DISSENTING OPINION BY NAKAMURA, C.J.

There is no dispute that Appellant-Appellant Eden L. Panado (Panado) is permanently incapacitated for the further performance of her duty as a Computer Operator III and that her incapacity was not the result of wilful negligence on her part. Panado applied for service-connected disability retirement benefits. Panado asserted that during her eight-hour work shift that ended on October 9, 2004,[1] she hurt her back, neck, and arm due to the repetitive lifting of heavy boxes. Appellee-Appellee Board of Trustees of the Employees' Retirement System of the State of Hawaiʻi (Board) denied Panado's application[2] on the alternative grounds that: (1) Panado's description of how she was injured during her eight-hour work shift was not specific enough to constitute an "accident" within the meaning of Hawaii Revised Statutes (HRS) § 88-79 (Supp. 2004); and (2) Panado failed to demonstrate that her permanent incapacitation was the natural and proximate result of her alleged accident on October 9, 2004.[3]

The Circuit Court of the First Circuit (Circuit Court) only addressed the Board's first ground for denying Panado's application. In my view, the Circuit Court erred in ruling, as a matter of law, that Panado's description of how she was injured was insufficient to satisfy the requirement of HRS § 88-79 that the work accident occur "at some definite time and place."

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[1]Panado's work shift was from 11:30 p.m. on October 8, 2004, to 7:45 a.m. on October 9, 2004.

[2]The Board adopted the hearing officer's recommended decision, including the hearing officer's findings of fact and conclusions of law. The hearing officer, in turn, recommended that the Board affirm the findings and certifications of the Medical Board and deny service-connected disability retirement benefits to Panado.

[3]With respect to the second alternative ground, conflicting medical evidence was presented regarding whether the injuries Panado sustained during her October 9, 2004, work shift were a temporary aggravation versus a permanent aggravation of her pre-existing condition. Panado had a pre-existing low back condition due to a 1994 motor vehicle accident and pre-existing fibromyalgia, a serious condition that causes chronic pain. The Board accepted the medical opinions that Panado's October 9, 2004, injuries only temporarily aggravated her pre-existing condition and that her permanent incapacity was not the natural and proximate result of the alleged October 9, 2004, accident.

Contrary to the Circuit Court, I believe that Panado's description of her injuries as resulting from repetitive lifting of heavy boxes during her October 9, 2004, work shift was sufficient to meet the "at some definite time and place" requirement. I therefore respectfully dissent from the majority's decision to affirm the Circuit Court's decision and order and Final Judgment. I would vacate the Circuit Court's decision and order and Final Judgment, and I would remand the case to have the Circuit Court rule on the Board's alternative ground for denying Panado's application.

I.

Service-connected disability retirement benefits are available, upon application, to an Employees' Retirement System "member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, . . . through no wilful negligence on the member's part . . . ." HRS § 88-79 (emphasis added). Hawaiʻi Administrative Rules (HAR) § 6-22-2 (1989) defines "accident" as "an unlooked for mishap or untoward event which is not expected or designed, occurring while in the actual performance of duty at some definite time and place."

The Circuit Court concluded that "[g]iven the plain and ordinary meaning of 'at some definite time and place' in HRS § 88-79 and HAR [§] 6-22-[2], the Court concludes that repetitive lifting and moving of heavy boxes during the course of [Panado's] eight hour shift does not constitute an 'accident' for purposes of determining whether [Panado] is entitled to service connected disability retirement benefits . . . ."

II.

In my view, this case turns on a question of statutory interpretation, the meaning of the phrase "at some definite time and place," which focuses on the Legislature's intent in using the phrase and presents a question of law. The evident purpose of the statutory requirement that the accident occur while in the

actual performance of duty "at some definite time and place" is to limit qualifying accidents to those that are clearly work related. Here, there was no dispute that Panado was injured as the result of her lifting of heavy boxes sometime during her eight-hour shift that ended on October 9, 2004.[4] Panado's inability to specifically attribute her injuries to a particular box lifted or pinpoint the exact time during the eight-hour shift that she sustained her injuries did not detract from the fact that she clearly suffered injuries as the result of a work-related accident. Panado described an accident occurring "at some definite time and place" by stating that she sustained injuries from the lifting of heavy boxes during an eight-hour shift on October 9, 2004. In other words, Panado's description of her injuries as occurring from lifting heavy boxes during a particular eight-hour shift on October 9, 2004, not only satisfied the letter but fulfilled the purpose of the "at some definite time and place" requirement.

In Myers v. Board of Trustees of the Employees' Retirement System, 68 Haw. 94, 95-96, 704 P.2d 902, 903-04 (1985), the Hawaiʻi Supreme Court held that Myers had suffered an "accident" that entitled him to service-connected disability retirement benefits, when he hurt his back as the result of carrying a 35-pound coffee maker as part of his normal work duties. Myers, who had a pre-existing degenerative back condition, heard a snap in his back and experienced sharp pains while carrying the coffee maker. Id. at 95, 704 P.2d at 903. The supreme court stated that "[s]ince the facts as to what happened on [the date Myers was injured] are not in dispute, the question of whether or not that incident constituted an 'accident' is one of law . . . ." Id. at 96, 704 P.2d at 904.

[4]The Board found that the October 9, 2004, incident caused injury to Panado's cervical spine and aggravated her low-back condition. The dispute was over whether the injuries Panado sustained during the October 9, 2004, incident were temporary or whether they resulted in a permanent aggravation of her pre-existing condition and her permanent incapacitation for duty.

In my view, it would be unreasonable to distinguish Panado's case from the Myers decision simply because Myers attributed his back injury to one lift at work while Panado attributed her injuries to repetitive lifts during her work shift. In both cases, the employee clearly sustained injury as the result of a work-related accident. I believe that construing and applying the "at some definite time and place" requirement to categorically deny Panado's application would be inconsistent with the letter and purpose of the statute and would be "unjust and unreasonable in its consequences." Hua v. Bd. of Trs. of the Emps.' Ret. Sys., 112 Hawaiʻi 292, 300, 145 P.3d 835, 843 (App. 2006) (internal quotation marks and citation omitted); see Kikuta v. Bd. of Trs. of the Emps.' Ret. Sys., 66 Haw. 111, 117, 657 P.2d 1030, 1035 (1983) (construing service-connected disability retirement statute to avoid absurd and unjust results).

III.

For these reasons, I conclude that the Circuit Court erred in ruling, as a matter of law, that Panado's description of how she was injured was insufficient to satisfy the requirement of HRS § 88-79 that the work accident occur "at some definite time and place" and in affirming the Board on this basis. I would vacate the Circuit Court's decision and order and Final Judgment, and I would and remand the case to have the Circuit Court rule on the Board's alternative ground for denying Panado's application -- namely, that Panado failed to demonstrate that her permanent incapacitation was the natural and proximate result of her alleged accident on October 9, 2004.