

NO. 22464

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DARRYL S. IGAWA, Claimant-Appellant, v. KOA HOUSE
RESTAURANT, Employer-Appellee, and PACIFIC
INSURANCE COMPANY, Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL
RELATIONS APPEALS BOARD
(Case No. AB 96-434 (2-91-35946))

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Lim, JJ.)

In this workers' compensation case, Claimant-Appellant Darryl S. Igawa (Igawa) appeals the March 30, 1999 Decision and Order (the Decision) of the Labor and Industrial Relations Appeals Board (the Board). The Decision reversed in part and modified in part the July 12, 1996 Supplemental Decision and Order (the Supplemental Decision) of the Director of Labor and Industrial Relations (the DLIR). The Decision reversed the DLIR's award of \$44,990.40 in permanent partial disability (PPD) benefits to Igawa, and reduced his disfigurement award from \$2,000.00 to \$850.00.

On appeal, Igawa argues (1) that the Board erroneously concluded he did not sustain any permanent disability attributable to his October 3, 1991 work injury, and (2) that the

Board erred as a matter of law in modifying his disfigurement award.

We reverse the Decision insofar as it denied PPD benefits to Igawa, but we affirm the Decision's modification of Igawa's disfigurement award.

I. Background.

On October 3, 1991, Igawa, who was employed as a cook by the Koa House Restaurant (the Employer), sustained a head injury when he reached for a pot on an overhead shelf and a "big soup pot" improperly stacked on top of the desired pot fell and struck him in the right forehead.

Igawa sustained a small laceration on his right forehead. He complained of swelling, dizziness and nausea. Several days later, he experienced severe headaches, loss of appetite, slight nausea, photophobia and sonophobia. He became forgetful and "fuzzy." His concentration and accuracy suffered. He would get lost easily. He became more distracted and irritable, and had trouble sleeping. He also complained of lightheadedness, blurred vision and dizziness. By June 1993, Igawa was complaining of pain and problems in his right upper extremity with numbness and tingling into the right half of his body, attributable to cervical strain from jerking his head back during the accident. He was also experiencing sudden blackouts. At the hearing before the Board, Igawa testified that these

sequelae of his industrial accident have severely limited his capabilities and functioning, such that he was unable to return to work or obtain employment.

Igawa was thirty years old at the time of the 1991 accident. In August 1975, while he was a teenager, Igawa sustained a significant head injury when he fell into a drainage ditch onto his head. He was in a coma for six days. The fall caused a brain contusion and a small hematoma in the left temporal area. He thereafter experienced a number of physical, neurological, psychological and behavioral problems, which led to suicidal ideation and a number of psychiatric hospitalizations. A 1977 diagnosis listed temporal lobe seizures secondary to brain trauma. A secondary diagnosis listed depressive reaction, insomnia, headaches and behavioral problems. By 1981, these sequelae had resolved and Igawa no longer needed medication.

The overarching issue in this case is whether Igawa's permanent partial disability is attributable solely to the nonindustrial accident in 1975, and is therefore not compensable. See, e.g., Akamine v. Hawaiian Packing & Crating Co., 53 Haw. 406, 495 P.2d 1164 (1972).

During the claims process, the Employer's insurer denied Igawa's request that it authorize surgery to excise a lesion in his right frontal lobe area. Igawa's physician, Dr. Yoshio Hosobuchi, opined that a preexisting "small cavernous angioma" in his right frontal lobe may have hemorrhaged as a

result of the 1991 industrial accident, causing Igawa's headaches and seizure problems. The insurer's medical examiners believed instead that Igawa's problems were solely a result of the 1975 accident, and that the preexisting lesion had in any event not hemorrhaged as a result of the 1991 industrial accident.

After a hearing on September 6, 1994, the DLIR issued a November 15, 1994 Amended Decision and Order,¹ in which the DLIR found that "there is insufficient medical evidence to rebut Dr. Hosobuchi's opinion that claimant's headaches and seizures are not [sic] caused by the hemorrhaged angioma. Also, the medical evidence on file supports the fact that since said accident, claimant started having headaches and seizures. We note that claimant did have headaches prior to date of accident, but they had resolved before claimant had said work-related accident."

The DLIR thereupon ordered that the Employer "pay for such medical care, services and supplies as the nature of the injury may require, to include surgery to remove lesion from the right frontal lobe." The DLIR also awarded Igawa temporary total disability benefits. The DLIR left the issues of permanent disability and disfigurement for determination at a later date.

The Amended Decision and Order read as follows:

On October 3, 1991, claimant was in the employ of [the Employer]; on said date, claimant

¹ The original Decision and Order, filed on October 31, 1994, was amended to correct an error regarding Igawa's entitlement to temporary total disability benefits.

sustained a personal injury to the head by accident arising out of and in the course of employment; said injury was not caused by claimant's wilful intention to injure oneself or another nor by intoxication. As a result of said injury, claimant was temporarily and totally disabled from work beginning (waiting period: November 9, 1991 through November 10, 1991; November 13, 1991) November 14, 1991 through November 17, 1991; April 5, 1992 through April 13, 1992; April 24, 1992 and continuing until such time as is determined by the Director that such disability has ended. The matters of permanent disability and/or disfigurement, if any, shall be determined at a later date. The average weekly wages of the claimant were \$290.00.

A hearing was held on September 6, 1994 to determine further medical liability, and other related issues.

Claimant contends that employer should authorize surgery which was recommended by Y. Hosobuchi, M.D., who was a referral from Kenneth Nakano, M.D., claimant's attending physician. Dr. Hosobuchi opines that the surgery should stop claimant's continued headaches and seizures. In his independent medical examination (IME) of June 28, 1992, scheduled by employer, James Pierce, M.D., opines that claimant's headaches are related to said work accident.

Claimant states that he sees "stars" and Dr. Hosobuchi told him that the surgery should stop this. He also has had a bad memory since the work-related accident. He has right leg and arm numbness and is not that balanced and has light-headedness when he suffers the seizures.

Employer denies liability for the surgery since it is not required by the nature of the injury. Maurice Nicholson, M.D., opines in his IME of December 4, 1993, that there is no basis to relate claimant's frontal lobe lesion to the date of said accident. Further, a CT scan of October 30, 1991 shows that the lesion is from the old injury in 1975 and that there is no mass from the lesion and that there is no indication for surgery.

Juris Bergmanis, M.D., opines in his report of April 22, 1994, that claimant's right frontal lobe cyst is related to the old injury of 1975. He also goes on to indicate that he agrees with Dr. Nicholson's conclusions. Dr. Bergmanis notes that no angiogram was done to confirm angioma and that surgery is not necessary and will not alleviate claimant's headaches.

Upon review of the entire matter, it is determined that the surgical excision of the lesion from the right frontal lobe appears to be reasonable and necessary medical care which relates to said injury.

We credit Dr. Hosobuchi's reports of December 16, 1993 and September 12, 1994 in which he opines that claimant "had a small cavernous angioma in the right frontal lobe and because of the head injury it may have hemorrhaged causing headache and seizure problems." Further, Dr. Hosobuchi opines that surgery would eliminate claimant's headaches and seizures.

Dr. Pierce in his report of June 28, 1992 opines, "The headaches he describes took a rather dramatic change since his accident of October. I think the accident combined with the associated stressors are responsible for the majority of his headache problems now."

Dr. Nicholson states in his report of December 4, 1993 that "An arteriogram should be performed to diagnose whether or not there is an angioma."

Dr. Bergmanis, in his report of April 22, 1994, opines that "cerebral angiography is the only study that conceivably could throw some light on this problem, although some of the malformations are so small as not to be seen on any test."

Further, Dr. Hosobuchi opines in his report of September 12, 1994, "By nature of his anatomy, cryptic arteriovenous malformation or cavernous angioma cannot be demonstrated by the arteriogram."

Based on the aforementioned, any test conducted to diagnose angioma would not be

appropriate since it would not show up on the test. Further, there is insufficient medical evidence to rebut Dr. Hosobuchi's opinion that claimant's headaches and seizures are not [sic] caused by the hemorrhaged angioma. Also, the medical evidence on file supports the fact that since said accident, claimant started having headaches and seizures. We note that claimant did have headaches prior to date of accident, but they had resolved before claimant had said work-related accident.

Thereupon the Director makes the following
DECISION

1. Pursuant to Sections 386-21 and 386-26, [Hawai'i Revised Statutes] HRS, said employer shall pay for such medical care, services and supplies as the nature of the injury may require, to include surgery to remove lesion from the right frontal lobe.
2. Pursuant to Section 386-31(b), HRS, said employer shall pay to claimant weekly compensation of \$193.34 for temporary total disability from work beginning November 14, 1991 through November 17, 1991; April 5, 1992 through April 13, 1992; April 24, 1992 and terminating at such time as is determined by the Director that such disability has ended.
3. The matters of permanent disability and/or disfigurement, if any, shall be determined at a later date.

The Employer did not appeal the DLIR's November 15, 1994 Amended Decision and Order, even though the DLIR, in ordering the surgery and awarding Igawa temporary total disability benefits, concluded that the 1991 industrial accident had caused morbidity and disabling sequelae.

On December 2, 1994, the surgery was performed by Dr. Hosobuchi. About a week later, Dr. Hosobuchi reported to Dr. Nakano:

Finally Daryl [sic] Igawa won and the Workman's [sic] Compensation agreed to pay for the surgery so he underwent right frontal craniotomy and excision of a cryptic arteriovenous malformation and significant frontal gliosis. Thus whatever the caused [sic] avian bleed one will never know but certainly he had a very significant gliosis to explain for [sic] his seizure problem and this is cleanly excised. I hope this will certainly reduce his seizure frequencies. I saw him today on December 8th and we removed the staples and he has done quit [sic] well and I will keep you posted about his progress from this standpoint.

About a month-and-a-half after the surgery, Dr. Hosobuchi reported to Dr. Nakano that "[t]he wound has healed well and he has not had a bad headache anymore and no seizures." Within a year, however, Igawa's headaches, seizures and associated problems returned.

On July 12, 1996, the DLIR issued a Supplemental Decision, which took up the issues of permanent disability and disfigurement left for further determination by its Amended Decision and Order. The Supplemental Decision read, in pertinent part, as follows:

1. On October 3, 1991, claimant, while in the employ of [the Employer], sustained a personal injury by accident arising out of and in the course of employment, said injury was not caused by claimant's wilful intention to injure oneself or another nor by intoxication.
2. The location of said injury was: head.
3. At the time of said injury, the average weekly wages of claimant were \$290.00.

4. As a result of said injury, claimant is awarded the following benefits which the employer shall pay pursuant to Chapter 386, HRS:

a. TEMPORARY TOTAL
DISABILITY: (Waiting
period: November 9, 1991
through November 10, 1991;
November 13, 1991)
beginning November 14,
1991 through November 17,
1991; April 5, 1992
through April 13, 1992;
April 24, 1992 through
October 17, 1995
NUMBER OF WEEKS: 183 4/7 @
\$193.34 = \$35,491.69

. . . .

d. PERMANENT PARTIAL
DISABILITY: beginning
October 18, 1995
NUMBER OF WEEKS: 232.7009 @
\$193.34 = \$44,990.40[.]
35.00% of the whole person

e. DISFIGUREMENT: 8½"
hypopigmented surgical
scar, forehead
TOTAL: \$2,000.00

Claimant is awarded such medical care, services and supplies as the nature of the injury may require pursuant to Sections 386-21 and 386-26, HRS.

On July 25, 1996, the Employer filed an appeal of the Supplemental Decision with the Board. On that same day, the Employer also filed a Motion for Stay of Payments of the disfigurement and PPD awards.

In support of its Motion for Stay of Payments, the Employer argued that the DLIR's Supplemental Decision "is silent with respect to the Director's reliance on medical opinion to

reach the decision, and absent from the [Supplemental Decision] is any reference to whether Dr. [Thomas H.] Sakoda's report, Dr. [Shepard] Ginandes' report, Dr. [Maurice W.] Nicholson's report or Dr. [George D.] Bussey's report was utilized."

Employer also complained that the "amount awarded by the Director to Claimant is simply excessive for a very minor injury on a person with significant pre-existing conditions[,] and that "[t]here is overwhelming medical evidence supporting a 0% award for Claimant's psychiatric impairment."

On August 29, 1996, the Board issued an Order Granting Stay of Payments in Part, which stayed the payment of PPD benefits in excess of 5% impairment of the whole person.

On September 13, 1996, following a pre-hearing conference with counsel the day before, the Board issued a Pretrial Order, in which it identified the two issues to be determined on appeal: (1) "What is the extent of permanent disability resulting from the work injury of October 3, 1991[;]" and (2) "[w]hat is the extent of disfigurement resulting from the work injury of October 3, 1991." The Employer had filed a September 9, 1996 Initial Conference Statement, which in essence limited its appeal to the two issues identified by the Board. The Initial Conference Statement did not dispute the DLIR's award of temporary total disability benefits to Igawa, even though the award implicitly recognized that more than three years of total disability had resulted from the 1991 industrial accident. Nor

did the Statement dispute the DLIR's order that the Employer pay for the remedial surgery.

At the September 29, 1997 appeal hearing, Igawa was the only live witness to testify. Igawa testified that after his 1975 fall, he received seven years of active treatment and medication for its sequelae from Dr. Joseph Tsai. By the end of the seven years, however, his seizures and blackouts ceased and he stopped taking medication.

Igawa further testified that he now takes Dilantin for his seizures, "Tylenol Codeine" for headaches and Triazalon for sleeping problems and for pain. Igawa also claimed that he is depressed and seldom socializes because of problems with his headaches, his arm and his leg. He also suffers from dizziness or lightheadedness, blurred vision, clumsiness and continuing blackouts. Igawa described his most recent blackout, which occurred one month before the hearing. He had been walking to his friend's car when he became lightheaded and "went down," injuring his wrist in the fall.

Igawa maintained that he no longer has the strength to work in his yard because his arm "bothers" him, that he has trouble concentrating, that he forgets things "real bad," that Dr. William T. Tsushima treated him for suicidal ideation for a period after the 1991 industrial accident occurred, and that he has lost twenty-five to thirty pounds due to lack of appetite.

Igawa further testified that, although he had experienced headaches after his 1975 accident, the headaches had remitted, at least from the time he stopped his medications in 1980, until his 1991 work injury. After the 1991 work injury, Igawa began to suffer daily, lingering headaches. Igawa testified that he had not been on medication for "almost ten years until this accident."

On cross-examination, Igawa admitted that he had encountered problems with his co-workers before the 1991 work injury, but claimed that "everything got worse" after the accident.

With respect to Igawa's scar, Igawa's counsel pointed out new suture marks from a remedial, post-surgery procedure. Igawa testified that the scar had become a "lot wider" as a result of the post-surgery procedure.

On the same day as the hearing, the Employer submitted its post-hearing Position Statement. The Employer argued that Igawa's PPD benefits should be "limited to 5% of the whole person, which has already been paid by Employer/Carrier subsequent to the Order granting Stay of Payments in Part issued . . . on August 26, 1996." The Employer also argued that disfigurement benefits should be limited to \$850.00.

On March 30, 1999, the Board rendered the Decision, in pertinent part:

FINDINGS OF FACT

1. On October 3, 1991, Claimant, who was employed as a cook by Employer, sustained a compensable head injury when he reached overhead for a pot and another pot about two feet above his reach fell and struck him in the right forehead. Claimant was dazed, but did not lose consciousness.

2. In August 1975, Claimant sustained a significant head injury when he fell into a drainage ditch and was knocked unconscious. Claimant was evaluated both neurologically and neurosurgically, with no significant sequelae found at that time. In the fall of 1976, however, Claimant began to exhibit abnormal behavior, including hallucinations, *deja vu* experiences, and time distortions.

In December 1976, an EEG was normal, but a brain scan showed an abnormality in the right frontoparietal area and a CT scan showed right frontal and temporal lesions. Claimant was seen by Dr. Stanford Au in a neurological consultation and was diagnosed with temporal lobe epilepsy (TLE). The TLE was treated with the medication Dilantin.

Claimant had multiple hospitalizations in 1977. He was seen at Queen's Medical Center (QMC) during January and February 1977, for TLE secondary to brain trauma and psychosis associated with brain trauma. Claimant was hospitalized at QMC in April 1977 and October 1977, for a depressive reaction, with the TLE noted to be under control.

On April 2, 1981, Claimant reported to Dr. Au that he had been seizure-free for about four years and had taken himself off Dilantin about one year ago. A repeat EEG of April 6, 1981 was normal. After 1981, Claimant did not receive further medical treatment for his 1975 head injury.

3. Claimant was initially treated for his work injury by Dr. Joseph Tsai, his regular physician, for complaints of dizziness and headache. Dr. Tsai noted a small laceration just above Claimant's right eyebrow. Because Claimant continued to complain of headaches, Dr.

Tsai ordered a CT scan and referred Claimant to a neurologist, Dr. Jordan Popper.

4. An October 30, 1991 CT scan of the head showed a 1.8 x 2.6 cm. focal area of atrophy in the right frontal lobe.

5. Claimant saw Dr. Popper on November 8, 1991. An EEG of November 12, 1991 was normal. Dr. Popper diagnosed post-concussion syndrome and post-traumatic headaches.

6. Claimant saw Dr. Gordon Trockman of Straub Clinic & Hospital (Straub) for a psychiatric consultation in January 1992. Dr. Trockman reported that Claimant was working at the time and that he was doing well emotionally without depression or anxiety.

Dr. Trockman's subsequent clinical notes reflect that Claimant became very upset at work on April 24, 1992 and walked off the job. Claimant's boss indicated, however, that Claimant was having behavioral difficulties at work before his work injury and that this was not the first time he had walked off the job. Claimant's employment was eventually terminated.

7. On August 10, 1992 and September 3, 1992, Claimant underwent a neuropsychological evaluation with Robert Anderson, Jr., Ph.D. Dr. Anderson stated that the work accident in October 1992 could not have resulted in a brain injury. The pot weighed only one pound and fell a short distance and there was no loss of consciousness and no post-traumatic amnesia.

According to Dr. Anderson, Claimant was experiencing significant emotional distress and the work injury appeared to be acting as a focus for his emotional distress. Dr. Anderson noted that Claimant had a history of difficulty coping with emotional distress that was due, in part, to his 1975 head injury and was also a contributing factor to his present symptom complex.

8. Claimant was seen by Dr. Kenneth Nakano at Straub for a neurologic consultation on September 24, 1993. Dr. Nakano opined that Claimant had a mild closed head injury and residual post-traumatic headaches as a result of his work injury.

9. Upon Dr. Nakano's referral, Claimant was seen by Dr. Yoshio Hosobuchi of Straub for a neurosurgical consultation on November 3, 1993. Dr. Hosobuchi diagnosed hemorrhagic cyst probably formed post-traumatically secondary to pre-existing cavernous angioma and recommended surgical extirpation of the hemorrhagic cyst and cavernous angioma.

In a request for authorization for surgery dated November 3, 1993, Dr. Hosobuchi attributed Claimant's headache and seizure to the hemorrhagic cyst. Dr. Hosobuchi stated that Claimant may have had a small cavernous angioma in the right frontal lobe, which hemorrhaged as a result of his work injury. Dr. Hosobuchi also stated, however, that a cavernous angioma or cryptic arteriovenous malformation (AVM) could spontaneously hemorrhage.

10. A November 3, 1993 brain MRI showed two right frontal lobe lesions. An EEG of the same date was found to be mildly abnormal, consistent with a right hemisphere frontal temporal deficit.

11. Claimant had surgery at Straub on December 2, 1994. The Straub records describe the procedure performed as a right frontal craniotomy and excision of a cryptic AVM and significant frontal gliosis.

12. Claimant was evaluated by Dr. Maurice Nicholson in November 1993 and February 1996, and by Dr. Juris Bergmanis in April 1994. Both doctors are neurosurgeons. Dr. Nicholson's reports are dated December 4, 1993 and February 25, 1996. Dr. Bergmanis' report is dated April 22, 1994.

Both Drs. Nicholson and Bergmanis diagnosed Claimant's work injury as a mild head injury.

They agreed that the right frontal lobe cystic lesion was not related to Claimant's work injury, but was related to the 1975 head injury. They noted that the cystic lesion was present before the 1991 work injury and had been documented on diagnostic studies as early as 1976.

In addressing Dr. Hosobuchi's opinion that the frontal lobe cyst was hemorrhagic in type and therefore, could have been caused by bleeding of a cavernous angioma, Dr. Bergmanis stated that it was far more probable that any bleeding was caused by a major, rather than a minor, head injury.

13. Dr. Nicholson opined that Claimant did not sustain any ratable impairment due to his October 3, 1991 work injury.

14. Dr. George Bussey, a psychiatrist, provided a records review report dated April 19, 1996. After he examined Claimant, Dr. Bussey submitted another report dated May 7, 1996.

Dr. Bussey's psychiatric diagnosis included organic personality syndrome secondary to 1975 brain injury and probable adjustment disorder secondary to multiple psychosocial stressors.

Dr. Bussey opined that Claimant's 1991 work injury did not result in any psychiatric impairment. While Dr. Bussey found that Claimant had a mild psychiatric impairment, such impairment was due to the underlying organic personality disorder related to his 1975 head injury.

15. We find that Claimant sustained only a minor head trauma due to his October 3, 1991 work injury. Claimant did not sustain a hemorrhagic cyst as a result of his work injury. Based on Dr. Bergmanis' opinion, we find that any hemorrhagic cyst Claimant may have sustained was more probably related to his major head injury in 1975.

While Claimant has attributed a multitude of symptoms to his 1991 work injury, we find that these symptoms cannot be accounted for on the basis of his minor head injury. In 1996, Claimant reported to Dr. Nicholson having [sic] neck pain with pain radiating down the entire right body with numbness on the entire right side of his body. Dr. Nicholson stated that these symptoms as well as Claimant's headaches had a psychological or nonorganic basis.

16. Based on Drs. Nicholson's and Bergmanis' opinions, we find that Claimant did

not sustain any permanent physical impairment as a result of his work injury.

We do not accept Dr. Thomas Sakoda's permanent physical impairment report dated November 16, 1995, because his diagnosis of Claimant's work injury as a central nervous system injury and cervical spine problem is inconsistent with the minor nature of the work injury.

17. Based on Dr. Bussey's opinion, we find that Claimant did not sustain any permanent psychiatric impairment as a result of his work injury.

We do not accept Dr. Shepard Ginandes' permanent psychiatric impairment rating report dated February 26, 1996, because his history of Claimant's work injury and consequences stemming from the work injury are inconsistent with the minor nature of work injury.

18. Claimant has an 8-1/2" hypopigmented surgical scar on the forehead, as a result of his surgery.

19. Because the Director had determined that Claimant's surgery was related to his work injury, Employer was ordered to pay for the surgery. Liability for the surgery, however, is not an issue on appeal.

20. On appeal, Employer does not dispute Claimant's entitlement to compensation for his surgical scar. Employer only seeks a reduction in the amount of the Director's disfigurement award.

21. We find that Claimant is entitled to \$850.00 for his disfigurement.

. . . .

CONCLUSIONS OF LAW

1. We conclude that Claimant did not sustain any permanent disability attributable to his October 3, 1991 work injury, because Claimant's work injury was a minor head trauma which would not have resulted in any permanent impairment either on a physical or psychiatric basis.

2. We conclude that Claimant is entitled to \$850.00 for disfigurement.

On April 28, 1999, Igawa filed his notice of this appeal.

II. Standards of Review.

A. Agency Decisions.

Judicial review of administrative agency decisions, in particular the decisions of the Board, is governed by HRS § 91-14 (1993). Under HRS chapter 91, appeals taken from findings set forth in decisions of the board are reviewed under the clearly erroneous standard. Thus, this court considers whether such a finding is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is left with the definite and firm conviction that a mistake has been made. On the other hand, a conclusion of law is not binding on an appellate court and is freely reviewable for its correctness. Thus, this court reviews conclusions *de novo* under the right/wrong standard.

Bocalbos v. Kapiolani Medical Center, 93 Hawai'i 116, 123-24, 997

P.2d 42, 49-50 (App. 2000) (brackets, citations, footnote, ellipsis, emphasis, and internal quotation marks omitted).

Hawai'i Revised Statutes (HRS) § 91-14(g) (1993) provides:

Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the

decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

"Under HRS § 91-14(g), [COLs] are reviewable under subsections (1), (2), and (4); questions regarding procedural defects are reviewable under subsection (3); [FOFs] are reviewable under subsection (5); and an agency's exercise of discretion is reviewable under subsection (6)." Potter v. Hawai'i Newspaper Agency, 89 Hawai'i 411, 422, 974 P.2d 51, 62 (1999) (quoting Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Hawai'i 217, 229, 953 P.2d 1315, 1327 (1998) (quoting Konno v. County of Hawai'i, 85 Hawai'i 61, 77, 937 P.2d 397, 413 (1997) (quoting Bragg v. State Farm Mutual Auto. Ins., 81 Hawai'i 302, 305, 916 P.2d 1203, 1206 (1996))).

Korsak v. Hawai'i Permanente Medical Group, 94 Hawai'i 297, 302, 12 P.3d 1238, 1243 (2000) (brackets in original).

In addition, the Hawai'i Supreme Court has stated that

[appellate] review is "further qualified by the principle that the agency's decision carries a presumption of validity and appellant has the heavy burden of making a convincing showing that the decision is invalid because it is unjust and unreasonable in its consequences."

Mitchell v. State, Dept. of Educ., 85 Hawai'i 250, 254, 942 P.2d 514, 518 (1997) (citations omitted).

B. Statutory Interpretation.

[T]he interpretation of a statute is a question of law reviewable de novo. Furthermore, our statutory construction is guided by established rules:

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. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

This court may also consider the reason and the spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning. HRS § 1-15(2) (1993).

Korsak, 94 Hawai'i at 303, 12 P.3d at 1244 (citations, ellipses, and quotation marks, omitted).

III. Discussion.

A. *The Board Erroneously Concluded That Igawa Did Not Sustain Any Permanent Disability Attributable to His October 3, 1991 Work Injury.*

Igawa undisputedly suffered a work injury on October 3, 1991. Igawa appeals the Board's conclusion that he did not sustain any permanent disability as a result of that work injury.

HRS chapter 386 governs workers' compensation claims. HRS § 386-85(1) (1993) provides that "[i]n any proceedings for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary . . . [t]hat the claim is for a covered work injury[.]" This presumption has been described as one of the "keystone principles" of our workers' compensation plan. Iddings v. Mee-Lee, 82 Hawai'i 1, 22, 919 P.2d 263, 284 (1996) (Ramil, J., dissenting).

The Hawai'i Supreme Court has construed "the use of the word 'any' to mean that the presumption applies in all proceedings conducted pursuant to the workers' compensation chapter. See Hough v. Pacific Ins. Co., Ltd., 83 Hawai'i 457, 463, 927 P.2d 858, 864 (1996) ('[I]n interpreting a statute, we give words their common meaning, unless there is something in the statute requiring a different meaning.')

Korsak, 94 Hawai'i at 306, 12 P.3d at 1247.

Igawa's claim was filed under the workers' compensation chapter. The purpose of the proceeding before the Board was to determine the compensability of Igawa's PPD claim.² Thus,

² HRS § 386-32 (1993), provides, in pertinent part:

(a) Permanent partial disability. Where a work injury causes permanent partial disability, the employer shall pay the injured worker compensation in an amount determined by multiplying the effective maximum weekly benefit rate prescribed in section 386-31 by the number of weeks specified for the disability as follows:

. . . .

Disfigurement. In cases of personal injury resulting in disfigurement the director may award compensation not to exceed \$15,000 as the director deems proper and equitable in view of the disfigurement. Disfigurement shall be separate from other permanent partial disabilities and shall include scarring and other disfiguring consequences caused by medical, surgical, and hospital treatment of the employee;

Other cases. In all other cases of permanent partial disability resulting from the loss or loss of use of a part of the body or from the impairment of any physical function, weekly benefits shall be paid at the rate and subject to the limitations specified in this subsection for a period that bears the same relation to a period named in the schedule as the disability sustained bears to a comparable disability named in the schedule. In cases in which the permanent partial disability must be rated as a percentage of the total loss or impairment of a physical or mental function of the whole person, the maximum compensation shall be computed on the basis of the corresponding percentage of the product of three hundred twelve times the effective maximum weekly benefit rate prescribed in section 386-31.

Payment of compensation for permanent partial disability. Compensation for permanent partial disability shall be paid in weekly installments at the rate of sixty-six and two-thirds per cent of the worker's average weekly wage, subject to the limitations on weekly benefit rates prescribed in section 386-31.

(continued...)

pursuant to the plain language of the statute, the presumption applied in Igawa's PPD and disfigurement proceeding.

Consequently, the Employer had the burden to rebut the statutory presumption that Igawa suffered PPD as a result of his work injury:

"HRS § 386-85(1) creates a presumption in favor of the claimant *that the subject injury is causally related to the employment activity*. . . . [T]his presumption imposes upon the employer both the heavy burden of persuasion and the burden of going forward with the evidence. *Akamine*, 53 Haw. at 408, 495 P.2d at 1166. The claimant must prevail if the employer fails to adduce substantial evidence that the injury is unrelated to employment. The term "substantial evidence" signifies a high quantum of evidence which, at the minimum, must be "relevant and credible evidence of a quality and quantity sufficient to justify a conclusion by a reasonable man that an injury or death is not work connected." *Id.* at 408-09, 495 P.2d at 1166; *Survivors of Timothy Frietas v. Pacific Contractors Co.*, 1 Haw. App. 77, 85, 613 P.2d 927, 933 (1980)."

Korsak, 94 Hawai'i at 307-08, 12 P.3d at 1248-49 (quoting Chung v. Animal Clinic, Inc., 63 Haw. 642, 650, 636 P.2d 721, 726).

In its Decision, the Board relied upon the reports of Drs. Nicholson and Bergmanis to find that Igawa did not sustain

²(...continued)

Unconditional nature and time of commencement of payment. Compensation for permanent partial disability shall be paid regardless of the earnings of the disabled employee subsequent to the injury. Payments shall not commence until after termination of any temporary total disability that may be caused by the injury.

any permanent physical impairment as a result of his work injury. The Board also relied upon Dr. Bussey's report to find that Igawa did not sustain any permanent psychological impairment as a result of his work injury.

In his December 4, 1993 report, Dr. Nicholson wrote, "Basically, this man's examination is unremarkable." He believed that the prognosis for Igawa's "minor head injury should be excellent[,] and opined that "[t]here is no basis to relate any aggravation of the right frontal lobe lesion to the accident of October 3, 1991. Dr. Nicholson opined that, "If surgery is done, it is in no way related to the October 3, 1991 accident. . . . This man did work for six months following his October 3, 1991 injury, and there does not appear to be any physical reason why he could not have continued to work."

Furthermore, in his February 25, 1996 report, Dr. Nicholson wrote:

For purposes of a rating, it should be noted that this man's cyst was present prior to 1991, and a slight blow this [sic] man's head did not cause the cyst. The cyst documented [sic] and diagnosed prior to 1991. This man's headaches, in my opinion, have been on the basis of a psychological or nonorganic basis. He now has headaches in spite of having surgery.

. . . .

Dr. Bergmanis, Dr. Anderson, and this examiner are all in agreement that the October, 1991 injury was a minor injury of no significance. This man does not have any ratable impairment referable to the October, 1991 incident.

. . . .

Dr. Sakoda's rating is completely inconsistent with the injury.

. . . .

There is absolutely no evidence that this man injured his neck in the October, 1991 incident.

. . . .

There is absolutely no relationship [between possible right carpal tunnel syndrome as discussed by Dr. Sakoda and the October 3, 1991 injury]. Clinically he does not have a carpal tunnel syndrome in any case.

In his April 22, 1994 report, Dr. Bergmanis opined that Igawa "incurred a mild, rather non-specific head injury in the work-related incident of 10/3/91." Dr. Bergmanis' review, dated October 30, 1991, of a CT scan of Igawa's head indicated a "small peripherally located cyst in the right frontal region" which appeared consistent with old trauma and did not contain evidence of fresh bleeding within it.

Dr. Bergmanis conceded that Igawa "had a scalp injury and even these minor injuries can lead to prolonged post-traumatic headaches[,] " but opined that his headaches "are greatly aggravated by pre-existing current psychological and stress factors as already documented." Dr. Bergmanis characterized Dr. Hosobuchi's diagnosis of "cryptic arteriovenous malformation" as "mere speculation. Cerebral angiography is the only study that conceivably could throw some light on this problem, although some of the malformations are so small as not

to be seen on any test." He agreed with Dr. Nicholson that surgery was not indicated.

In his April 19, 1996 report, Dr. Bussey opined that

I do not believe that Mr. Igawa has any psychiatric impairment secondary to the industrial injury of 1991. I do believe that he has an underlying pre-existing psychiatric impairment secondary to the organic personality disorder associated with his 1975 injury.

. . . .

Overall Mr. Igawa suffers from a mild psychiatric impairment due to underlying organic personality disorder related to his 1975 injury. There is no impairment related to his 1991 industrial injury.

. . . .

. . . 100% of the psychiatric impairment is pre-existing and not related to the industrial injury.

In a supplemental reported dated May 7, 1996, Dr. Bussey repeated his belief that "I do not believe that Mr. Igawa has any psychiatric impairment secondary to the industrial injury of 1991."

In addition to these reports, the record also contains a report from Dr. Mark Dillen Stitham, who performed an independent psychiatric examination of Igawa. Dr. Stitham did not anticipate any permanent disability resulting from the work injury. The record also contains a report from Dr. Anderson, who conducted a neuropsychological evaluation of Igawa on August 10, 1992 and September 3, 1992. Dr. Anderson opined that Igawa might be presenting an "exaggerated picture" of his present situation

and that the work injury is not likely to have resulted in a brain injury.

The Board nonetheless erred when it denied Igawa PPD benefits, in light of the directly contradictory medical reports in the record before the Board.

In his independent medical examination (IME) report dated October 31, 1995, Dr. Sakoda noted that Igawa complained to him of "headaches, neck pain, low-back pain and occasional numbness and weakness of the right hand with occasional numbness and tingling of the right foot. He is also having some psychiatric/psychological problems and insomnia following a head injury that occurred at work on 01 [sic] October 1991."

Dr. Sakoda went on to note Igawa's difficulty with memory and mathematical calculations, as well as Igawa's episodic disorder of seizures. Dr. Sakoda noted that Igawa had blacked out three to four times since the surgery, with the last episode occurring "last month."

In his November 16, 1995 report, Dr. Sakoda specifically stated that his diagnosis, prognosis and impairment rating for Igawa, dated November 16, 1995, was for "any permanent impairment related to the injury which occurred on 01 [sic] October 1991."

Dr. Sakoda opined that, although a cryptic arteriovenous malformation pre-existed the work injury,

the results certainly indicate that the AV malformation was somehow aggravated by the trauma [of the work injury] and there most likely there [sic] was some bleeding into the cyst at that time. This did cause some problems mentally and symptomatically. Postoperatively, he is much improved and this certainly supports the diagnosis of Dr. Hosobuchi.

Dr. Sakoda also noted that Igawa "appears to have had a hyperextension injury to his neck when struck by the large pot" which "could be a strain or a cervical disk injury."

Dr. Sakoda wrote that "the prognosis for the [arteriovenous] malformation certainly is good[,] " and that the symptoms Igawa has are not related to the malformation. In addition, Dr. Sakoda opined that the prognosis for "the other conditions" would be "fair to good."

Dr. Sakoda further opined that Igawa has an injury to the central nervous system relating to his head injury. He rated Igawa as having "11% impairment of the whole person for his head injury" owing to Igawa's continuing blackouts, memory problems, mathematical difficulties and emotional behavior impairments -- for forgetfulness and difficulty with numbers, he rated a 2% impairment; for mild emotional behavior limitation, he rated a 2% impairment; for risk or limitation of daily activities due to blackouts, he rated a 7% impairment; for a combined total of 11% impairment.

Dr. Sakoda further opined that Igawa suffers a problem of the cervical spine. He stated,

Under the DRE Category, he would really fall into Category II and that would be 5% impairment of the whole person. However, there are no x-rays, no EMG studies and nothing to assess whether he might be placed in a higher category because of some other criteria. Thus, he may not qualify for the DRE categories. Using the Range of Motion Model, he has 4% impairment of the whole person for the injury that is still symptomatic. He has limitation of movement. Cervical flexion is 31 degrees or 2% impairment of the whole person. Cervical extension is 40 degrees or 2% impairment of the whole person. Cervical right lateral flexion is 30 degrees or 1% impairment of the whole person. Cervical left lateral flexion is 43 degrees of 1% impairment of the whole person. Cervical right rotation is 62 degrees or 1% impairment of the whole person. Cervical left rotation is 68 degrees or 1% impairment of the whole person. The combined value is 8% impairment of the whole person for limitation of movement of the cervical spine. The combined value for the neck injury would then be 8% + 4% or 12% impairment of the whole person based on the Range of Motion Model.

In his February 26, 1996 report on his independent psychiatric examination of Igawa, Dr. Ginandes evaluated Igawa for permanent psychiatric injury. He rated Igawa's overall level of psychiatric impairment as being "moderate - 35%." Of that figure, Dr. Ginandes explained that "5% is due to his prior head injury and prior history, and 30% is due to his industrial injury of October 1 [sic], 1991." Dr. Ginandes noted that he saw no evidence of any malingering or conscious exaggeration of symptoms in his examination of Igawa.

The record also contains a June 28, 1992 report by Dr. James F. Pierce, one of the insurer's independent medical examiners. In it, Dr. Pierce noted that there does appear to

have been a dramatic increase in Igawa's headaches after the work injury, and that

I do not think his headaches are related to his temporal lobe seizures nor to his head injury of 1975. There are scattered notes throughout his record of headaches. The headaches he describes took a rather dramatic change since his accident of October. I think the accident combined with the associated stressors are responsible for the majority of his headache problems now.

As summarized by Dr. Ginandes, "[t]here seems to have been considerable controversy among physicians as to what role his earlier head injury played in his neurological disorder, and as to what role other stresses have played in his development of his depression and/or his adjustment disorder." The reports of Drs. Nicholson, Bergmanis and Bussey directly conflict with those of Drs. Sakoda, Ginandes and Pierce, giving rise overall to a reasonable doubt as to the existence of work-connected PPD.

In instances where the testimony of two doctors directly conflict on the issue of an injury's causal connection to the claimant's employment activity, the legislature has mandated that the conflict should be resolved in the claimant's favor. Chung, 63 Haw. at 652, 636 P.2d at 727. The Hawai'i Supreme Court has noted that, in Hawai'i, the legislature has chosen to

"cast a heavy burden on the employer in work[ers'] compensation cases. In its wisdom in formulating public policy in this area of the law, the legislature has decided that work injuries are among the costs of

production which industry is required to bear; and if there is reasonable doubt as to whether an injury is work-connected, the humanitarian nature of the statute demands that doubt be resolved in favor of the claimant." Akamine, 53 Haw. at 409, 495 P.2d at 1166. It is the legislature's prerogative to give the employee the benefit of the doubt in any workers' compensation claim. HRS § 386-85 does just that.

Korsak, 94 Hawai'i at 307, 12 P.2d at 1248 (emphasis in original).

Here, the Board simply rejected the medical reports of Drs. Sakoda and Ginandes as being "inconsistent with the minor nature of the work injury." Accordingly, because the workers' compensation statute mandates resolution of any reasonable doubt in favor of the claimant, the Board erred in reversing Igawa's award for permanent partial disability.

In this respect, we also observe that it is at least intuitively suggestive that the sequelae of Igawa's 1975 head injury had for all intents and purposes remitted entirely for about a decade before a similar syndrome arose shortly after his 1991 head injury. Under such circumstances, the suggestion that the 1991 industrial accident aggravated the preexisting condition naturally and ineluctably arises.³

³ We note that the Board apparently drew implicitly inconsistent conclusions. By modifying -- instead of reversing -- the disfigurement award, the Board implicitly affirmed the DLIR's finding that the surgery, and hence the underlying injury and its disabling sequelae, was causally related to Igawa's work injury.

B. *The Board's Modification of the Disfigurement Award.*

Igawa next argues that "the Board erred as a matter of law in modifying the Director's disfigurement award" from \$2,000.00 to \$850.00.

HRS § 386-32 (Supp. 1999) provides, in pertinent part,

Disfigurement. In cases of personal injury resulting in disfigurement the director may award compensation not to exceed \$30,000 as the director deems proper and equitable in view of the disfigurement. Disfigurement shall be separate from other permanent partial disabilities and shall include scarring and other disfiguring consequences caused by medical, surgical, and hospital treatment of the employee[.]

We are unable to determine from the record how the amount of the award was computed, either by the DLIR or by the Board. The Board, which reviews the DLIR's decisions de novo, ostensibly awarded \$100.00 per inch of scar for Igawa's eight-and-one-half inch scar in reducing Igawa's disfigurement award from \$2,000.00 to \$850.00. However, the record contains neither a detailed description of Igawa's surgical scar nor a photograph or other illustration which would indicate the scar's precise placement, width, thickness, hue, etc. As there is no basis upon which to base a review of the Board's decision for abuse of discretion, we affirm the Board's disfigurement award in the amount of \$850.00.

IV. Conclusion.

Based on the foregoing, we reverse the Board's Decision insofar as it reversed the Supplemental Decision of the DLIR awarding Igawa PPD benefits, and we affirm the Board's modification of the DLIR's disfigurement award.

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