

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

ISAIAH C. CARSON,	)	CASE NO.: AB 2021-139
	)	DCD No.: 2-20-04512
Claimant-Appellant,	)	
	)	
vs.	)	D/A: May 14, 2020
	)	
LOCKHEED MARTIN CORP.,	)	
	)	
Employer-Appellee,	)	May 22 2023, 8:17 am
	)	<b>FILED</b> <sup>SM</sup>
and	)	Labor and Industrial Relations
	)	Appeals Board
ACE USA/ESIS,	)	
	)	
Insurance Carrier-	)	
Appellee.	)	
	)	

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ORDER HOLDING CASE IN FURTHER ABEYANCE  
and  
SECOND NOTICE OF INTENTION TO DISMISS

On September 17, 2021, Claimant ISAIAH C. CARSON appealed the Director's August 31, 2021 Decision Supplemental to Award Dated 4/6/2021 to the Labor and Industrial Relations Appeals Board ("Board").

On November 1, 2021, Claimant filed a Designation of Representative, authorizing Verneice Carson to act as his representative in the above-captioned matter.

On August 3, 2022, Verneice Carson informed the Board that Claimant passed away.

On August 9, 2022, Verneice Carson emailed the Board a Certificate of Death, confirming that Claimant died on June 1, 2022.

On August 9, 2022, Verneice Carson stated that a “problem concerning [Claimant]’s heir has occurred,” and that she “will not be in any future connection or capacity relevant to this matter.”

On August 10, 2022, the Board received correspondence from Verneice Carson, dated August 6, 2022, stating that she does not have legal authority to proceed in this matter.

On August 29, 2022, the Board issued a Notice of Status Conference for a status conference set for September 15, 2022 at 9:00 a.m. A copy of the notice was mailed to Claimant’s last known address via certified mail. Employer’s counsel was served via email.

On September 2, 2022, the Board issued an Order to Cancel Trial, cancelling the trial set for September 20, 2022.

On September 15, 2022, a status conference was held at which J. Thomas Weber, Esq. appeared on behalf of Employer LOCKHEED MARTIN CORP. No one appeared on Claimant’s behalf.

On September 20, 2022, the Board issued an Order Holding Case in Abeyance and Notice of Intention to Dismiss. The Board’s order, in relevant part, stated that, by February 7, 2023, Employer shall confirm whether or not a special administrator or personal representative of Claimant’s estate was appointed and if so, provide that special administrator or personal representative with certain documents pertaining to the appeal herein and give notice to that special administrator or personal representative that s/he/they must enter an appearance in this appeal by March 19, 2023 or the appeal will

be dismissed. Employer was also to file a declaration with this Board that confirmed the foregoing by February 7, 2023.

On February 27, 2023, Employer informed the Board that it was their understanding that Joyce [L]. Carson<sup>1</sup> was the court-appointed personal representative of Claimant. Employer also provided the Board with a copy of the outcome of its search from eCourt\* Kokua, confirming that **Joyce Lee Carson** or **Joyce L. Carson** was the court-appointed personal representative of Claimant.

On May 17, 2023, Employer's counsel, J. Thomas Weber, Esq., filed with the Board a declaration under penalty of perjury stating that on May 17, 2023, he provided **Joyce L. Carson** (7725 S. Cornell Avenue, Chicago, IL 60649) and her attorney, **Kimberly Y. Koide Iwao, Esq.** (P.O. Box 240269, Honolulu, HI 96824), with various documents pertaining to this appeal, including the Board's September 20, 2022 Order Holding Case in Abeyance and Notice of Intention to Dismiss.<sup>2</sup> Mr. Weber's notice to Ms. Carson and Ms. Koide Iwao which informed them of the date by which an appearance needed to

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<sup>1</sup> J. Thomas Weber, Esq.'s letter, dated February 22, 2023 and filed February 27, 2023, identifies the personal representative as Joyce **I.** Carson. However, the record included as an enclosure to his letter identifies the personal representative as "Joyce **Lee** Carson" or "Joyce **L.** Carson."

<sup>2</sup> The majority observes that the concurrence's independent verification and acknowledgement that the information provided by J. Thomas Weber, Esq. is true were unnecessary.

be filed in this appeal occurred after the Board's previously stated deadline of March 19, 2023.

To date, no court-appointed legal representative of Claimant's estate and no court approved personal representative for Claimant has appeared in this appeal. Although neither Ms. Carson nor Ms. Koide Iwao have entered an appearance in this appeal, a courtesy copy of this order will be provided to them at the addresses provided by Mr. Weber.

The following legal authorities are relevant:

"A deceased person cannot be a party to a legal proceeding, and the effect of death is to suspend the action as to the decedent until his legal representative is substituted as a party." *Bagalay v. Lahaina Restoration Foundation*, 60 Haw. 125 (1978) (citations omitted.)

"As a general rule, the authority of counsel to proceed with a case is terminated upon the death of the party being represented . . . but the courts can pass upon questions raised and listen to suggestions as to their disposal from an attorney who is an officer of the court . . . ." *Id.*

" . . . an heir of an undistributed estate, who has not been judicially appointed as the personal representative of a decedent's estate, is not a 'proper party' for substitution . . . ." *Roxas v. Marcos*, 89 Haw. 91 (1998), (analyzing the application of HRCF Rule 25(a)(1)).

"The majority rule in other jurisdictions is that only judicially appointed representatives may be substituted for a decedent party." *Id.* (Citations omitted.)

§ 12-47-25, LAB Rules: "Upon motion and for good cause shown, the board may order substitution of parties, except that in the case of a party's death, substitution may be ordered without filing a motion."

§ 371-4(k), HRS: “The board may make or issue any order or take other appropriate steps as may be necessary to enforce its rules and orders and to carry into full effect the powers and duties given to it by law.”

§ 560:1-302(a), HRS: “To the full extent permitted by the Constitution and except as otherwise provided by law, the court has jurisdiction over all subject matter relating to: (1) Estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons . . . .”

§ 560:3-103, HRS: “Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.”

§ 560:3-105: “Persons interested in decedents’ estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court’s jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents’ estates, subject to the laws of this State, are to be administered, expended, and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.”

§ 560:3-703(c): “Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent’s death has the same standing to sue and be sued in the courts of this State and the courts of any

other jurisdiction as the decedent had immediately prior to death.”

Being fully advised in the premises,

IT IS HEREBY ORDERED that the above-captioned appeal be held in abeyance until **September 18, 2023**, pending the Board’s receipt of a written appearance by a court-appointed personal representative or special administrator of Claimant’s estate. Such appearance is to be made on or before **September 18, 2023**. Extensions by the Board may be granted upon good cause shown or at the discretion of the Board.

YOU ARE HEREBY NOTIFIED that this appeal may be dismissed after **September 18, 2023**, unless an appearance is made by either a court-appointed personal representative of Claimant’s estate or a special administrator of Claimant’s estate. Extensions by the Board may be granted upon good cause shown or at the discretion of the Board.

Dated: Honolulu, Hawaii,

May 22 2023



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member

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*Isaiah C. Carson v. Lockheed Martin Corp., et al.; AB 2021-139; Order Holding Case in Further Abeyance and Second Notice of Intention to Dismiss*

CONCURRENCE:

I concur, but would have also noted that I independently confirmed, through eCourt Kokua, that Ms. Carson represented her address in her Application for Informal Appointment of Personal Representative (Without Will), filed with the Circuit Court of the First Circuit, State of Hawaii on August 30, 2022.

A handwritten signature in black ink, appearing to read "melanie matsui".

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MELANIE S. MATSUI, Member

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*Isaiah C. Carson v. Lockheed Martin Corp., et al.; AB 2021-139; Order Holding Case in Further Abeyance and Second Notice of Intention to Dismiss (Concurrence)*

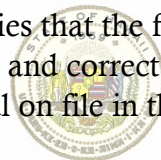
Isaiah Carson  
Claimant-Appellant, deceased

J. Thomas Weber, Esq.  
For Employer/Insurance  
Carrier-Appellee

Joyce L. Carson  
Personal Representative for  
Isaiah Carson, Claimant-  
Appellant

Kimberly Y. Koide Iwao, Esq.  
For Joyce L. Carson

This certifies that the foregoing is a  
full, true, and correct copy of the  
original on file in this office.



*/s/ J. Macarayan for LIRAB*

A certified copy of the foregoing was served upon the above-captioned parties or  
their legal representatives on the date of filing noted above.

LABOR APPEALS BOARD - 830 PUNCHBOWL ST, RM 404, HONOLULU, HI 96813 - (808)586-8600

If you need a language interpreter or if you need an auxiliary aid/service or other  
accommodation due to a disability, please contact the Board at (808) 586-8600  
and/or [dlir.appealsboard@hawaii.gov](mailto:dlir.appealsboard@hawaii.gov) as soon as possible, preferably at least ten  
(10) business days prior to your hearing or conference date. Requests made as early  
as possible have a greater likelihood of being fulfilled. If a request is received after  
the reply date, the Board will try to obtain the interpreter, auxiliary aid/service, or  
accommodation, but the Board cannot guarantee that the request will be fulfilled.

Upon request, this notice is available in alternate/accessible formats such as large  
print, Braille, or electronic copy.

Equal Opportunity Employer/Program  
Auxiliary aids and services are available  
upon request to individuals with disabilities.  
TDD/TTY Dial 711 then ask for (808) 586-8600

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*Isaiah C. Carson v. Lockheed Martin Corp., et al.; AB 2021-139; Order  
Holding Case in Further Abeyance and Second Notice of Intention to Dismiss*