DISSENTING OPINION BY GINOZA, J.

Among the points of error raised on appeal, Claimant-Appellee-Appellant Brian M. Yoshii (Yoshii) contends that Employer-Appellant-Appellee State of Hawaiʻi, University of Hawaiʻi (State) failed to overcome the statutory presumption that Yoshii's claim is for a covered work injury, pursuant to Hawaiʻi Revised Statutes (HRS) § 386-85(1) (1993). Yoshii thus challenges finding of fact (FOF) 19 and conclusion of law (COL) 1 in the Decision and Order by the Labor and Industrial Relations Appeals Board (LIRAB).[1] Given the record in this case and in my view the lack of substantial evidence to overcome the statutory presumption, I agree with Yoshii and therefore respectfully dissent.

In analyzing the statutory presumption for a claimed work injury, the following standards are applicable.

> When determining whether a claim is work-related, HRS § 386-85(1) (1993) states that "it shall be presumed, *in the absence of substantial evidence to the contrary* ... [t]hat the claim is for a covered work injury...." (Emphasis added.) In order to overcome the presumption of work-relatedness, the employer bears the initial burden of "going forward" with the evidence and the burden of persuasion. In other words, the employer must initially introduce substantial evidence that, if true, could rebut the presumption that the injury is work-related. In the workers' compensation context, the term "substantial evidence" "signifies a high quantum of evidence which, at the minimum, must be 'relevant and credible evidence of a quality and quantity sufficient to justify a conclusion by a reasonable [person] that an injury or death is not work connected.'" Once the trier of fact determines that the employer has adduced substantial evidence that could overcome the presumption, it must then weigh that evidence against the evidence presented by the claimant. In so doing, the employer bears the burden of persuasion in which the claimant is given the benefit of the doubt.

Nakamura v. State, 98 Hawaiʻi 263, 267-68, 47 P.3d 730, 734-35 (2002) (citations omitted). Additionally, as Yoshii points out,

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[1] FOF 19 states: "The Board has applied the presumption of compensability and finds that Employer has presented substantial evidence to overcome and rebut said presumption with regard to Claimant's knee condition."

COL 1 states: "Having applied the presumption of compensability and determining that Employer presented substantial evidence to overcome and rebut the presumption, the Board concludes that Claimant did not sustain a personal injury to his right knee on October 30, 2008, arising out of and in the course of employment."

generalized medical evidence is not enough to rebut the presumption of a covered work injury, and instead a "reasonable degree of specificity is required in order for medical opinion evidence to rebut the presumption of compensability." Id. at 268-69, 47 P.3d at 735-36; See also Akamine v. Hawaiian Packing & Crating Co., 53 Haw. 406, 410-12, 495 P.2d 1164, 1167-68 (1972).

In reviewing FOF 19 and COL 1, it appears that they involve mixed questions of fact and law, and therefore should be reviewed under the clearly erroneous standard because they are "dependent upon the facts and circumstances of the particular case." Nakamura, 98 Hawaiʻi at 267, 47 P.3d at 734 (citation and quotation mark omitted).

Yoshii claims that he sustained a work injury to his right knee on October 30, 2008, when he was walking down a loading dock stairs, stepped with his right leg and then felt a sharp pain in his leg.[2] In his WC-5 claim form for workers' compensation benefits, Yoshii describes his injury as a "[t]orn ligament on right knee both inside and outside."

There is no definitive evidence as to what caused Yoshii's right knee pain and the claim has been questioned because three days before, on October 27, 2008, Yoshii visited his doctor, Luis Ragunton, M.D. (Dr. Ragunton), and complained about right leg pain that had begun when Yoshii got up from a chair after watching a movie. At that time, Dr. Ragunton assessed Yoshii with edema, *i.e.* swelling. Compounding matters further, Yoshii has described his work injury in various ways that has caused concern about his ability to provide a credible history.

However, the record establishes that on October 30, 2008, the day of the claimed work injury, Yoshii immediately sought care at the Pali Momi emergency department. In the

[2] As the majority opinion notes, the LIRAB did not base its decision on the time of Yoshii's claimed work injury, and thus I do not address that issue.

following months, Dr. Ragunton continued to assess Yoshii as suffering from edema, but then in late December 2008, Dr. Ragunton referred Yoshii to Calvin Oishi, M.D. (Dr. Oishi), for a possible torn meniscus of the right knee. An MRI on December 29, 2008 indicated a possible degenerative tear of the medial meniscus, and on January 17, 2009, Yoshii underwent surgery by Dr. Oishii for a partial medial and lateral meniscectomy.[3]

In this case, therefore, there appears no question that within two months of the claimed work injury, and after Yoshii had continued to complain of right leg pain, the MRI indicated a possible torn meniscus and the following month Yoshii underwent surgery for a partial medial and lateral meniscectomy. Yoshii thus claims that the torn meniscus in his right knee resulted from, or at least was aggravated by, his employment. In determining that Yoshii did not sustain an injury to his right knee on October 30, 2008, the LIRAB credited the opinions of Brian Mihara, M.D. (Dr. Mihara) and Kent Davenport, M.D. (Dr. Davenport),[4] which were contained in reports dated February 9, 2009 and June 4, 2009, respectively, and submitted to the LIRAB. However, in my view, these reports do not provide substantial evidence to rebut the statutory presumption that the torn meniscus in Yoshii's right knee was a covered work injury. Dr. Mihara's February 9, 2009 report only minimally addresses the meniscus tear and the surgery performed by Dr. Oishi, and when it

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[3] Although Yoshii's WC-5 claim form asserted a "torn ligament" and the LIRAB made a finding that "[t]here is no evidence of torn ligaments as described or claimed by Claimant[,]" it is evident that Yoshii was referring to the torn meniscus. Yoshii submitted his WC-5 form on March 11, 2009, after the MRI and surgery with Dr. Oishii. Granted, a meniscus is a cartilage and not a ligament, but Yoshii's mistake in this regard should not affect his claim.

[4] One of the issues before the LIRAB was whether the report of Dr. Davenport should be stricken from the record. The LIRAB credited Dr. Davenport's opinion and then determined that the issue of whether to strike his report was moot. It appears the issue of whether to strike the report should have been addressed first. Nonetheless, even considering Dr. Davenport's report, I do not believe it assists the State in overcoming the presumption of a covered work injury.

does, the report simply concludes without explanation that the medical records do not suggest that a meniscal tear was due to a work injury. There is no reasoning or explanation for the existence of the meniscus tear, or why the October 30, 2008 incident could not have been an aggravating factor for the meniscus tear. Dr. Davenport's June 4, 2009 report is even more sparse and does not reflect that he was provided with the MRI report to review. He notes that Yoshii was referred to Dr. Oishii for evaluation of a possible meniscus tear, but Dr. Davenport's report does not reflect that he was aware of the MRI findings or the surgery. Thus, similar to Dr. Mihara's report, Dr. Davenport's report provides no explanation for the existence of the torn meniscus or why it could not have been related to the October 30, 2008 incident. In sum, these reports do not provide substantial evidence with a reasonable degree of specificity to rebut the statutory presumption. Nakamura, 98 Hawaiʻi at 267-69, 47 P.3d at 734-36. On this record, therefore, I would conclude that FOF 19 and COL 1 are clearly erroneous.

For these reasons, I respectfully dissent and would remand to the LIRAB for a determination of the appropriate compensation arising from the October 30, 2008 incident.