***** FOR PUBLICATION *****

DISSENTING OPINION BY LEVINSON, J.,
IN WHICH MOON, C.J., JOINS

I respectfully dissent.

The majority opinion fails to adhere to the unambiguous language of Hawai'i Administrative Rules (HAR) § 12-5-51(c), see majority opinion at 2 n.1, which implements the "beneficent and humane purpose of relieving the stress of economic insecurity due to unemployment," Camara v. Agsalud, 67 Haw. 212, 216-17, 685 P.2d 794, 797 (1984) (citations omitted), underlying Hawaii's employment security law, Hawai'i Revised Statutes (HRS) Chapter 383. See Allstate Ins. Co. v. Ponce, 105 Hawai'i 445, 454, 99 P.3d 96, 105 (2004) (citations omitted). By neglecting the plain meaning of HAR § 12-5-51(c), the majority has produced an absurd and unjust result. See Allstate Ins. Co., 105 Hawai'i at 454, 99 P.3d at 105 (citations omitted).

For the reasons discussed infra in sections I and II, I would hold as follows: (1) that the Employment Security Appeals Referees' Office's (ESARO's) Decision No. 0001888 was erroneous because (a) its undisputed findings of fact do not support its conclusion that the appellant-appellant Susan C. Medeiros acted in wilful or wanton disregard of the appellees-appellees Castle Resorts' & Hotels' and Hilo Hawaiian Hotel's [collectively hereinafter, "the Employer's"] interests, (b) Medeiros's actions, as a matter of law, do not rise to the level of negligence or carelessness required for a conclusion of wrongful intent or evil design amounting to misconduct, and (c) the decision was not consonant with the beneficent and humane purpose of employment security law; and (2) that, for the foregoing reasons, the circuit court erred in affirming the ESARO's Decision No.

0001888. Accordingly, I would (1) reverse the circuit court's (a) May 4, 2001 order affirming the ESARO's Decision No. 0001888 and (b) May 4, 2001 final judgment and (2) remand this matter to the ESARO for entry of a decision in Medeiros's favor.

I. STATUTORY AND REGULATORY INTERPRETATION

A. HRS § 383-30 Is Clear And Unambiguous And Does Not Provide That Unemployment Benefits Are Limited To Claimants Who Were Terminated Through No Fault Of Their Own.

"When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." In re Doe Children, 105 Hawai'i 38, 53, 93 P.3d 1145, 1160 (2004) (internal citations and quotation signals omitted). Moreover, "[i]t is a cardinal rule of statutory interpretation that, where the terms of a statute are plain, unambiguous and explicit, we are not at liberty to look beyond that language for a different meaning. Instead, our sole duty is to give effect to the statute's plain and obvious meaning." State v. Walker, 106 Hawai'i 1, 8, 100 P.3d 595, 602 (2004) (internal citations and quotation signals omitted).

The majority ignores the foregoing principles, noting at the outset of its analysis that the language of HRS § 383-30 (1993), see majority opinion at 16, is "clear and unambiguous[,]" id., but nevertheless mistakenly delving into the statute's legislative history in order to glean "the intent of the unemployment benefits provisions [as endeavoring] to pay benefits only to those claimants who became involuntarily unemployed through no fault of their own." Majority opinion at 16-18

(emphasis in original). The plain and unambiguous language of HRS § 383-30, however, does not employ any construct of "fault." See majority opinion at 16. Insofar as the majority cites HRS § 383-30(2) in its entirety and observes that the statute is "clear and unambiguous[,]" the majority stumbles in asserting, based on its extraneous review of legislative history, that HRS § 383-30 excludes claimants on the basis of "fault." I further discuss the inapplicability of the majority's construction of "fault" to the present matter infra in section II.A.

B. A Dispositive Application Of HAR § 12-5-51(c) Establishes That Medeiros Did Not Engage In Misconduct.

In any case, HAR § 12-5-51(c), see majority opinion at 2 n.1, the specific regulation implementing HRS § 383-30, see majority opinion at 16, is dispositive as to the present matter. HAR § 12-5-51(c) provides that neither "isolated instances of ordinary negligence or inadvertence" nor "good-faith errors in judgment or discretion" rise to the level of "misconduct." The ESARO Appeals Officer entered the following unchallenged findings of fact (FOFs): (1) that the complainant "was not . . . actually afraid of being hurt by [Medeiros]"; (2) that Medeiros and the complainant "had known each other for nine years and, prior to this incident[,] were on good terms and joked around with one another"; (3) that the co-worker who witnessed the incident "did not perceive [Medeiros's] actions as either violent or threatening[] and . . . was of the opinion that the [complainant] . . . 'took it the wrong way'"; (4) that following the incident, Medeiros, the complainant, and the witness "sat together and talked and laughed for a few minutes"; (5) that Medeiros "had

worked for the Employer for 22 years and had never before been involved in such an incident"; (6) that, because "[n]othing like [this incident] had happened in [Medeiros's] 22 years of prior employment," it "[c]learly . . . was an isolated instance"; (7) that Medeiros's conduct "clearly constituted poor judgment"; and (8) that Medeiros "did not intend to actually threaten or harm her co-worker[.]" (Emphases added.)

The Appeals Officer's FOFs necessarily fall within several of the instances enumerated in HAR § 12-5-51(c) of what does not constitute misconduct. The FOFs indicate that Medeiros committed a "good-faith error[] in judgment," insofar as the Appeals Officer found that Medeiros's conduct "clearly constituted poor judgment" and Medeiros "did not intend to actually threaten or harm her co-worker." Moreover, the Appeals Officer's FOFs track another of HAR § 12-5-51(c)'s illustrations of non-misconduct -- "isolated instances of ordinary negligence" -- the Appeals Officer having expressly found (1) that Medeiros's conduct reflected no more than an "isolated instance" and, (2) that based, inter alia, on Medeiros's relationship and level of comfort with the complainant (to wit, that they were nine-year acquaintances who were on "good terms" and "joked around with one another"), Medeiros's expectation that her conduct would not offend her co-worker constituted only "ordinary negligence."

Nevertheless, and despite her FOFs, the Appeals Officer concluded that Medeiros "was discharged for misconduct connected with . . . work" on the basis that, notwithstanding the fact that Medeiros "did not intend to harm or threaten [her] co-worker," Medeiros's "wilful" breach of her duty to "refrain from treating

[her] co-workers in a manner that can shock and upset them" amounted to "a deliberate disregard of standards of behavior which the Employer had a right to expect of her." But insofar as the Appeals Officer found that, in this "isolated instance," Medeiros "did not intend to harm or threaten [her] co-worker" and instead intended only to "joke" with her co-worker, who was a nine-year acquaintance with whom Medeiros was on "good terms" and had "joked around with" in the past, Medeiros's conduct, ill-advised as it may have been, could not constitute a "wilful" breach of her duty to "refrain from treating [her] co-workers in a manner that can shock and upset them" and could not rise to the level of "deliberate disregard of standards of behavior which the Employer had a right to expect of her." That being the case, the Appeals Officer's COL that Medeiros "was discharged for misconduct connected with . . . work" was wrong.

It therefore follows that the circuit court erred in affirming Decision No. 0001888. As section I of the majority opinion explains, the circuit court reasoned that the question whether Medeiros had been terminated for misconduct turned on "not just one matter that we look at or one dimension that we look at," but rather on "all [of] the circumstances" and that, "in the context of all that was occurring[,] . . . the act constituted [a] sufficient basis for [a] finding of misconduct under the unemployment law and, therefore, precluded the recovery by [Medeiros] for the same benefits." The circuit court ruled "that the record as it currently stands . . . sufficiently supports the finding of the hearings officer or the appeals officer" and stated that it would "accord the appeals officer[]

due deference and . . . affirm the appeals officer's decision." But as discussed supra, the Appeals Officer's FOFs do not describe HAR § 12-5-51(c)'s characterization of misconduct; to the contrary, they are consonant with the rule's provisions expressly setting out what is not misconduct. Because Decision No. 0001888 was erroneous, the circuit court likewise erred in affirming it.

C. The Majority Erroneously Elevates HAR § 12-5-51(d) Over HAR § 12-5-51(c) And Wrongly Allows The Employer To Narrow Medeiros's Qualification For Unemployment Benefits.

By contrast to the foregoing, the majority elevates its construction of the factors for considering whether a claimant's actions constitute misconduct, listed in HAR § 12-5-51(d), see majority opinion at 20, over the definition of non-misconduct per se, as set forth in HAR § 12-5-51(c). The majority also contravenes its own acknowledgment "that an employer may not, by way of a policy or otherwise, unilaterally narrow the qualifications for unemployment benefits or redefine a legal term of art such as 'misconduct connected with work.'" Majority opinion at 30 n.8 (citing Gonzales v. Indus. Comm'n of the State of Colo., 740 P.2d 999, 1003 (Colo. 1987) ("adoption of such an approach would in effect grant employers ultimate authority to determine that some claimants automatically should not receive unemployment compensation benefits"). Notwithstanding that the majority emphasizes that "an employee's violation of such policy is not in itself sufficient to justify a finding of misconduct connected with work so as to disqualify a claimant for unemployment compensation benefits[,]" majority opinion at 30 n.8, the majority's reliance upon the Employer's "zero tolerance

for violence in the workplace" policy effectively allows the Employer's policy to take precedence over the unambiguous definition of non-misconduct set forth in HAR § 12-5-51(c). See majority opinion at 21-24. Thus, allowing the Employer to unilaterally narrow the qualifications for unemployment benefits and redefine "misconduct connected with work" is precisely what the majority accomplishes by reasoning and ruling that "Medeiros's conduct . . . was in violation of the Employer's zero tolerance for violence in the workplace policy," and that, "[a]s such, Medeiros's conduct constituted misconduct connected with work[.]" Majority opinion at 30.

D. The Majority Does Not Effectuate All Of The Relevant Definitions Of Non-Misconduct.

The majority opinion further suffers from obfuscating the categorical exclusion of certain behavior from the regulatory definition of "misconduct connected with work." The majority characterizes "isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion," which HAR § 12-5-51(c) unambiguously provides are not misconduct, as "situations of simple negligence or mistake." Majority opinion at 24. Notwithstanding that the majority recognizes that a "mistake" is not misconduct, the majority considers only the possibility that Medeiros's behavior constituted "negligence." Majority opinion at 23-24. The majority ignores HAR § 12-5-51(c)'s provision that a "good-faith error[] in judgment" is not misconduct, as well as the ESARO Appeals Officer's unchallenged FOFs that Medeiros's conduct "clearly constituted poor judgment" and that Medeiros "did not intend to actually threaten or harm

her co-worker." See supra section I.B. The majority therefore turns a blind eye to the definition of non-misconduct, set forth in HAR § 12-5-51(c), which should dictate the outcome of this appeal.

II. ANALYSIS OF RELEVANT CASE LAW

A. *Camara v. Agsalud* Is Analogous To The Present Matter Insofar As Both Cases Concern Isolated Instances Of Negligence Or Good-Faith Errors In Judgment.

The majority's claim to the contrary notwithstanding, the correct resolution of the present matter is governed by this court's decision in Camara v. Agsalud, 67 Haw. 212, 685 P.2d 794 (1984).[1] In Camara, the employer appealed from the circuit court's decision reversing the decision of the DLIR Appeals Officer "by concluding that [the employee was] qualified to receive unemployment insurance benefits." 67 Haw. at 212, 685 P.2d at 795. The Appeals Officer had found as follows:

> He [(i.e., Camara)] was discharged by the Employer because he was involved in a traffic accident on November 5, 1981. On that day, he crossed a solid line on the highway while trying to pass a slow moving pick-up truck. He could have safely passed the pick-up truck except that the truck proceeded to turn left and thus the two vehicles collided.
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> The Claimant was traveling at approximately 50 miles per hour on a 55 miles per hour highway. The

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[1] The contention of the appellee-appellee Director of the Department of Labor and Industrial Relations' (DLIR), State of Hawai'i [collectively hereinafter, "the Director"] that Camara is distinguishable is also unpersuasive. The Director maintains that Camara is inapposite to the present matter in light of extrajurisdictional authority that stands for the proposition "that an isolated instance of poor judgment can constitute misconduct," such that "the facts in this case . . . show that [Medeiros's] isolated instance of poor judgment did indeed rise to the level of misconduct." The Director's reliance upon non-binding jurisprudence is unavailing given the DLIR's controlling administrative rule, to wit, the provision of HAR § 12-5-51(c) that "isolated instances of ordinary negligence or inadvertence, or good-faith errors in judgment or discretion are not misconduct." (Emphasis added.)

> other vehicle was traveling about 30 miles per hour before the left turn was negotiated.
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> Other than the solid line, the intersection was not "controlled" by signs or other indicators. The road is an open highway which goes through the rural agricultural area. There was no sign to caution the Claimant to reduce his speed.
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> Just beyond the point of the impact of the accident, the highway has a broken center line.
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> The driver of the other vehicle had activated his left turn signal light but he later found that the signal light was inoperative.
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> The Claimant crossed the solid line because he could see that the stretch of highway before him was clear of oncoming traffic. He was not trying to avoid the accident when he crossed the solid line and he was aware of the solid line.
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> . . . .
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> The evidence shows that the Claimant crossed a solid line near an intersection. He was aware of the solid line but he felt that he could safely pass the slow moving pick-up truck. Although the other vehicle was partially at fault because it was traveling so slowly, I find that the Claimant had acted in wilful disregard of the Employer's best interest when he proceeded to cross the solid line. Moreover, the evidence fails to show that the Claimant had crossed the solid line because he was trying to avoid an accident.

(Record On Appeal (ROA), 38-40).

> Based on the incident, [Camara] was discharged from employment. He subsequently applied for unemployment insurance benefits which were denied by the claims officer. Pursuant to Hawaii Revised Statutes (HRS) § 383-38, Employee filed an appeal with the referee who made findings of facts and concluded that Employee had been discharged for misconduct and therefore, disqualified from receiving benefits.
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> An appeal was filed with the circuit court pursuant to HRS § 383-41. The circuit court reversed, stating that:
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> > [T]he hearing officer specifically found that the Appellant felt that he could safely pass the vehicle in front of him. Such a finding is inconsistent with the determination that the Appellant acted in wilful disregard of the employer's interests. Further, the single isolated driving error by Appellant does not demonstrate a wanton disregard of the employer's interests absent other evidence of poor driving or other misconduct connected with work.
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> (ROA, 180).

Id. at 212-15, 685 P.2d at 795-96 (ellipsis points in original) (some brackets added and some in original).

On the employer's appeal to this court, we reasoned and held as follows:

> The unemployment compensation statute was enacted for the beneficent and humane purpose of relieving the stress of economic insecurity due to unemployment. It should therefore be liberally construed to promote the intended legislative policy. Berkoff v. Hasegawa, 55 Haw. 22, 27, 514 P.2d 575, 579 (1973); Bailey's Bakery v. Tax Commissioner, 38 Haw. 16, 28 (1948); 76 Am.Jur.2d, Unemployment Compensation, § 6 (1975); 81 C.J.S., Social Security and Public Welfare, § 147 (1977). In view of the basic policy of the statute of protecting the worker from the hazard of unemployment, our courts must view with caution any construction which would narrow the coverage of the statute and deprive qualified persons of the benefits thereunder. Emrick v. Unemployment Compensation Comm'n, 53 Del. 561, 173 A.2d 743, 745 (1961); Donahue v. Dept. of Employment Security, 142 Vt. 351, 454 A.2d 1244 (1982); Smith v. Employers' Overload, 314 N.W.2d 220 (Minn. 1980); 76 Am.Jur.2d, supra.
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> The referee's findings of fact were not disturbed by the circuit court. We have examined the evidence in [the] record and hold that the findings are not clearly erroneous and therefore, will not be disturbed by this court. As to the referee's conclusion that the Employee is disqualified for benefits due to his discharge for misconduct connected with work, we agree with the circuit court that the conclusion is inconsistent with and not supported by the undisputed facts. Furthermore, the decision of the referee is not consonant with the purpose of the employment security law. We hold that the court was correct in reversing the referee's decision.

. . . .

HRS § 383-30(2) disqualifies an individual, otherwise eligible for benefits, if the individual is discharged for misconduct connected with his work. [HAR] § 12-5-51(c), adopted to implement HRS § 383-30(2), defines misconduct:

> Misconduct connected with work consists of actions which show a wilful or wanton disregard of the employer's interests, such as deliberate violations of or deliberate disregard of the standards of behavior which the employer has a right to expect of an employee, or carelessness, or negligence of such a degree or recurrence as to show wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good-faith errors in judgment or discretion are not misconduct. The misconduct shall be related to the work of the individual or the individual's status as an employee.

> In tort law, noncompliance with an established statutory standard is not necessarily conclusive on the issue of negligence, Pickering v. State, 57 Haw. 405, 408, 557 P.2d 125, 127 (1976), but is merely evidence of negligence, Michel v. Valdastri, Ltd., 59 Haw. 53, 575 P.2d 1299 (1978). Under tort law the Employee driving his vehicle over a solid line to pass another vehicle on a highway would be a violation of the traffic code, but without more, such a passing would not amount to negligence per se. In view of the beneficent purpose of the law, we refuse to hold that under the Hawaii Employment Security Law that same action is more than mere evidence of negligence. Rule 12-5-51 itself provides that "isolated instances of ordinary negligence or . . . good-faith errors in judgment . . . are not misconduct . . . ." [Camara], although aware of the solid line and its significance, felt he could safely pass, and would have safely passed had not the pick-up truck, without the left signal light flashing, made the left turn. Aside from the fact that [Camara] violated the traffic code by passing a vehicle on a solid line, there is no evidence of repeated negligence or careless conduct on [Camara's] part . . . . At best, [Camara's] action was an isolated instance of negligence or a good-faith error in judgment.
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> We hold that [Camara's] action does not approach the degree of negligence or carelessness to show wrongful intent or evil design amounting to misconduct. We concur with the circuit court that the facts do not support the conclusion that [Camara] acted in wilful or wanton disregard of the Employer's interests.

Id. at 216-19, 685 P.2d at 797-99 (emphases added).

As in Camara, where "the Employee['s] violat[ion of the] traffic code by passing a vehicle on a solid line" was, "[a]t best, . . . an isolated instance of negligence or a good-faith error in judgment[,]" 67 Haw. at 218, 685 P.2d at 798 (emphasis added), Medeiros's isolated instance of poor judgment by joking about violence, although contrary to the Employer's "zero tolerance" policy, likewise fell outside the scope of misconduct delineated in HAR § 12-5-51. Indeed, the Appeals Officer's finding that, because "[n]othing like [the relevant incident] had happened in [Medeiros's] 22 years of prior employment," it "[c]learly . . . was an isolated instance," is strikingly analogous to the majority's approval of Camara's

holding that "a single act of negligence in driving a motor vehicle does not demonstrate a wanton disregard of the employer's interests absent other evidence of poor driving or other misconduct connect with work[.]" Majority opinion at 27-28 n.7. Accordingly, as in Camara, the ESARO Appeals Officer's "conclusion [that Medeiros was guilty of misconduct connected with work] is inconsistent with and not supported by the undisputed facts." 67 Haw. at 217, 685 P.2d at 798.

I would hold that "the decision of the [Appeals Officer was] not consonant with the ['beneficent and humane'] purpose of the employment security law" and that Medeiros's actions "do[] not approach the degree of negligence or carelessness to show wrongful intent or evil design amounting to misconduct[,] . . . [such that] the facts do not support the conclusion that [Medeiros] acted in wilful or wanton disregard of the Employer's interests." Id. at 217-19, 685 P.2d at 798-99. I would therefore further hold that the circuit court erred in affirming Decision No. 0001888.

The majority asserts that Camara is distinguishable from the present matter based on the self-evident proposition that "neither [the beneficient] intent [of Hawaii's employment security law] nor liberal construction [of the statute] trumps the clear and unambiguous language of HRS § 383-30(2)[, see majority opinion at 16,] that an individual is disqualified from receiving unemployment benefits when the individual is discharged for misconduct connected with work." Majority opinion at 27. However, because Medeiros was not discharged for misconduct connected with work as defined by HAR § 12-5-51(c),

HRS § 383-30(2) is inapposite to the present matter.

The majority also cites Keanini v. Akiba, 93 Hawai'i 75, 86, 996 P.2d 280, 291 (App. 2000), which in turn quotes Berkoff v. Hasegawa, 55 Haw. 22, 514 P.2d 575 (1973), for the proposition that the "Hawai'i Unemployment Security Law should be liberally construed in order to achieve the beneficent legislative purpose of relief of workers under the stress of unemployment through no fault of their own." Berkoff, 55 Haw. at 27, 514 P.2d at 579 (internal quotation marks and citation omitted). Keanini and Berkoff notwithstanding, HAR § 12-5-51(c) plainly affords unemployment benefits to claimants who are unemployed through "fault" of their own, inasmuch as the regulation defines non-misconduct as including "inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, [and] good-faith errors in judgment or discretion[.]" An employee who is terminated for engaging in any of the foregoing classes of behavior can be said to have become unemployed through their own "fault," but HAR § 12-5-51(c) provides that such employees are nonetheless eligible for unemployment benefits. As such, the majority opinion's application of the Keanini "fault" principle is contrary to the express provisions of the HAR § 12-5-51(c).

B. *Hardin v. Akiba* Is Inapposite To The Present Matter Because The Claimant In *Hardin* Engaged In Conduct That Was Not An "Isolated Instance."

The majority similarly misapplies Hardin v. Akiba, 84 Hawai'i 305, 933 P.2d 1339 (1997), to the present matter. As the majority notes, the Hardin court ultimately "agree[d] with the

[employer] that [the claimant], after numerous counseling sessions and notices from [the employer] regarding her poor dependability, knew or should have known that her job would be in jeopardy if she chose to leave work early without permission on June 11, 1994." 84 Hawai'i at 318, 933 P.2d at 1352 (emphasis added). In other words, Hardin stated that, precisely because the claimant had been counseled several times and had received multiple notices regarding her offensive behavior, she was on notice, at least constructively, that she could lose her job if she continued to engage in misconduct. Indeed, the claimant had repeated notices and counseling over a two-and-a-half year period regarding her behavior. Hardin, 84 Hawai'i at 307, 933 P.2d at 13. In total, the claimant was counseled eleven times and received three notices, all while she was continually absent and tardy. Id. The majority therefore concedes that "[t]he Hardin facts are different from the instant case in that [the claimant] had numerous counseling sessions regarding her prior dependability before the final incident . . . which led to her termination and subsequent disqualification from receiving unemployment benefits, while Medeiros had no such history." Majority opinion at 27 (emphases added). The majority also admits that "Medeiros's conduct did represent an isolated incident[.]" Majority opinion at 24 (emphasis added).

Notwithstanding the foregoing, the majority "[a]ppl[ies] the Hardin rationale to the facts here, . . . conclud[ing] that Medeiros 'knew or should have known that her job would be in jeopardy' if she violated her employer's zero tolerance policy regarding violence in the workplace." Majority

opinion at 29-30 (footnote omitted). As discussed supra, the "Hardin rationale" that the claimant "knew or should have known that her job would be in jeopardy" is grounded in the claimant having had "numerous counseling sessions and notices from [the employer]" -- a condition that the majority concedes is not met in the instant case. As such, by the majority's own admission, the "Hardin rationale" is inapposite to the present matter.

Moreover, although the majority acknowledges that "Medeiros had no . . . history" analogous to the claimant in Hardin, majority opinion at 29, the majority asserts that, inasmuch as "[t]he facts are similar . . . to the extent that the misconduct involved intentional actions by the employee" and "the misconduct by Medeiros . . . is at least as serious (and presumably more so) as the misconduct in Hardin[,] . . . it is appropriate to apply the Hardin rationale to this case." Majority opinion at 29. But the "Hardin rationale" upon which the majority relies did not turn on whether the claimant's act was intentional or the degree of "seriousness" of the misconduct, but rather was conditioned on the fact that the claimant's misconduct did not represent an "isolated instance." 84 Hawai'i at 318, 933 P.2d at 1352.

The fact of the matter is that the claimants in Camara, Hardin, and the present case all engaged in intentional acts of varying degrees of "seriousness." The conduct at issue in Camara -- intentionally violating the traffic code and passing a vehicle across a solid line -- is "serious" misconduct because it entailed a substantial risk of injury or death both to the claimant and to other drivers. It is reasonable to assume that

such misconduct is "at least as serious (and presumably more so) as the misconduct in [both] Hardin" and the instant case. Majority opinion at 29. If the mere fact that a claimant had intended to commit an act of serious misconduct was dispositive for purposes of HAR § 12-5-51(c), then Camara should have been denied unemployment benefits on those bases. Dissonant with its own reasoning, however, the majority agrees with the Camara holding. Majority opinion at 25-27.

III. CONCLUSION

Based on the foregoing analysis, I would (1) reverse the circuit court's (a) May 4, 2001 order affirming ESARO's Decision No. 0001888 and (b) May 4, 2001 final judgment and (2) remand this matter to the ESARO for entry of a decision in Medeiros's favor.