

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of
VINH ALKIRE-CLEMEN,

Complainant.

CASE NO. 2010-1
ORDER NO. 2757
ORDER DISMISSING UNFAIR LABOR
PRACTICE COMPLAINT

ORDER DISMISSING UNFAIR LABOR PRACTICE COMPLAINT

On December 22, 2010, Complainant VINH ALKIRE-CLEMEN (Alkire-Clemen or Complainant), *pro se*, filed an Unfair Labor Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board). Complainant filed the Complaint naming the Board as the Respondent and alleged, *inter alia*, the following:

(“LABOR APPEALS BOARD’S MEMBER DAVID A. PENDLETON, MEMBER ASSIGNED APPELLANT’S CASES)

- (1) 11/4/10, Denied remanding the file to DCD for medical care & benefits determination for Board’s Decision and Order dated 8/27/07. This inconsistent with Board’s letter dated 5/21/10, (“The Board intends to issue a Notice of Non-hearing Motion for Remand”).
- (2) 8/14/09, Denied benefits determination for Board’s Decision & Order as to §386-73, Original jurisdiction over controversies as instructed by Intermediated (sic) Court Appeals.
- (3) 10/19/10, Decision affirmed 4/7/08, DCD’s Administrator’s decision “claiming appellant relitigated and owed attorney fees”. Claimant actually requested hearing for filed WC-5 for subsequence (sic) injuries cases.

- (4) 10/27/10, denied motion to submit new evidentiary (sic) consistent with the ICA's instruction to "consider whether there are other reasons why Claimant's claim is not barred by the statute of limitations."

("DISABILITY COMPENSATION DIVISION'S ADMINISTRATOR, GARY S. HAMADA, AND HEARING OFFICER, SIU")

- (1) 2/20/08, omission and distorted appellant's hearing motion and testimony presented at hearing for filed WC-5 for subsequence (sic) injuries cases AB 2002-309(S)2-98-14176 and AB 2003-121(S)2-02-09980.
- (2) 4/7/08, based on § 12-10-64 Correction of records, Administrator refused to correct his decision based on the facts Appellant presented dated 4/14/08, Correcting The Director's Decision Dated April 7, 2008.
- (3) 9/8/08, refused appellant request for benefits determination as to §386-73, Original jurisdiction over controversies as instructed by Intermediated (sic) Court of Appeals.

After reviewing the Complaint, the Board finds that Complainant alleges that she was improperly denied medical care and benefits under Hawaii Revised Statutes (HRS) Chapter 386 pertaining to workers' compensation and does not allege facts or contentions which fall within the Board's unfair labor practice jurisdiction under HRS Chapter 377.

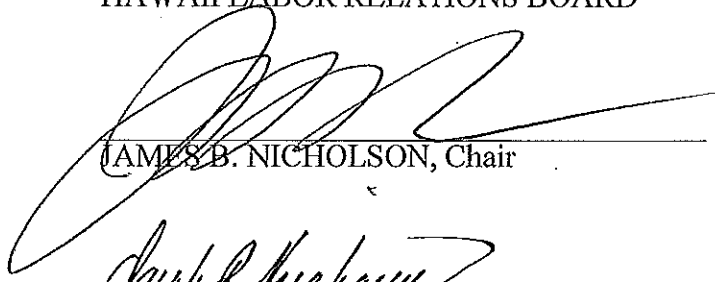
The Intermediate Court of Appeals has observed that "[a]n administrative agency can only wield powers expressly or implicitly granted to it by statute. Implied powers are limited to those reasonably necessary to make an express power effective." TIG Ins. Co. v. Kauhane, 101 Hawai'i 311, 327, 67 P.3d 810, 826 (App. 2003).

Accordingly, the Board concludes that it lacks jurisdiction over instant Complaint because the allegations in the Complaint do not pertain to the commission of unfair labor practices within the scope of HRS Chapter 377, Employment Relations Act. Accordingly, the Board, *sua sponte*, dismisses the instant Complaint for lack of jurisdiction.

VINH ALKIRE-CLEMEN, Complainant
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DATED: Honolulu, Hawaii, January 5, 2011

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

Copy sent to:

Vinh Alkire-Clemen

