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2006 MAY -4 AM 9:46

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\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 24723

IN THE SUPREME COURT OF THE STATE OF HAWAII

CRAIG A. GOMES,  
Claimant-Appellant,

vs.

HAWAIIAN ELECTRIC COMPANY, INC.,  
Employer-Appellee.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(Case No. AB 2000-084 (2-99-02723))

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Acoba and Duffy, JJ.,  
and Circuit Judge Marks in place of Nakayama, J., recused)

The claimant-appellant Craig A. Gomes appeals from the September 27, 2001 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB).

On appeal, Gomes seems to allege that: (1) the LIRAB's findings of fact (FOFs) were clearly erroneous; (2) due to the LIRAB chairman's conflict of interest, he should have recused himself; (3) the employer-appellee Hawaiian Electric Company, Inc.'s (HECO's) representative should have neither conferred with counsel before testifying nor testified during breaks; and (4) HECO attempted to introduce improper evidence.

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 affirm the September 27, 2001 decision and order of the LIRAB for the following reasons:

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(1) Gomes's opening brief does not comply with Hawai'i Rule of Appellate Procedure 28(b). Functionally, Gomes asks us to canvass the entire record on appeal for wisps of contradiction, rather than pointing to specific evidence that: (a) Gomes presented to the LIRAB; and (b) the LIRAB clearly misapplied or disregarded. We need not dredge the entire record on appeal to crystallize Gomes's argument. See Lanai Co. v. Land Use Comm'n, 105 Hawai'i 296, 309 n.31, 97 P.3d 372, 385 n.31 (2004); Charles Alan Wright et al., Federal Practice and Procedure § 3974.1(7) n.18 (1999 & Supp. 2005).

(2) Moreover, the record on appeal strongly suggests that Gomes did not bear his burden of persuasion. The few probative portions of the record that Gomes cites show at most that Gomes received various evaluations from HECO - some positive and some negative -- and that he was denied a waiver. Most of the evidence that Gomes adduced in the LIRAB consisted of his self-authored documents and testimony bearing no relationship to the ultimate conclusion of the LIRAB (and the only contestable issues before this court) -- that Gomes's injury, if any, was not work-related. In sum, the LIRAB's FOF "that [Gomes] did not sustain a personal injury on or about February 12, 1999, arising out of and in the course of employment," was not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." See Hawai'i Revised Statutes § 91-14(g) (Supp. 2004), quoted in Konno v. County of Hawai'i, 85 Hawai'i 61, 77, 937 P.2d 397, 413 (1997).

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(3) Even if we were able to consider facts not shown to have been preserved before the LIRAB, any evidence in Gomes's Appendices 5 and 6, absent more, is too attenuated to establish a former attorney-client relationship between the LIRAB chairman and HECO.

(4) The LIRAB's Rules of Practice and Procedure, Hawai'i Administrative Rules §§ 12-47-1 to -61, generally do not restrict the LIRAB's discretion to control the procedure and admission of evidence in its hearings.

(5) The LIRAB rejected HECO's Exhibit 13, and we find no substantive reference to Exhibit 13 in the hearing transcript nor any sign in the LIRAB's September 27, 2001 FOFs that it considered Exhibit 13's contents. Therefore,

IT IS HEREBY ORDERED that the decision and order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, May 4, 2006.

On the briefs:

The claimant-appellant  
Craig A. Gomes, pro se

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Torkildson, Katz, Fonseca,  
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Hawaiian Electric Company, Inc.



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