

*** NOT FOR PUBLICATION ***

NO. 23789

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ARNOLD D. DILI, Appellant-Appellant

vs.

BOARD OF TRUSTEES OF THE EMPLOYEES RETIREMENT SYSTEM OF THE STATE
OF HAWAI'I, Appellee-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-3570)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.
and Intermediate Court of Appeals Chief Judge Burns,
in place of Duffy, J., recused)

Appellant-appellant Arnold D. Dili (Dili) appeals from the September 19, 2000 judgment of the circuit court of the first circuit, the Honorable Allene Suemori presiding, affirming the Board of Trustees (Trustees) of the Employees' Retirement System's (ERS) decision to deny Dili's application for service-connected disability retirement status. On appeal, Dili's "Statement of Points of Error" are as follows:

1. The Circuit Court erred in ruling that Mr. Dili failed to prove, on appeal, that, "Appellee's Conclusions of Law are not clearly erroneous in view of the reliable, probative and substantial evidence in the whole record." By this statement, the Circuit Court has revealed that it applied the incorrect standard of review to Mr. Dili's legal challenges to the Appellee's conclusions of law.

2. The Circuit Court and Appellee committed legal error by implicitly concluding that a psychological injury is not compensable as a service connected disability under [Hawai'i Revised Statutes (HRS) §] 88-79.

3. The Circuit Court and Appellee committed legal error in failing to impose, upon Appellee, the burden of proof and persuasion with respect to proving the affirmative defense of somatoform pain disorder.

4. The Circuit Court's and Appellee's findings of fact (numbers 2, 3 and 4), as to causation, are clearly erroneous because they are premised upon a clear misrepresentation of the record with respect to the physical injuries that Mr. Dili claimed.

5. The Circuit Court's and Appellee's findings of fact (numbers 2, 3 and 4), as to causation, are clearly erroneous

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because they are based on an incorrect definition of somatoform pain disorder which is contrary to the meaning in the record and because this finding disregards the evidence of a separate condition known as "chronic pain syndrome."

6. The Circuit Court's and Appellee's findings of fact (numbers 2, 3 and 4), as to causation, are clearly erroneous because they conflict with the Circuit Court's and Appellee's finding of no pre-existing cause and because there is no evidence in the record that somatoform pain disorder is a separate condition that is unrelated to the accidents at issue.

7. The Circuit Court's and Appellee's findings of fact (numbers 2, 3 and 4), as to causation, are clearly erroneous because the only medical evidence in the record establishes that Mr. Dili's psychological conditions were caused by the accidents at issue.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that: (1) the circuit court applied the correct standard of review in deciding Dili's appeal, inasmuch as Dili challenged the FOFs, and, thus, the circuit court was required to review such challenge under the clearly erroneous standard of review, see HRS § 91-14(g); Korean Buddhist Dae Won Sa Temple of Hawai'i v. Sullivan, 87 Hawai'i 217, 953 P.2d 1315 (1998); (2) the circuit court and the Trustees affirmed the denial of Dili's application for service-connected disability retirement status based on Dili's failure to prove by a preponderance of the evidence that his incapacity was the result of his May 30, 1991 and August 24, 1992 injuries; (3) Dili bore the entire burden of establishing by a preponderance of the evidence that his incapacity was the natural and legal result of the May 30, 1991 and August 24, 1992 injuries, inasmuch as the plain and unambiguous language of HRS § 91-10(5) demonstrates that the party initiating an action has the burden to present all applicable matters to support its claim, see HRS § 91-10(5); HRS § 88-79(a); State v. Wells, 78 Hawai'i 373, 894 P.2d 70 (1995); and (4) FOF Nos. 2, 3 and 4 were not clearly erroneous, inasmuch

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as the record demonstrated that (a) Dili was incapacitated by somatoform pain disorder, and (b) Dili failed to prove that his incapacity was caused by the May 30, 1991 and August 24, 1992 injuries, see HRS § 88-79. Moreover, Dili was not entitled to attorneys' fees pursuant to HRS § 88-82 because the plain language of HRS § 88-82 indicates that attorneys' fees are only awarded to a member who appeals an unsatisfactory decision of the medical board and is thereafter awarded retirement benefits, see HRS § 88-82. Therefore,

IT IS HEREBY ORDERED that the circuit court's September 19, 2000 judgment, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

Eric T. Krening for
appellant-appellant

John P. Dellera, Deputy
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appellee-appellee