (HRS) § 383-30(2) (1993), Lepere was disqualified from receiving unemployment benefits because he had been discharged for misconduct. Lepere thereafter appealed the decision of the claims examiner to the DLIR Employment Security Appeals Referees' Office and when that appeal was unsuccessful, filed an appeal, *pro se*, with the Circuit Court of the First Circuit (the circuit court).

During proceedings before the circuit court,<sup>1</sup> Lepere, despite having voluntarily applied for unemployment benefits, filing the appeal, and invoking the jurisdiction of the circuit court, challenged the circuit court's jurisdiction to hear the appeal, claiming that HRS § 89-19 (Supp. 2006)<sup>2</sup> "take[s] precedence and should preempt any hearings or decisions heard in other improper jurisdictions." On August 30, 2005, the circuit

---

<sup>1</sup>The Honorable Eden Elizabeth Hifo presided.

<sup>2</sup>Hawaii Revised Statutes § 89-19 (Supp. 2006) provides now, as it did when the underlying proceedings took place, as follows:

**Chapter takes precedence, when.** This chapter shall take precedence over all conflicting statutes concerning this subject matter and shall preempt all contrary local ordinances, executive orders, legislation, or rules adopted by the State, a county, or any department or agency thereof, including the departments of human resources development or of personnel services or the civil service commission.

court entered: (1) an order concluding that it had jurisdiction over Lepere's appeal and affirming Decision 0400254 of the Employment Security Appeals Referees' Office, dated October 12, 2004; and (2) the Final Judgment against Lepere and in favor of Appellees-Appellees Nelson B. Befitel, Director of DLIR; Ernest Hanaumi, Appeals Officer, Employment Security Appeals Referees' Office, DLIR (Appeals Officer); John F. Peyton, Jr., Director of DPS; and Shelly Nobriga, a DPS employee.

Lepere contends on appeal that: (1) HRS § 89-19 "precluded [Lepere's] termination other than in accordance with the terms and conditions of his union's collective bargaining agreement's grievance procedures, which proceedings are still ongoing[,] and therefore, the circuit court lacked jurisdiction to hear his case; and (2) the circuit court reversibly erred in affirming the Appeals Officer's decision because the circuit "court's findings, based solely on [Lepere's] refusal to consent to a retaliatory medical examination, were materially inconsistent and clearly erroneous and reversible error by it and by the Employment Security Appeals Office[.]"

Based on our review of the record on appeal, we disagree with Lepere. As to Lepere's first contention, we note that the grievance process and the unemployment claims process are totally separate proceedings and there exists no requirement that the grievance process be exhausted before Lepere could be

terminated for misconduct. As to Lepere's second contention, there appears to be no dispute that Lepere failed to comply with an order to undergo an MFDE, despite being disciplined twice before for failing to undergo an MFDE and being warned that his failure to comply with the order would result in his termination.

Accordingly, we affirm the "Order Affirming Employment Security Appeals Referee's [sic] Office's Decision 0400254 Dated October 12, 2000" and the Final Judgment, both entered by the circuit court on August 30, 2005.

DATED: Honolulu, Hawai'i, April 10, 2007.

On the briefs:

Gary Victor Dubin  
for appellant-appellant.

Frances E. H. Lum and  
Robyn M. Kuwabe,  
deputy attorneys general,  
State of Hawai'i,  
for appellee-appellee  
Nelson B. Befitel, Director of  
Labor and Industrial Relations.

James E. Halvorson,  
deputy attorney general,  
State of Hawai'i,  
for appellee-appellee  
John F. Peyton, Jr., Director of  
Department of Public Safety.

*James S. Burns*  
*Corinne K. A. Waterhouse*  
*Craig W. Makamau*