

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26268

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

THOMAS L. AITKEN, Claimant-Appellant, v.
STATE OF HAWAI'I, DEPARTMENT OF EDUCATION, Employer-Appellee
Self-Insured

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2001-527(H) (1-00-10098))

SUMMARY DISPOSITION ORDER

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

In this workers' compensation case, Thomas Laune Aitken (Claimant) appeals the November 5, 2003 decision and order of the Labor and Industrial Relations Appeals Board (Board) that affirmed the November 16, 2001 decision of the Director of Labor and Industrial Relations (Director) which denied Claimant workers' compensation for a January 13, 2000 stress injury arising out of allegations that Claimant, formerly a public school counselor, sexually abused one of his students.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we conclude the Board did not err, because

(1) the January 11, 1999 decision of the Director (deciding that Claimant's March 11, 1998 stress injury, arising out of allegations that Claimant, then a public school counselor, sexually abused one of his students, did not "aris[e] out of and in the course of [his]

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employment[,]" Hawaii Revised Statutes (HRS) § 386-3 (Supp. 2005)), and the May 5, 2000 decision and order of the Board (dismissing Claimant's appeal of the January 11, 1999 decision as untimely), were "final and conclusive between the parties," HRS § 386-87(a) (1993); HRS § 386-88 (1993); or

(2) the Director could not reopen Claimant's March 11, 1998 stress injury claim, as no "fraud ha[d] been practiced on the [D]irector or on any party[,]" HRS § 386-89(b) (1993), nor could he review Claimant's March 11, 1998 stress injury claim, as there had been no "change . . . or . . . mistake in a determination of fact related to the physical condition of [Claimant]," HRS § 386-89(c) (1993); or

(3) Claimant's January 13, 2000 stress injury did not "aris[e] out of and in the course of [his] employment[,]" HRS § 386-3; or

(4) all or a combination of the foregoing.

Therefore,

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IT IS HEREBY ORDERED that the November 5, 2003 decision and order of the Board are affirmed.


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

On the briefs:

James Ireijo,
for Claimant-Appellant.

Kathryn-Jean T.K. Taniguchi and
James E. Halvorson,
Deputy Attorneys General,
for Employer-Appellee.


Chief Judge


Associate Judge


Associate Judge