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NO. 24980

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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NORMA T. YARA
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STATE OF HAWAI'I

ONESIMO ARELLANO, Claimant-Appellant

vs.

PLEASANT TRAVEL SERVICE, and FIREMAN'S FUND INSURANCE CO., Employer/Insurance Carrier-Appellee

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APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 98-648 (WH)(9-97-00894))

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Claimant-appellant Onesimo Arellano (Arellano) appeals from the February 11, 2002 order of the Department of Labor and Industrial Relations (DLIR) Appeals Board (LIRAB), adopting, *in toto*, Hearings Officer Jean Tanaka's November 7, 2001 proposed decision and order, which affirmed the DLIR Director's December 9, 1998 decision to the extent that the Director awarded Arellano (1) temporary total disability (TTD) benefits from June 30, 1997 through May 13, 1998, and (2) 8% permanent partial disability (PPD) of the whole person, with respect to his June 26, 1997 work-related injury. On appeal, Arellano argues that the LIRAB (1) violated his constitutional right to due process by failing to issue a finding of fact (FOF) or provide an explanation as to the specific "odd-lot" factors it considered, if any, in determining that he was not permanently and totally disabled (PTD) under the "odd-lot" doctrine, and (2) erred considering his voluntary retirement in determining his

entitlement to PPD benefits.[1]

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we first hold that the LIRAB did not violate Arellano's constitutional right to procedural due process by summarily finding that Arellano was not PTD under the "odd-lot" doctrine, inasmuch as the testimonies presented by Arellano, Priscilla Barcoma, and Martin Hudon, together with the LIRAB's unchallenged FOFs, namely FOF nos. 20, 22, and 26, more than adequately apprise Arellano as to why he was not PTD under the "odd-lot" doctrine. See Atchley v. Bank of Hawai'i, 80 Hawai'i 239, 909 P.2d 567 (1996); Yarnell v. City Roofing, Inc., 72 Haw. 272, 813 P.2d 1386 (1991); Tsuchiyama v. Kahului Trucking and Storage, Inc., 2 Haw. App. 659, 638 P.2d 1381 (1982). Due process compels nothing more. We further hold that the LIRAB did not "abruptly minimize" Arellano's PPD rating by adversely considering his voluntary retirement in determining his entitlement to PPD benefits. Indeed, notwithstanding Arellano's voluntary retirement, substantial evidence was adduced to support the LIRAB's conclusion that Arellano was 8% PPD of the whole person for his June 26, 1997 work-related injury, inasmuch as (1)

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[1] Arellano challenges finding of fact (FOF) no. 27, which provides:

> 27. We also find that [Arellano's] work-related permanent partial impairment does not combine with the odd-lot factors of age, education, and experience, to render him PTD under the odd-lot doctrine. Based on Dr. Direnfeld's unrebutted opinion, we find that it is the non-work-related psychosocial factors that have allegedly rendered [Arellano] unable to work. In addition, [Arellano] has taken himself out of the labor market by his voluntary retirement on November 22, 1998.

Raymond Taniguchi, M.D., opined that, although he was not sure whether Arellano would have any PPD, if he did, "it will not be a major problem, probably 5% at the most," (2) during Arellano's independent medical evaluation (IME) with Lorne K. Direnfeld, M.D. (Dr. Direnfeld), Dr. Direnfeld (a) reported that, although "there [wa]s a probable causal relationship between [] Arellano's complaints of low back pain and the occupational injury reported on 6/2[6]/97 . . . [o]ther factors contributing to the persistence of [] Arellano's symptom complex appear to be of a psychosocial nature[,]" and (b) concluded that Arellano was stable for rating and rated him 5% impairment of the whole person, and (3) during Arellano's second IME with Dr. Direnfeld, Dr. Direnfeld (a) reported that (i) Arellano's symptom complex was not attributable to the effects of his June 26, 1997 work-related injury, (ii) "psychosocial factors appear to have taken a more prominent role and have likely contributed to delayed recovery and prolonged disability[,]" (iii) Arellano reached maximum medical improvement and was medically stable no later than six months post-injury, and (iv) it was medically probable Arellano could have returned to modified-duty no later than six months post-injury, and (b) rated Arellano 5% impairment of the whole person. <u>See</u> HRS § 386-32(b) (Supp. 2004); <u>Nakamura v. State</u>, 98 Hawaiʻi 263, 47 P.3d 730 (2002). Therefore,

IT IS HEREBY ORDERED that the LIRAB's February 11, 2002 order, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, June 29, 2005.

On the briefs:

James Ireijo for claimant-appellant

Robert E. McKee, Jr., of the Law Office of Faye M. Koyanagi for employer/insurance carrier-appellee