

SUPREME COURT OF HAWAI‘I

Tauese v. State, Department of Labor & Industrial Relations, 113
Haw. 1

147 P.3d 785 (2006) · No. Nos. 26389, 26899 · Decided November 21, 2006

SUMMARY

The Supreme Court of Hawai‘i held that a fraudulent insurance act under Hawai‘i Revised Statutes § 386-98(a)(8) must be proven by clear and convincing evidence, rather than by a preponderance of the evidence. The court also addressed the statute’s requirements, the nature of administrative penalties, constitutional challenges, First Amendment protection for misrepresentations to the Department of Labor and Industrial Relations, and physician-patient privilege. The court vacated the Labor and Industrial Relations Appeals Board’s decision and remanded for a rehearing, while affirming the circuit court’s judgment.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Acoba, J.; Nakayama, J.; Duffy, J.; Moon, C.J.; Levinson, J.
JURISDICTION	Hawaii
DECIDED	November 21, 2006
DOCKET	Nos. 26389, 26899
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from a circuit court judgment dismissing Tauese's constitutional and injunctive challenge to proceedings under Hawai‘i's workers' compensation fraud statute and from a Labor and Industrial Relations Appeals Board decision affirming administrative fraud penalties.
STANDARD OF REVIEW	The circuit court's decision reviewing the administrative decision is reviewed as a secondary appeal for whether the circuit court was right or wrong. Agency conclusions of law are reviewed de novo; findings are reviewed under the clearly erroneous standard based on reliable, probative, and substantial evidence; procedural defects are reviewed under HRS § 91-14(g)(3); and agency discretion is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Sione Tauese v. State of Hawai‘i, Department of Labor and Industrial Relations, Ritz-Carlton Kapalua, Marriott Claims Services Corporation, Special Compensation Fund

TOPICS

workers compensation

judicial review of agency action

administrative law

statutory interpretation

appellate procedure

PRACTICE AREAS

administrative law

workers compensation

statutory interpretation

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether a violation of Hawai‘i Revised Statutes § 386-98 must be proved by clear and convincing evidence rather than by a preponderance of the evidence.
2. Whether HRS § 386-98 requires that the claimant actually receive benefits, or merely that obtaining benefits be the logical result or purpose of the challenged conduct.
3. Whether HRS § 386-98(a)(8) requires reliance or detrimental reliance as elements of a fraudulent insurance act.
4. Whether administrative penalties under HRS § 386-98(e) are criminal or punitive in nature.
5. Whether HRS § 386-98 improperly delegates the State's police power by allowing a private party to initiate an administrative fraud complaint.
6. Whether misrepresentations made before the Department are protected speech under the First Amendment.
7. Whether statements made during an independent medical examination are protected by the physician-patient privilege.
8. Whether the circuit court properly dismissed Tauese's declaratory and injunctive action.

HOLDINGS

1. A violation of HRS § 386-98 must be proved by clear and convincing evidence, not by a preponderance of the evidence.
2. A fraudulent insurance act does not require that benefits actually be received; it is sufficient that obtaining benefits was the logical result or purpose of the acts or omissions.
3. HRS § 386-98(a)(8) does not require proof of reliance or detrimental reliance by another party.
4. Administrative penalties imposed under HRS § 386-98(e) are not criminal in nature.
5. Tauese failed to establish that HRS § 386-98 improperly delegates the State's police power by allowing a private party to file an administrative complaint.

6. Misrepresentations made before the Department are not constitutionally protected by the First Amendment.
7. Statements made to a physician during an independent medical examination are not protected by the physician-patient privilege.

KEY QUOTATIONS

“We hold that fraudulent insurance acts under HRS § 386-98(a)(8) must be proven by clear and convincing evidence.” (147 P.3d at 785)

“HRS § 386-98(a), then, does not require that a party actually obtain benefits to be subject to a penalty.” (147 P.3d at 815)

“We hold, then, that a violation of HRS § 386-98, a fraudulent insurance act, must be proved by clear and convincing evidence.” (147 P.3d at 821)

FACTUAL BACKGROUND

Tauese sustained a work-related back injury while employed as a housekeeper and received workers' compensation benefits. On the day he was released to return to work with restrictions, a private investigator videotaped him repeatedly bending, cutting and handling portions of a cow carcass, and arranging bags near a pickup truck. During a later independent medical examination and Department hearing concerning permanent impairment, Tauese described substantial limitations and denied or minimized the extent of his physical activity. The Department found that he intentionally or knowingly misrepresented or concealed material facts to obtain permanent partial disability benefits and imposed administrative penalties.

PROCEDURAL HISTORY

The Department of Labor and Industrial Relations found that Tauese committed a fraudulent insurance act by misrepresenting or concealing his physical capabilities in connection with an independent medical examination and an administrative hearing, and imposed a \$5,000 fine, suspension of benefits, and attorney-fee and cost reimbursement. The LIRAB affirmed, applying a preponderance-of-the-evidence standard. The circuit court dismissed Tauese's separate declaratory and injunctive action and entered final judgment for the defendants. The Supreme Court affirmed the circuit court judgment but vacated the LIRAB decision and remanded for rehearing under the clear-and-convincing-evidence standard.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The LIRAB's October 7, 2004 decision and order was vacated, and the matter was remanded to the LIRAB for a rehearing applying the clear-and-convincing-evidence standard. The circuit court's January 27, 2004 judgment was affirmed.

CASES CITED

- Lanai Co. v. Land Use Commission, 105 Hawai‘i 296, 97 P.3d 372 (2004)
- Masaki v. General Motors Corp., 71 Haw. 1, 780 P.2d 566 (1989)
- Kekona v. Abastillas, No. 24051, 2006 WL 3020312 (Haw. Sept. 26, 2006)
- United States v. Ward, 448 U.S. 242 (1980)
- Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963)
- State v. Simeona, 10 Haw. App. 220, 864 P.2d 1109 (1993)
- DeNuptiis v. Unocal Corp., 63 P.3d 272 (Alaska 2003)
- Sjostrand v. North Dakota Workers Compensation Bureau, 649 N.W.2d 537 (N.D. 2002)
- Shoppe v. Gucci America, Inc., 94 Hawai‘i 368, 14 P.3d 1049 (2000)
- State v. Guidry, 105 Hawai‘i 222, 96 P.3d 242 (2004)
- Hudson v. United States, 522 U.S. 93 (1997)
- Bocalbos v. Kapiolani Medical Center for Women & Children, 89 Hawai‘i 436, 974 P.2d 1026 (1999)

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