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NO. CAAP-25-0000608

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

KIRK L. FLORES, SR., Appellant-Appellant
v.
EMPLOYEES' RETIREMENT SYSTEM, STATE OF HAWAIʻI,
Appellee-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CASE NO. 3CCV-24-0000028)

SUMMARY DISPOSITION ORDER
(By: Leonard, Presiding Judge, McCullen and Gluck, JJ.)

Appellant-Appellant Kirk L. Flores Sr. appeals from the Circuit Court of the Third Circuit's (**Circuit Court**) Findings of Fact, Conclusions of Law, and Order (**FOFs/COLs**) and Final Judgment, both entered on August 7, 2025,[1] which affirmed the final decision of the Board of Trustees of the Employees' Retirement System of the State of Hawaiʻi (**ERS Board**) denying Flores's application for service-connected disability retirement benefits. Flores contends that three of the Circuit Court's COLs are erroneous: (1) COL #31, that "[Flores's] incapacity was temporary and was not likely to be permanent"; (2) COL #38,

[1] The Honorable Peter K. Kubota presided.

that Flores "is [not] permanently incapacitated"; and (3) COL #71, that the judicial opinions relied upon by Flores "did not involve the issue of permanent incapacitation." These three points of error come down to one issue: whether the ERS Board erred in ruling that Flores's incapacity in December 2021 — when Flores applied for service-connected disability retirement benefits — was not "likely to be permanent" (such that Flores was ineligible for service-connected disability retirement benefits pursuant to Hawaiʻi Revised Statutes (**HRS**) § 88-336).

Upon careful review of the record and the briefs submitted, and having given due consideration to the arguments and issues raised, we affirm.

Background: On December 23, 2021, Flores filed an application for service-connected disability retirement benefits with the Employees' Retirement System (**ERS**). In his "Statement of Examining Physician," dated December 31, 2021, Flores's own medical provider indicated that Flores was "currently incapacitated from performing present duties" but that the incapacity was not likely to be permanent. Instead, the provider indicated that Flores's condition was temporary. On January 28, 2022, Flores's provider opined that Flores "may be able to return to work part-time[,] gradually increasing his work hours until he resumes work full-time." On February 11, 2022, Flores's provider wrote that Flores should be able to return to work approximately ten weeks after implementation of a viable transition plan.

On April 15, 2022, the Medical Board to the ERS (**Medical Board**) issued its Report. The Medical Board concluded that "there is insufficient medical evidence proving that [Flores's] incapacity from the further performance of duty . . . was likely to be permanent at the time he applied for service-connected disability retirement benefits." In a letter dated August 2, 2022, ERS notified Flores that its Executive Director

"made a preliminary decision to accept" the Medical Board's recommendation.

On August 22, 2022, Flores petitioned for a contested case hearing, and the hearing was held on March 16, 2023. Dr. Patricia L. Chinn, Chair of the Medical Board, testified at the hearing that the December 31, 2021 assessment by Flores's provider demonstrated that Flores "is not permanently incapacitated." According to Dr. Chinn, the Medical Board concluded that Flores's incapacitation was not likely to be permanent "[b]ecause all the records so far had shown that, or had indicated that even his treating [provider] felt that it was temporary." Dr. Chinn likewise testified that "there was nowhere in the medical records that there was any opinion that [Flores] was permanently incapacitated, including the records of" Flores's provider. On November 21, 2023, the ERS Board adopted the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order as its own Proposed Decision (with one minor edit), denying Flores's application for service-connected disability retirement benefits.

Flores appealed to the Circuit Court, which affirmed the ERS Board's decision. On August 7, 2025, the Circuit Court entered its FOFs/COLs and Final Judgment.[2] This appeal followed.

Standard of Review:

HRS § 91-14, entitled "Judicial review of contested cases," provides in relevant part:

> (g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been

[2] We note that "[a] circuit court reviewing an agency decision acts as an appellate court. It shouldn't make its own findings of fact; it decides whether the agency's findings of fact were clearly erroneous based on the evidence before the agency." Mālama Kakanilua v. Bd. of Land & Nat. Res., 155 Hawaiʻi 512, 516 n.4, 567 P.3d 217, 221 n.4 (App. 2025).

> prejudiced because the administrative findings, conclusions, decisions, or orders are:
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> (1) In violation of constitutional or statutory provisions; or
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> (2) In excess of the statutory authority or jurisdiction of the agency; or
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> (3) Made upon unlawful procedure; or
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> (4) Affected by other error of law; or
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> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
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> (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
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> Under HRS § 91-14(g), conclusions of law are reviewable under subsections (1), (2), and (4); questions regarding procedural defects under subsection (3); findings of fact under subsection (5); and an agency's exercise of discretion under subsection (6).

Paul's Elec. Serv., Inc. v. Befitel, 104 Hawaiʻi 412, 416, 91 P.3d 494, 498 (2004) (cleaned up).

"Appellate review of a circuit court decision reviewing an agency decision constitutes a secondary appeal. The appellate court must determine whether the circuit court was right or wrong in its decision by applying the standards set forth in HRS § 91-14(g) to the agency's decision." Keep the N. Shore Country v. Bd. of Land & Nat. Res., 150 Hawaiʻi 486, 502, 506 P.3d 150, 166 (2022) (citation omitted). "In a secondary appeal, this court's review is further qualified by the principle that the agency's decision carries a presumption of validity and appellant has the heavy burden of making a convincing showing that the decision is invalid." Id. at 503, 506 P.3d at 167 (cleaned up). Furthermore:

> issues of fact and mixed issues of law and fact are reviewed for clear error. A mixed question of law and fact exists when the conclusion is dependent upon the facts and circumstances of the particular case.

> A finding of fact or a mixed determination of law and fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding or determination, or (2) despite substantial evidence to support the finding or determination, the appellate court is left with the definite and firm conviction that a mistake has been made.

Id. (cleaned up).

(1-2) Flores's first two points of error — regarding COLs #31 and #38 — appear to be that the ERS Board (and, subsequently, the Circuit Court) used the wrong legal standard and/or applied the legal standard incorrectly in denying Flores's application for service-connected disability retirement benefits. For example, Flores argues that "the Circuit Court used the wrong definition of 'permanent' and ignored the substantial evidence of permanent incapacity." He further contends that "[t]he Circuit Court was wrong, as a matter of law, by requiring [Flores] to show that he was totally incapable of performing work as a Building Maintenance Worker I, at any location within the State of Hawaii." These arguments are without merit.

First, both the ERS Board and the Circuit Court correctly identified HRS § 88-336(a) as the applicable legal standard for Flores's application.[3] Neither the ERS Board nor the Circuit Court erred as to the applicable law.

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[3] HRS § 88-336(a) (Supp. 2018) provides in relevant part:

> (a) Under rules the board of trustees may adopt, . . . any class H 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, or as the cumulative result of some occupational hazard, through no wilful negligence on the member's part, may be retired by the system for service-connected disability; provided that:
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> . . .
>
> (4) The medical board or other entity designated by the board of trustees certifies that the member is incapacitated for the further performance of duty at the time of application and that the member's incapacity is likely to be permanent.

Second, the ERS Board's FOFs, and its mixed FOFs and COLs, were not clearly erroneous: there is substantial evidence in the record that, at the time of Flores's application on December 23, 2021, his incapacitation was not likely to be permanent. Flores's own treating provider opined that Flores's incapacitation was not likely to be permanent. The ERS Board did not clearly err in finding that "the overwhelming evidence suggests that [Flores's] incapacity [as of the date of the application] was deemed to be temporary."

"Notably, unlike workers' compensation claims, there is no presumption of compensability for disability retirement benefits claims." Panado v. Bd. of Trs., Employees' Ret. Sys., 134 Hawaiʻi 1, 11, 332 P.3d 144, 154 (2014). Further, "[e]xcept as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. . . . The degree or quantum of proof shall be a preponderance of the evidence." Hawaiʻi Administrative Rules § 6-23-31 (eff. 2009). Here, the ERS Board concluded that Flores did not meet his burden, and the ERS Board did not err in reaching this conclusion.

(3) Flores argues that the Circuit Court erred in COL #71, which distinguished three cases Flores had cited: Panado, 134 Hawaiʻi 1, 332 P.3d 144; Hua v. Bd. of Trs. of Employees' Ret. Sys., 112 Hawaiʻi 292, 145 P.3d 835 (App. 2006); and Stout v. Bd. of Trs. of the Employees' Ret. Sys., 140 Hawaiʻi 177, 398 P.3d 766 (2017). Flores seems to rely on these decisions to argue that the ERS Board and the Circuit Court imposed an unduly restrictive interpretation of eligibility for service-connected disability retirement benefits. As set forth supra, both the ERS Board and the Circuit Court applied the correct legal standard. Furthermore, the Circuit Court did not err in

concluding that these three cases "did not involve the issue of permanent incapacitation." Instead, each of these cases focused on a different question regarding HRS § 88-79. See Stout, 140 Hawaiʻi at 186, 398 P.3d at 775 (analyzing HRS § 88-79's use of the phrase "service-connected disability"); Panado, 134 Hawaiʻi at 13, 332 P.3d at 156 (analyzing HRS § 88-79's use of the phrase "definite time and place"); Hua, 112 Hawaiʻi at 299, 145 P.3d at 842 (analyzing HRS § 88-79's use of the phrase "actual performance of duty"). The Circuit Court did not err in distinguishing or applying these cases.

For the foregoing reasons, we affirm the Circuit Court's August 7, 2025 Findings of Fact, Conclusions of Law, and Order and Final Judgment.

Dated: Honolulu, Hawaiʻi, November 25, 2026.

On the briefs:

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for Appellant-Appellant.

Randall S. Nishiyama
and Diane W. Wong,
Deputy Attorneys General,
for Appellee-Appellee.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Daniel M. Gluck
Associate Judge