

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

LEILA N. MONIZ,)	CASE NO. AB 2009-603
)	(2-92-25327)
Claimant-Appellee,)	
)	D/A: September 18, 1992
vs.)	
)	
GEORGE C. CROMACK,)	
)	
Employer-Appellant,)	Jan 22 2025, 10:38 am
)	FILED SM
and)	Labor and Industrial Relations
)	Appeals Board
FIRST INSURANCE COMPANY OF)	
HAWAII, LTD.,)	
)	
Insurance Carrier-)	
Appellant.)	

ORDER OF DISMISSAL

This workers' compensation case is before the Labor and Industrial Relations Appeals Board on appeal by Employer GEORGE C. CROMACK and Claimant LEILA N. MONIZ, both of whom appealed the November 16, 2009 Decision of the Director of Labor and Industrial Relations ("Director").

On January 6, 2011, the Board temporarily remanded the appeal to the Director to address issues concerning medical and indemnity benefits, as well as compensable consequences of the work injury.

On March 23, 2017, the Director held a hearing during which Employer appeared and neither Claimant nor Wayne H. Mukaida, Esq., Claimant's attorney, appeared.

By letter dated April 12, 2017 and filed on April 17, 2017, Mr. Mukaida informed the Director that he “recently learned” of Claimant’s death and that “the hearing on [March 23, 2017] is void as [Claimant's] estate was not a party to the proceedings, and no decision should be issued by the Director.” Mr. Mukaida provided the Director a copy of Claimant’s Certificate of Death, confirming that Claimant died on November 27, 2016.

On May 3, 2017, the Director issued a Supplemental Decision. Neither party appealed this decision. Subsequently, the case was returned to the Board.

On January 17, 2018, Employer’s attorney requested that the Board suspend the January 30, 2018 trial, pending substitution of a legal representative for Claimant.

On January 19, 2018, Employer filed a Non-Hearing Motion to Continue Trial arguing that the trial scheduled for January 30, 2018 should be continued until such time that that a legal representative for Claimant is substituted in the case. Employer requested that Mr. Mukaida confirm, in writing, within 30 days of an order, whether there is any survivor of Claimant who wishes to pursue the appeal. If there was no one, Employer stated that it would take the appropriate action and move to dismiss the appeal for failure to prosecute the claim.

On February 8, 2018, the Board issued the Order Granting Motion to Continue Trial.

On May 24, 2018, Mr. Mukaida filed a Motion to Withdraw as

Counsel for Claimant stating that because Claimant is deceased, he no longer has a client and that he spoke with Claimant's daughter (Kaleimaeole Latronic) and son (Mark Rodrigues), both of whom decided not to retain his services to be their attorney.

On June 21, 2018, the Board held a hearing on Mr. Mukaida's Motion to Withdraw as Counsel, with Mr. Mukaida and Employer being present.

On September 14, 2018, the Board issued an Order Granting Motion to Withdraw as Counsel.

By letter dated March 27, 2019 and filed on March 28, 2019, Mr. Mukaida provided the Board the contact information for Claimant's son and daughter.

On February 10, 2020, the Board issued a Notice of Hearing stating that a trial would be held on May 6, 2020 and that the Board intended to dismiss the appeal if either Claimant or Employer failed to timely appear for the trial. The notice was provided to Mr. Rodrigues and published in the Honolulu Star-Advertiser on the 10th and 17th of February 2020. On March 23, 2020, the USPS returned Mr. Rodrigues's copy of the notice to the Board as "Return to Sender;" "Attempted Not Known;" and "Unable to Forward."

On March 18, 2020, the Board issued a memorandum stating that all hearings, conferences, trials, and deadlines were suspended due to the Emergency Proclamations of the Governor, specifically, the COVID Pandemic.

On June 23, 2021, the Board issued a Notice of Status Conference

that scheduled a status conference for August 12, 2021 at 1:30 p.m. This notice was provided to Mr. Rodrigues and Ms. Latronic via email and published in the Honolulu Star-Advertiser on the 20th and 27th of July 2021.

On August 12, 2021, the Board held a status conference. Employer appeared, but no personal representative or special administrator for Claimant's estate appeared.

On May 25, 2023, the Board issued an Order Holding Case in Abeyance and Notice of Intention to Dismiss. In relevant part, the Board ordered that the above-captioned appeal be held in abeyance until September 21, 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 was to be made on or before September 21, 2023. The Board further ordered that if it did not receive any of the above-referenced, written appearances on or before September 21, 2023 and no extension of this deadline was granted by the Board, Employer would have until October 11, 2023 to confirm, in writing, whether or not a special administrator or personal representative of Claimant's estate was appointed on or before September 21, 2023. The Board further notified all parties that this appeal may be dismissed after September 21, 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.

The Board's May 25, 2023 order and notice of intention to dismiss was published on the Board's website for at least 180 days.

On January 14, 2025, Employer submitted the Declaration of Carlton W.T. Chun, Esq. In relevant part, Mr. Chun, Employer's attorney, attested that multiple electronic searches, the most recent having occurred on January 13, 2025, were conducted in the State of Hawaii Circuit Court system without any evidence that the Circuit Court approved the appointment of a special administrator or personal representative for Claimant's estate.

To date and despite the two publications in newspapers of general circulation to the "Estate of Leila N. Moniz" and despite publications of various Board orders and notices on the Board's website, including a Notice of Intention to Dismiss, no court-appointed personal representative or special administrator of Claimant's estate has appeared in this appeal to pursue Claimant's appeal of the Director's November 16, 2009 Decision.

Section 12-47-23, Hawaii Administrative Rules, Board Rules of Practice and Procedure states that:

Where it appears that the appellant or complainant was served with a notice of hearing or initial or settlement conference but fails to appear at such hearing or conference, either in person, by attorney, or duly appointed representative, the board may, after service of notice of intention to dismiss, dismiss the appeal or may proceed and make a decision as is just and proper.

On January 16, 2025, the Board entered an Order Dismissing Claimant's Appeal; Order to Amend Caption; and Order Regarding Further Proceedings on Appeal. In relevant part, the Board dismissed Claimant's appeal, herein.

A withdrawal of appeal having been filed by Employer GEORGE C. CROMACK and Insurance Carrier FIRST INSURANCE COMPANY OF HAWAII, LTD. on January 16, 2025,

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

Dated: Honolulu, Hawai'i,

Jan 22 2025



DAMIEN A. ELEFANTE, Chair

EXCUSED

MARIE C.L. LADERTA, Member



HARRY YEE, Member

Leila N. Moniz v. George C. Cromack, et al.; AB 2009-603; Order of Dismissal

Carlton W. T. Chun, Esq.
For Employer/Insurance
Carrier-Appellant

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: Jan 22 2025

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

/s/ S. Macarayan for LIRAB