

*** NOT FOR PUBLICATION ***

NO. 22784

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ROGER HEATH, Appellant-Appellee

vs.

HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,
UNEMPLOYMENT INSURANCE DIVISION, EMPLOYMENT SECURITY APPEALS
REFEREES' OFFICE, Appellee-Appellant

and

HAWAII DEPARTMENT OF EDUCATION, RECORDS AND TRANSACTIONS UNIT,
Appellee-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 99-014K)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Appellees-appellants State of Hawai'i Department of Labor and Industrial Relations (DLIR) and State of Hawai'i Department of Education (DOE) appeal from the August 3, 1999 judgment of the circuit court of the third circuit, the Honorable Ronald Ibarra presiding, finding in favor of Roger Heath (Heath) and against DLIR and DOE. On appeal, DLIR and DOE argue that the circuit court (1) erroneously concluded that the appeals officer failed to consider Hawai'i Administrative Rules (HAR) § 12-5-39(a)(12)(B)(iii) (1989),¹ and (2) erroneously interpreted HAR §

¹ HAR § 12-5-39(a)(12) provides in relevant part:

"Reasonable assurance" means a written, oral, or implied agreement that the individual will perform services in an institution of education or government agency in an instructional, research, principal administrative, or any other capacity during the ensuing academic year or term. Notification from the institution of education or government agency to the individual or reemployment for the next academic year or term shall constitute reasonable assurance, provided there are sufficient facts to show that the individual can realistically expect to be reemployed during

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12-5-39(a) (12) (B) (iii) .

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 hold that the appeals officer considered HAR § 12-5-39(a) (12) (B) (iii) in reaching her decision, inasmuch as she addressed Heath's argument that "his employment as a substitute teacher is contingent upon vacancies due to the absences of regular employees." However, because the circuit court did not interpret HAR § 12-5-39(a) (12) (B) (iii) by merely stating that "[t]he Department of Labor & Industrial Relations' decision is reversed on the basis that all factors in [HAR §] 12-5-39(a) (12) were not considered,

the ensuing academic year or term, including, but not limited to:

- (A) The existence of a job opening at the time of notification;
- (B) The absence of any contingencies, such as:
 - (i) Future enrollment;
 - (ii) Availability of funding;
 - (iii) Vacancies due to absences of regular employees;or
 - (iv) Any other conditional factors;
- (C) The individual's past employment with the institution of education or government agency; and
- (D) The employer's practice or procedure in assigning and offering work to its employees[.]

It should be noted that HAR § 12-5-39(a) (12) (A-D) was amended on October 12, 2000 as follows:

- (A) the existence of a job opening;
- (B) The nature and effect of any factors, such as:
 - (i) Future enrollment;
 - (ii) Availability of funding;
 - (iii) Vacancies due to absences of regular employees;or
 - (iv) The individual's past employment with an institution of education or governmental agency;
- (C) The employer's practice or procedure in assignment and offering work to its employees; and
- (D) Any other factors to be considered in determining realistic expectation for reemployment[.]

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i.e. B(iii),” this court has no opportunity to determine whether the circuit court’s interpretation was erroneous. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is reversed and DLIR’s decision is reinstated.

DATED: Honolulu, Hawai‘i, December 12, 2003.

On the briefs:

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