

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

DANIEL F. HUBER,)	CASE NO.: AB 2017-072(WH)
)	DCD No.: 9-16-00512
Claimant-Appellant,)	
)	
vs.)	D/A: July 17, 2016
)	
LIVING STONES CHURCH,)	
)	
Employer-Appellee,)	Jun 30 2023, 11:04 am
)	FILED ^{SK}
and)	Labor and Industrial Relations
)	Appeals Board
HARTFORD UNDERWRITERS,)	
adjusted by JOHN MULLEN AND)	
COMPANY, INC.,)	
)	
Insurance Carrier/)	
Insurance Adjuster-)	
Appellee.)	
)	

ORDER OF DISMISSAL

This workers' compensation case is before the Labor and Industrial Relations Appeals Board from Claimant DANIEL F. HUBER's April 4, 2017 appeal of the decision of the Director of Labor and Industrial Relations dated March 16, 2017.

The Director determined that pursuant to Section 386-79, HRS, Claimant's right to compensation is suspended until Claimant's refusal or obstruction of the Director's November 16, 2016 order ceases. The Director's November 15, 2016 order compelled Claimant to submit himself for examination by Floyd Pohlman, M.D. on December 9, 2016. The Director's

November 15, 2016 order stated that if Claimant refuses to submit to or in any way obstructs the order of examination, his right to claim compensation may, after a hearing by the Director, be suspended until such refusal or suspension ceases.

On October 11, 2019, the Board issued a Notice of Status Conference that scheduled a status conference for October 28, 2019.

On October 30, 2019, following a conference held on October 28, 2019, at which Claimant and Employer's counsel, Carlton W.T. Chun, Esq., were present, the Board issued a First Amended Pretrial Order. The First Amended Pretrial Order set a trial date of August 17, 2020. The sole issue to be determined in the appeal is:

Whether Claimant's right to claim compensation should be suspended, pursuant to Section 386-79, HRS.

Claimant's last participated in the proceedings on appeal herein on October 28, 2019.

On November 26, 2019, the United States Postal Service ("USPS") returned Claimant's copy of the First Amended Pretrial Order to the Board as "RETURN TO SENDER," "UNCLAIMED," and "UNABLE TO FORWARD."

The Board cancelled the August 17, 2020 trial due to the Emergency Proclamations of the Governor, specifically, the COVID-19 pandemic.

On August 2, 2021, Employer filed a Motion to Dismiss Appeal. Employer representing that Claimant died on January 16, 2020. Attached to

Employer's motion was an obituary of a "Daniel Huber," posted by Dodo Mortuary, Inc. Employer stated that the personal information contained in the obituary of "Daniel Huber" is consistent with information regarding Claimant contained in its own records with respect to Claimant's hometown, age, month and year of birth, number of children, and marriage status. Employer argued that the appeal should be dismissed because Claimant is dead and that the sole issue on appeal concerning Claimant's "refusal or obstruction to attend an ordered IME will never cease or change." The Board set and held a hearing on Employer's motion on September 2, 2021.

Following the September 2, 2021 hearing, at which only Employer's counsel appeared, the Board issued an Order Holding Case in Abeyance and Resetting Hearing and Trial De Novo. The Board ordered that: 1) the case be held in abeyance for up to 120 days, pending an appearance by Claimant or his designated representative, or a court-appointed personal representative or 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; 2) the hearing on Employer's Motion to Dismiss be reset for January 13, 2022; and 3) trial would be reset to September 12, 2022 if the Board denied Employer's motion to dismiss.

On September 15, 2021, the Board issued a Legal Notice to DANIEL F. HUBER or a Court-Appointed Representative or Special Administrator of the Estate of Daniel F. Huber, or legal counsel. The Notice stated that a hearing on Employer's motion to dismiss had been scheduled for

January 13, 2022 and that if the appeal was not dismissed, then trial would be held on September 12, 2022. The Board further provided notice that it intended to dismiss the appeal and/or impose other sanctions as appropriate if Appellant failed to timely appear for the hearing(s).

On September 27, 2021, the Board filed Affidavits of Publication that its Legal Notice filed on September 15, 2021 had been published in: 1) the Hawaii Tribune-Herald on September 16, 2021 and September 23, 2021; and 2) the Honolulu Star-Advertiser on September 16, 2021 and September 23, 2021.

On September 27, 2021, Mr. Rickey Rivera, Jr. filed an Objection to Employer's motion.

By letter dated September 27, 2021 to Mr. Rivera, the Board acknowledged receipt of his objection letter. The Board requested that Mr. Rivera file, by October 8, 2021, a certified copy of Claimant's death certificate and a certified copy of an appropriate court order confirming that Mr. Rivera had been designated the court-appointed personal representative or special administrator of Claimant's estate.

On October 4, 2021, Mr. Rivera filed a letter in response to the Board's September 27, 2021 letter. Mr. Rivera requested a settlement conference to negotiate a settlement in Daniel Huber's appeal. Mr. Rivera did not file the documents as requested by the Board.

On November 4, 2021, the USPS returned to the Board Claimant's copy of the Board's Legal Notice filed on September 15, 2021 and the Order

Holding Case in Abeyance and Resetting Hearing and Trial De Novo filed on September 15, 2021. The envelopes transmitting these documents were marked “RETURN TO SENDER,” “UNCLAIMED,” and “UNABLE TO FORWARD.”

A hearing on Employer’s motion to dismiss Claimant’s appeal was held on January 13, 2022 with Employer’s counsel being present. There were no appearances made on behalf of Claimant.

On January 18, 2022, the Board issued an Order Denying Motion to Dismiss. A copy of the Board’s Order was mailed to Claimant.

On February 11, 2022, the USPS returned Claimant's copy of the January 18, 2022 Order to the Board with a notation of “RETURN TO SENDER,” “UNCLAIMED,” and “UNABLE TO FORWARD.”

On September 12, 2022, Employer’s new counsel Brian G.S. Choy, Esq. appeared for the trial. No one else appeared for the trial. Claimant did not appear for the trial, and there were no appearances made on Claimant’s behalf.

At the trial, Employer orally moved that Claimant’s appeal be dismissed for lack of prosecution and failure to appear.

After a total of four publications of the Board’s Legal Notice published across two newspapers of general circulation to Claimant and the “Estate of Daniel F. Huber,” Claimant has not participated in this, and no court-appointed personal representative and/or special administrator of Claimant’s estate has entered an appearance in this case.

The Board considers Claimant to have died on or about January 16, 2020.

As of the date of this order, no court-appointed personal representative and/or special administrator of Claimant's estate has entered an appearance in this case.

The Board's order herein is consistent with the common law principle that "if a party dies before a verdict or decision is rendered, the action abates as to him and must be dismissed unless it is revived by substitution of a personal representative." *Bagalay v. Lahaina Restoration Foundation*, 60 Haw. 125, 135, 588 P.2d 416, 423 (1978) (emphasis added). In this respect, the order that follows is consistent with and mindful of practice and precepts of common law.

Having considered Employer's oral motion to dismiss and Claimant's death that occurred over three years ago, having held the case in abeyance for over 120 days with no appearance of a personal representative and/or special administrator of Claimant's estate, and having published four notices regarding this appeal in two newspapers of general circulation, and the Board being fully apprised in the premises,

IT IS ORDERED that all proceedings before this Board in the above-entitled cause be and hereby are dismissed.

Dated: Honolulu, Hawaii,

Jun 30 2023



DAMIEN A. ELEFANTE, Chair

EXCUSED

MELANIE S. MATSUI, Member



MARIE C.L. LADERTA, Member

Daniel F. Huber
Claimant-Appellant

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

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

/s/ *J. Kaathue* 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.
Order mailed Jun 30 2023

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. 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

Daniel F. Huber v. Living Stones Church, et al.; AB 2017-072(WH); Order of Dismissal