

NOT FOR PUBLICATION

NO. 25189

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

AIG HAWAII INSURANCE COMPANY, Respondent-Appellant-Appellant, v. D. KEALA NALUAI, Claimant-Appellee-Appellee, and J. P. SCHMIDT,¹ INSURANCE COMMISSIONER, STATE OF HAWAI'I, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 01-1-3660)

SUMMARY DISPOSITION ORDER

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

In this secondary appeal, Respondent-Appellant-Appellant AIG Hawaii Insurance Company (AIG) challenges the May 30, 2002 Judgment entered by the Circuit Court of the First Circuit (the circuit court), Judge Eden Elizabeth Hifo presiding.

AIG contends that the circuit court's Judgment should be reversed because the circuit court clearly erred in affirming the Commissioner's Final Order entered on December 4, 2001 by Appellee-Appellee Insurance Commissioner, Department of Commerce and Consumer Affairs, State of Hawai'i (the Commissioner), which, in turn, adopted a hearings officer's recommendation that AIG be required to pay three no-fault benefits claims made by Claimant-Appellee-Appellee D. Keala Naluai. We disagree.

^{1/} At the time this case arose, Wayne C. Metcalf, III was the Insurance Commissioner of the State of Hawai'i, Department of Commerce and Consumer Affairs, the Appellee-Appellee in this appeal. Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c)(1) relating to substitution of parties, the current Insurance Commissioner, J. P. Schmidt, has been substituted as the named party to this case.

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The Hawai'i Supreme Court has stated that appellate review of an agency's decision "is 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." In re Water Use Permit Applications, 94 Hawai'i 97, 118-19, 9 P.3d 409, 430-31 (2000) (ellipsis and block quote formatting omitted). According to the supreme court,

[Hawaii Revised Statutes (HRS)] § 91-14(g) (1993) enumerates the standards of review applicable to an agency appeal and 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.

[Findings of Fact] are reviewable under the clearly erroneous standard to determine if the agency decision was clearly erroneous in view of reliable, probative, and substantial evidence on the whole record. HRS § 91-14(g) (5).

[Conclusions of Law] are freely reviewable to determine if the agency's decision was in violation of constitutional or statutory provisions, in excess of statutory authority or jurisdiction of agency, or affected by other error of law. HRS §§ 91-14(g) (1), (2), and (4).

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A [Conclusion of Law] that presents mixed questions of fact and law is reviewed under the clearly erroneous standard because the conclusion is dependent upon the facts and circumstances of the particular case. When mixed questions of law and fact are presented, an appellate court must give deference to the agency's expertise and experience in the particular field. The court should not substitute its own judgment for that of the agency.

[A Finding of Fact] or a mixed determination of law and fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding or determination, or (2) despite substantial evidence to support the finding or determination, the appellate court is left with the definite and firm conviction that a mistake has been made. We have defined "substantial evidence" as credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

Id. at 119, 9 P.3d at 431 (block quote formatting, citations, and internal brackets and some quotation marks omitted).

Applying the foregoing standards, we cannot conclude that the circuit court erred in affirming the Commissioner's Final Order. Accordingly, the circuit court's May 30, 2002 Judgment is affirmed.

DATED: Honolulu, Hawai'i, March 30, 2004.

On the briefs:

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Nohr & Myhre) for respondent-
appellant-appellant.

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