

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28752

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

DEAN A. REINKING, Claimant-Appellant, v.
COUNTY OF HAWAII, HAWAII COUNTY POLICE DEPARTMENT,
Employer-Appellee, Self-Insured, and
STATE OF HAWAII, DEPT. OF HUMAN RESOURCES DEV.,
STATE WORKERS' COMPENSATION DIV.,
Third-Party Administrator-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL
RELATIONS APPEALS BOARD
(Case No. AB 2006-174(H))
(1-95-01132)

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Fujise and Leonard, JJ.)

Claimant-Appellant Dean A. Reinking (**Reinking**) appeals the Labor and Industrial Relations Appeals Board's (**LIRAB**) Decision and Order (**Decision**) in Case No. AB 2006-174(H) (1-95-01132), filed on August 3, 2007.^{1/} ^{2/} The LIRAB concluded, inter alia:

In this case, [Reinking] filed his claim for a psychological condition on April 15, 2004, more than two years after the effects of the injury became manifest. The Board concludes that [Reinking's] April 15, 2004 claim for a psychological condition is time-barred under HRS § 386-82.

On appeal, Reinking contends that his claim is not time-barred by Hawaii Revised Statutes (**HRS**) § 386-82^{3/} because

^{1/} Board Members Roland Q.F. Thom, Carol K. Yamamoto, and David A. Pendleton took part in the Decision.

^{2/} No copy of a "judgment, decree, findings of fact and conclusions of law, order, opinion or decision relevant to any point on appeal" was attached to the opening brief as required by Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 28(b)(3). Counsel for Appellant is warned that future failure to comply with HRAP Rule 28(b)(3) may result in sanctions.

^{3/} HRS § 386-82 provides, in relevant part:

(continued...)

his employer made voluntary payments for injuries stemming from a work-related injury that occurred on August 27, 1995. Therefore, he argues that his later claim, allegedly stemming from the same incident, falls within HRS § 386-83,^{4/} which exempts him from filing a claim within two years. Reinking also argues that he requested to reopen his claim pursuant to HRS § 386-89(c).

Upon careful review of the record and the briefs submitted by the parties and the issue raised by the parties, we resolve Reinking's point of error as follows:

The interpretation of Hawai'i's worker's compensation filing deadlines in Chung v. Food Pantry, Ltd., 2 Haw. App. 136, 627 P.2d 288 (1981), is applicable to this case. Reinking's claim is not time-barred by HRS § 386-82 and falls within the exception of HRS § 386-83 because, in the first instance,

^{3/}(...continued)

§386-82 Claim for compensation; limitation of time.

The right to compensation under this chapter shall be barred unless a written claim therefor is made to the director of labor and industrial relations (1) within two years after the date at which the effects of the injury for which the employee is entitled to compensation have become manifest, and (2) within five years after the date of the accident or occurrence which caused the injury.

^{4/} HRS § 386-83(a) provides:

§ 386-83 When claim within specified time is unnecessary or waived. (a) If payments of income and indemnity benefits have been made voluntarily by the employer, the making of a claim within the time prescribed in section 386-82 shall not be required. No such payments shall be deemed to have been made if the payments are in the nature of a gift and not intended as compensation, or are made by welfare or benefit organizations operating under direction or control of the employer, or are for medical, surgical, or hospital services and supplies, or are made as wages during periods of partial or total disability if the employer notifies the director of labor and industrial relations at the time in writing that such payments of wages are not in lieu of and shall not be considered as compensation.

Reinking's employer voluntarily made payments for treatment of his employment-related injury. See id.^{5/}

Therefore, the LIRAB's August 3, 2007 Decision is vacated and the case is remanded for further proceedings. Accordingly, we need not address Reinking's additional argument.

DATED: Honolulu, Hawai'i, September 26, 2008.

On the briefs:

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Alan L. Wong
(Kidani Law Center)
for Claimant-Appellant

Noralynne K. Pinao
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for Employer-Appellee,
Self-Insured and
Third-Party Administrator/Appellee



Chief Judge



Associate Judge



Associate Judge

^{5/} We note that, in its Answering Brief, Reinking's employer did not address the applicability of either HRS § 386-83 or Chung, although both authorities were cited in Reinking's Opening Brief.