*** NOT FOR PUBLICATION ***

NO. 24058

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JON DAFFRON, Claimant-Appellant

vs.

ROBERT'S HAWAII, INC. and CLAIMS MANAGEMENT, INC.,
Employer/Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 99-164(H) (1-98-00165))

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

Claimant-appellant Jon A. Daffron (Daffron) appeals from the January 4, 2001 decision and order of the Department of Labor and Industrial Relations (DLIR) Appeals Board (LIRAB) affirming in part and modifying in part the decision of the Director of the Disability Compensation Division of the DLIR. On appeal, Daffron argues that the LIRAB erred in finding (1) that he was not temporarily and totally disabled from January 1, 1999 through December 31, 1999, (2) that he sustained only 5% permanent partial disability of the whole person for the neck only, and (3) that Robert's Hawaii, Inc. (Robert's Hawaii) was not liable for his medical care after October 29, 1998.[1]

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[1] Daffron challenges the following Findings of Fact (FOF) and Conclusions of Law (COL):

FINDINGS OF FACT

. . . .

16. [Daffron] contends that he is entitled to further TTD from June 17, 1998 through December 31, 1999. The evidence in the record, however, does not show that [Daffron] was TTD as a result of his MVA, during this period. Dr. Koga did not certify [Daffron] TTD after he returned to regular work in April 1998. We also do not accept Dr. McSherry's certification of disability, as it is contrary to the credible medical evidence in the record. In

(continued...)

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) substantial evidence was adduced to support the LIRAB's finding and conclusion that Daffron was temporarily and totally disabled through April 26, 1998, see HRS § 386-31(b); HAR § 12-10-1; Nakamura v. State, 98 Hawai'i 263, 47 P.3d 730 (2002); (2) the LIRAB did not err in concluding that Daffron sustained five percent permanent partial impairment of the whole person for the neck only, inasmuch as (a)

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[1](...continued)

addition, [Daffron] received unemployment insurance benefits during part of the period for which he claims he was TTD.

. . . .

19. While [Daffron] contends that he is permanently and totally disabled from his February 26, 1998 work injury, we find that he is not permanently and totally disabled as a result of his February 26, 1998 work injury. [Daffron] has not presented any medical evidence to support his claim for permanent total disability.

. . . .

22. Based on Dr. Kienitz, Dr. Pillai, and Dr. Mauro's opinions and reports, we find that [Daffron's] neck condition from the February 26, 1998 MVA, a cervical musculoligamentous strain, had resolved by October 29, 1998. On that basis, we find that [Robert's Hawaii] is not liable for further medical care for [Daffron's] neck condition, as of October 29, 1998.

. . . .

CONCLUSIONS OF LAW

1. We conclude that [Daffron] is entitled to the various periods of TTD as awarded by the Director, but that he is not entitled to any additional TTD, for the reasons stated above.

2. We conclude that [Daffron] is entitled to 5% PPD of the whole person for the neck only, based on Dr. Mauro's rating. We conclude that [Daffron] sustained no permanent disability to his low back.

3. We conclude that [Robert's Hawaii] is not liable for further medical care for the low back and neck, with the exception of the six weeks of progressive rehabilitative exercises recommended by Dr. Mauro and if so requested by [Daffron's] attending physician.

Dr. Mauro used the "Guides to Evaluation of Permanent Impairment," fourth edition, to conclude that Daffron suffered from five percent impairment of the whole person for the neck only, and (b) Dr. Kienitz reported that if he had to rate Daffron, he would rate him, at most, as "Toracolumbar Category II," which was equivalent to five percent impairment of the whole person, see HRS § 386-1; HAR § 12-10-21(a); and (3) the LIRAB did not err in finding and concluding that Robert's Hawaii was not liable for Daffron's medical care as of October 29, 1998, inasmuch as (a) reliable, probative and substantial evidence supported the LIRAB's finding that Daffron's February 26, 1998 work-related injury "had resolved by October 29, 1998," (b) Dr. Mauro's recommendation of six weeks progressive therapy was not based on Daffron's February 26, 1998 work-related injury, (c) Daffron's psychiatric condition was not attributed to his February 26, 1998 injury, and, therefore, was not compensable for purposes of workers' compensation, and (d) the LIRAB did not apportion medical treatment, see HRS § 386-21(a). Therefore,

IT IS HEREBY ORDERED that the LIRAB's January 4, 2001 decision and order, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, July 28, 2004.

On the briefs:

Earl T. Nakasato
for the claimant-appellant
Jon A. Daffron

Scott R. Devenney
for the employer/administrator-
appellee Robert's Hawaii, Inc.
and Claims Management, Inc.