

*** NOT FOR PUBLICATION ***

NO. 24561

IN THE SUPREME COURT OF THE STATE OF HAWAII

ALOHA ISLANDAIR, INC., Appellant-Appellee/Cross-Appellant

vs.

WILLIAM D. HOSHIJO, IN HIS CAPACITY AS EXECUTIVE DIRECTOR OF THE
HAWAII CIVIL RIGHTS COMMISSION; and BRUCE PIED, Appellees-
Appellants/Cross-Appellees

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-3779)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.
and Acoba, J., dissenting)

Appellees-Appellants/Cross-Appellees Bruce Pied (Pied) and William D. Hoshijo (Hoshijo)¹ appeal from the August 22, 2001 judgment of the circuit court of the first circuit, the Honorable Eden Elizabeth Hifo presiding, reversing the November 22, 2000 final decision and order of the Hawaii Civil Rights Commission (HCRC or Commission), which found that Appellant-Appellee/Cross-Appellant Aloha Islandair, Inc. (Island Air) engaged in "unlawful discriminatory practices," in violation of Hawaii Revised Statutes (HRS) § 378-2(1)(A) (Supp. 2000), by denying Pied employment on the basis of his monocular vision in 1990 and 1991.

On appeal, Pied and Hoshijo present the following questions: (1) whether Pied timely challenged alleged discriminatory practices that occurred more than 180 days before a charge of discrimination was filed; (2) whether the circuit court, in reviewing the HCRC's findings of fact de novo, was required to defer to the Commission's findings on witness

¹ Hoshijo appears in his official capacity as executive director of the Hawaii Civil Rights Commission.

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credibility; (3) whether, under the statutory definition of "disability" found in HRS § 378-1, mitigating measures may be considered when examining the extent to which an individual's physical or mental impairment limits him or her in a major life activity; (4) whether Island Air's admissions in a prior federal court proceeding involving the same parties are binding and entitled to preclusive effect in the instant case; (5) whether, upon the plaintiff's establishment of a prima facie case of discrimination based on disparate treatment, Hawai'i Rules of Evidence (HRE) Rule 304 shifts the burden of persuasion to the defendant to prove that non-discriminatory reasons motivated the challenged employment action; and (6) whether the circuit court erred in reversing the HCRC's determination that Island Air unlawfully denied Pied employment because he was (a) disabled in fact, and (b) regarded by Island Air as being disabled. Pied and Hoshijo request that the HCRC's final decision and order be affirmed in its entirety. In its cross-appeal, Island Air argues that: (1) the circuit court's finding of fact that Island Air maintained a policy against hiring monocular pilots between 1989 and 1991 was clearly erroneous; and (2) the court denied Island Air its constitutional right to have a jury determine common law damages.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that Island Air was improperly denied its constitutional right to a jury trial inasmuch as we have previously held that "a respondent who appeals a final order of the HCRC pursuant to HRS § 368-16, is entitled to a jury trial on any claims that form the basis of an

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award of common law damages by the HCRC." SCI Management Corp. v. Sims, 101 Hawai'i 438, 452, 71 P.3d 389, 403 (2003).²

Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is vacated and the case remanded for jury trial.

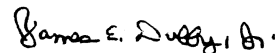
DATED: Honolulu, Hawai'i, January 26, 2006.

On the briefs:

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for appellee-appellant/cross-
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Fonseca, Jaffe, Moore &
Hetherington and James Kawashima,
Michael A. Lorusso and Kristine N.
Kinaka of Watanabe Ing &
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appellee/cross-appellant
Aloha Islandair, Inc.



² All parties should be advised that, as stated in the dissent, the views expressed are those of Justice Acoba and do not necessarily reflect the views of other members of this court. Dissent at 3.