

NO. 27516

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

BARBARA K. DOI-MIYASATO, Appellant-Appellee, v.
CLAYTON C. IKEI, Attorney at Law, a Law Corporation,
Appellee-Appellant and STATE OF HAWAII, DEPARTMENT OF
LABOR AND INDUSTRIAL RELATIONS, EMPLOYMENT SECURITY
APPEALS REFEREE'S OFFICE, Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 05-1-0537)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Fujise, Leonard, J.)

NEEMA T. YARA
CLERK OF APPELLATE COURTS
STATE OF HAWAII

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FILED

This is a secondary appeal from a Judgment of the First Circuit Court (**Circuit Court**) on an Order Reversing the Department of Labor and Industrial Relations (**DLIR**) Decision Dated February 8, 2005 and Concluding [Ms. Doi-Miyasato] is Qualified for Unemployment Insurance Benefits, entered on September 8, 2005 (**Order Reversing DLIR**).¹ The Appellant herein is Clayton Ikei (**Ikei**), the Appellee in the Circuit Court. The Appellee herein, the Appellant in the First Circuit Court appeal, is Barbara K. Doi-Miyasato (**Doi-Miyasato**). Appellee-Appellee Department of Labor and Industrial Relations (**DLIR**) takes no position on this appeal.

Ikei raises two points of error on appeal:

1. The Circuit Court erred in holding that the Appeals Officer erred in his decision that Doi-Miyasato was disqualified

¹ The Honorable Eden Elizabeth Hifo presided.

from unemployment insurance benefits on the grounds that she voluntarily quit without good cause.

2. The Circuit Court erred in holding that Doi-Miyasato was discharged and that the record did not support disqualification on the basis of Hawaii Revised Statutes (HRS) § 383-30(2) for misconduct connected with work.

Upon careful review of the record, the applicable statutes, rules, and case law, and the brief submitted by Ikei,² and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Ikei's points of error as follows:

1. The Circuit Court did not err in holding that the Appeals Officer erred in his decision that Doi-Miyasato was disqualified from unemployment insurance benefits on the grounds that she voluntarily quit without good cause. The Appeals Officer's determination that Doi-Miyasato voluntarily quit her employment is clearly erroneous in light of the reliable, probative, and substantial evidence on the whole of the record that Doi-Miyasato believed she was terminated, Doi-Miyasato did not subjectively intend to terminate the employment relationship, and Ikei was the moving party in the termination. See Hawaii Administrative Rules (HAR) § 12-5-51(a) ("A discharge occurs when an employer is the "moving party" in the termination of the employment relationship."); see also Hardin v. Akiba, 84 Hawai'i 305, 313, 933 P.2d 1139, 1347 (1997) (holding that, in determining whether an employee voluntarily quit, the circumstance must reflect a subjective intent on the part of the employee to terminate employment).

2. The Circuit Court did not err in holding that the record did not support disqualification for unemployment

² Doi-Miyasato did not file an answering brief herein.

insurance benefits on the basis of misconduct connected with work pursuant to HRS § 383-30(2). In Hardin v. Akiba, the Hawai'i Supreme Court held that the employer has the burden of proving misconduct connected with work. 84 Hawai'i at 311, 933 P.2d at 1345 (1997). The applicable sections of the Administrative Rule, HAR § 12-5-51(c), (d) & (e), flesh out the grounds for a finding of misconduct. See also Medeiros v. Hawaii Dept. of Labor and Indus. Relations, 108 Hawai'i 258, 118 P.3d 1201 (2005) (applying the factors set forth in the administrative rule).

The reliable, probative, and substantial evidence on the whole of the record demonstrates confusion and a lack of sophistication on the part of Doi-Miyasato, rather than a wilful and wanton disregard of her employer's interests. There is no evidence indicating that the situation leading to the termination was not a one-time incident. The finding of the Appeals Officer that Doi-Miyasato had concluded that Ikei wanted a written statement "so that he could use it against her in a malpractice complaint" is indicative of a good faith error in judgment or discretion on Doi-Miyasato's part. Indeed, Ikei created the confusion by indicating his displeasure with his "staff committing malpractice" and the record as a whole supports a misunderstanding on Doi-Miyasato's part, not an intentional disregard for Ikei's situation. Under these circumstances, and considering the other factors set forth in HAR § 12-5-51(c), (d) & (e), we conclude that the Circuit Court correctly determined that Doi-Miyasato was not discharged for misconduct connected with work, within the legislative and administrative framework of HRS § 383-30(2), and therefore should not have been disqualified for unemployment insurance benefits.

Accordingly, we affirm the Circuit Court's Order Reversing DLIR and Judgment entered on September 8, 2005.

DATED: Honolulu, Hawai'i, March 28, 2008.

On the briefs:

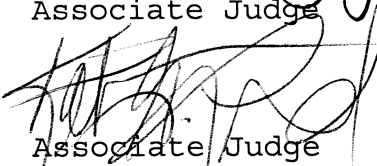
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Presiding Judge


Associate Judge


Associate Judge