

Shain Braum
Charles H. Brower
Brian G.S. Choy

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

SHAIN BRAUM,)	CASE NO.: AB 2020-145(K)
)	DCD No.: 4-12-00981(O)
Claimant-Appellant,)	
)	
vs.)	D/A: November 12, 2012
)	
THE RESONANCE PROJECT,)	
)	
Employer-Appellee,)	
)	
and)	
)	
HAWAII EMPLOYERS' MUTUAL)	
INSURANCE COMPANY,)	
)	
Insurance Carrier-)	
Appellee.)	
)	

May 09 2023, 8:42 am
FILEDSM
Labor and Industrial Relations
Appeals Board

ORDER HOLDING CASE IN ABEYANCE
and
NOTICE OF INTENTION TO DISMISS

On September 8, 2020, Claimant SHAIN BRAUM appealed the Director's August 19, 2020 decision to the Labor and Industrial Relations Appeals Board.

On November 21, 2022, Brian G.S. Choy, Esq., Employer THE RESONANCE PROJECT's Attorney, filed a letter, dated November 18, 2022, requesting an immediate status conference. Mr. Choy stated that Charles H. Brower, Esq., Claimant's Attorney, advised him that Claimant had passed away on or about July 2022.

On November 23, 2022, Mr. Choy filed with the Board an email correspondence addressed to Mr. Brower. Attached to the email was Claimant's obituary that was posted on-line from "ADA News," an Oklahoma newspaper, that stated Claimant "Shain Daniel Braum, 44, of Hilo, Hawaii . . . passed away Friday, May 27, 2022 in Hawaii."

On December 22, 2022, the Board held a status conference with Mr. Brower and Mr. Choy to discuss the status of the appeal, given the death of the Claimant.

To date, the Board has not received written notice from Mr. Brower, withdrawing as counsel for Claimant. The Board, however, recognizes that, as a general rule, the authority of counsel to proceed with a case is terminated upon the death of the party being represented. *Bagalay v. Lahaina Restoration Foundation*, 60 Haw. 125 (1978).

To date, no court-appointed legal representative of Claimant's estate and no court approved personal representative for Claimant has appeared in this appeal.

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)).

§ 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.”

In issuing the order that follows, the dissent questions the Board’s order for Employer to inform the Board as to whether or not a special administrator or personal representative of Claimant’s estate was appointed. In referencing the Board’s obligation to make a “reasonable and diligent inquiry,” the dissent’s reliance upon HRS § 371-4(d) is misplaced. Pursuant to HRS § 371-4(d), the Board has an obligation to make a “reasonable and diligent inquiry” to “ascertain the address of [a] party” in a situation where the Board (or its agents) “have been unable to ascertain the address of [a] party” and where a written “notice of hearing” needs to be served. Neither situation exists here: (1) The address of the party in question (Claimant) is not an issue because Claimant is deceased; and (2) the Board is not issuing a notice of hearing. Therefore, the provisions of HRS § 371-4(d) do not apply.¹

¹ Rather, this order concerns ascertaining the identity of a possible person who may be substituted for a party who is now deceased. The Board’s order, herein, is consistent with the procedure undertaken by the Intermediate Court of Appeals of the State of Hawai‘i (“ICA”) in *City and County of Honolulu v. Sharon Black*, CAAP-11-0000748,

Being fully advised in the premises,

IT IS HEREBY ORDERED that the above-captioned appeal be held in abeyance until September 1, 2023, pending:

1. The Board's receipt of a written appearance by a court-appointed personal representative or special administrator of Claimant's estate; or
2. The Board's receipt of a written appearance by a party with legal standing to participate in this case on Claimant's behalf, in the absence of a court-appointed legal representative.

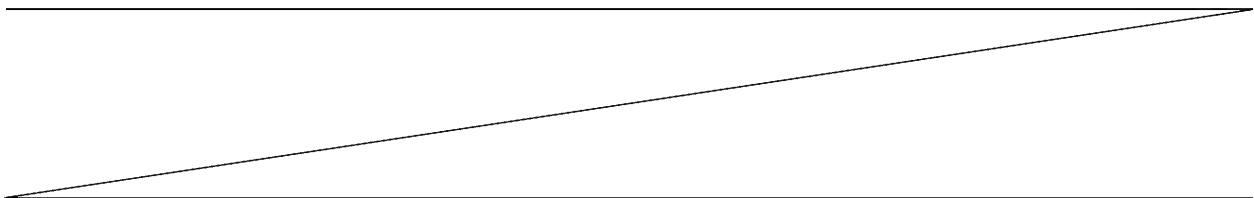
Such appearance is to be made on or before September 1, 2023. Extensions by the Board may be granted upon good cause shown or at the discretion of the Board.

If the Board does not receive any of the above-referenced written appearances on or before September 1, 2023 and no extension of this deadline is granted by the Board, IT IS HEREBY ORDERED that Employer will have until September 21, 2023 to confirm whether or not a special administrator or personal representative of Claimant's estate was appointed on or before September 1, 2023, and:

(Haw. App. 2013), wherein a self-represented appellant died after filing an opening brief at the ICA. Although *Black* is not a published decision and is of limited precedential value, it is noteworthy that in its effort to ascertain the identity of a proper person to substitute for the deceased appellant, the ICA placed the onus on the appellee to confirm with the court whether a personal representative had been appointed to represent the appellant's estate and to give the personal representative or special administrator, if any, notice: (1) of the pending appeal, copies of the opening brief, and copies of the answering brief; (2) that s/he must enter an appearance to indicate the estate's plan to continue with the appeal within the time frame specified by the ICA; and (3) that failure to do so in a timely manner may result in the dismissal of the appeal. The ICA also ordered the appellee to file a declaration indicating compliance with the foregoing.

1. If a special administrator or personal representative of Claimant's estate was not appointed on or before September 1, 2023, Employer shall file a declaration with the Board that confirms this, on or before September 21, 2023.
2. If a special administrator or personal representative of Claimant's estate has been appointed, Employer shall, on or before September 21, 2023 :
 - a. Provide the special administrator or personal representative with written notice of the appeal herein, any and all Pretrial Orders pertaining to this appeal, and this Order Holding Case in Abeyance;
 - b. Give notice to the special administrator or personal representative that, on or before October 31, 2023, the special administrator or personal representative must enter an appearance in this appeal and indicate whether the estate plans to continue the appeal with a substitute party or the appeal will be dismissed; and
 - c. File a declaration with this Board that confirms compliance with this order and includes the identity and contact information of the special administrator or personal representative of Claimant's estate.

YOU ARE HEREBY NOTIFIED that this appeal may be dismissed after October 31, 2023, unless an appearance is made by either a court-appointed personal representative of Claimant's estate, a special administrator of Claimant's estate, or a party with legal standing to participate in this case in the absence of a court-appointed legal representative. Extensions by the Board may be granted upon good cause shown or at the discretion of the Board.



Dated: Honolulu, Hawaii,

May 09 2023



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member

Shain Braum v. The Resonance Project, et al.; AB 2020-145(K); Order Holding Case in Abeyance and Notice of Intention to Dismiss

DISSENT:

I agree that this appeal should be held in abeyance for a period of time pending the appearance of a court-appointed personal representative. I dissent because I believe that the obligations to make reasonable and diligent inquiry (see Section 371-4(d), HRS) and provide appropriate notice should not be shifted to a party who is neither the Board nor an agent of the Board. Although the Board is quasi-judicial, it is not part of the Judiciary.



MELANIE S. MATSUI, Member

Shain Braum v. The Resonance Project, et al.; AB 2020-145(K); Order Holding Case in Abeyance and Notice of Intention to Dismiss (Dissent)

Shain Braum (last known address)

Charles H. Brower, Esq.

Brian G.S. Choy, Esq.
For Employer/Insurance
Carrier-Appellee

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 as soon as possible, preferably at least ten (10) business days prior to your hearing or conference date. 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 formats such as large print, Braille, or electronic copy.

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TDD/TTY Dial 711 then ask for (808) 586-8600

Shain Braum v. The Resonance Project, et al.; AB 2020-145(K); Order
Holding Case in Abeyance and Notice of Intention to Dismiss