

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

LEILA N. MONIZ,)
)
 Claimant-Appellant,)
)
 vs.)
)
 GEORGE C. CROMACK,)
)
 Employer-Cross)
 Appellant,)
)
 and)
)
 FIRST INSURANCE COMPANY OF)
 HAWAII, LTD.,)
)
 Insurance Carrier-)
 Cross Appellant.)
)
)
)

CASE NO. AB 2009-603
(2-92-25327)

D/A: September 18, 1992

Jan 10 2025, 9:49 am

FILED_{akw}

Labor and Industrial Relations
Appeals Board

DECISION AND ORDER

This workers’ compensation case is before the Labor and Industrial Relations Appeals Board (“Board”) on appeal by Claimant LEILA N. MONIZ and on cross-appeal by Employer GEORGE C. CROMACK from the November 16, 2009 decision of the Director of Labor and Industrial Relations (“Director”).

On August 12, 2024, an Order to Show Cause (“OSC”) was issued to determine whether sanctions should be imposed on Employer pursuant to Hawaii Revised Statutes (“HRS”) §371-4(k).

FINDINGS OF FACT

The Board makes the following Finds of Fact. If it should be determined that any of these Findings of Fact should have been set forth as Conclusions of Law, then they shall be deemed as such.

1. On April 17, 2017, while the case was on temporary remand with the Director, Claimant's former attorney, Wayne H. Mukaida, Esq., informed the Director that Claimant passed away and provided a copy of Claimant's Certificate of Death, indicating that Claimant died on November 27, 2016. Subsequently, the case was returned to the Board.

2. On May 25, 2023, the Board issued an Order Holding Case in Abeyance and Notice of Intention to Dismiss. The Board's order stated that, by October 11, 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 November 20, 2023 or the appeal will be dismissed. Employer was also to file a written statement by October 11, 2023 that confirmed the foregoing.

3. The Board's May 25, 2023 order explained that pursuant to HRS Chapter 560, Uniform Probate Code, the Hawaii Circuit Courts have jurisdiction to appoint a special administrator or personal representative to an individual's estate.

4. Because a special administrator or personal representative can only be appointed by a circuit court, the Board, in its May 25, 2023 order, advised Employer that it could utilize eCourt* Kokua¹ to conduct a quick electronic search on the Hawaii's State Judiciary's court records to determine if a special administrator or personal representative was appointed for Claimant's estate.

5. By letter, dated and filed on August 21, 2023, Employer requested a status conference with the Board. Employer stated:

A status conference is needed in order to determine how best to resolve this appeal. If no court appointed representative or special administrator of the estate of Claimant has come forward, even after Claimant's children have been made aware that this is needed in order for the claim to continue, then there needs to be discussion on whether Claimant's appeal can be dismissed.

6. On August 22, 2023, the Board responded to Employer's written request by explaining that a status conference is not required and that all of Employer's concerns were addressed in the Board's May 25, 2023 Order Holding Case in Abeyance and Notice of Intention to Dismiss.

7. Employer did not file a written confirmation on or before October 11, 2023, pursuant to the Board's May 25, 2023 order.

¹ E.g., eCourt* Kokua:
<http://jimspss1.courts.state.hi.us:8080/eCourt/ECC/ECCDisclaimer.iframe;jsessionid=10F561DB500CD4C171C64655EEA1B244>

8. Not having received Employer's written confirmation as ordered by the Board on May 25, 2023 and 10 months having passed since Employer's written confirmation was due to the Board, the Board issued an OSC on August 12, 2024, pursuant to HRS § 371-4(k).

9. The Board's August 12, 2024 OSC ordered Employer to show cause why it should not be sanctioned for failing to file a written statement with the Board pursuant to its May 25, 2023 order.

10. The Board's August 12, 2024 OSC provided Employer with the option to either (1) file a declaration regarding the status of Employer's search of a court-appointed special administrator or personal representative for Claimant's estate within 14 days of the OSC, or by August 26, 2024 or (2) to request hearing and present its response at the hearing, provided that said request for hearing was made within 7 days of the OSC.

11. The Board, in its OSC, reiterated that Employer could utilize eCourt* Kokua² to conduct a quick electronic search on the Hawaii's State Judiciary's court records to determine if a special administrator or personal representative was appointed for Claimant's estate.

12. To date, Employer has not filed a declaration regarding the status of Employer's search of a court-appointed special administrator or personal representative for Claimant's estate.

² E.g., eCourt* Kokua:
<http://jimspss1.courts.state.hi.us:8080/eCourt/ECC/ECCDisclaimer.iframe;jsessionid=10F561DB500CD4C171C64655EEA1B244>

13. Employer did not request a hearing regarding the Board's OSC.
14. To date, Employer has not responded to the Board's OSC.
15. The Board finds that Employer failed to comply with the May 25, 2023 Order Holding Case in Abeyance and Notice of Intention to Dismiss.
16. The Board finds that Employer failed to comply with the August 12, 2024 OSC.
17. The Board finds that Employer did not present good cause for failing to comply with the May 25, 2023 Order Holding Case in Abeyance and Notice of Intention to Dismiss.
18. The Board finds that Employer did not present good cause for failing to comply with the August 12, 2024 OSC.
19. The Board finds that a monetary sanction of FIFTY AND NO/100 DOLLARS (\$50.00) is reasonable.

ANALYSIS/DISCUSSION

In relevant part, HRS § 371-4(k) provides:

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. The board may after notice and reasonable opportunity to be heard by the board:

- (1) Impose administrative sanctions;
and
- (2) Impose monetary sanctions of not more than \$250 for each offense against any person who is found to

have violated the board's rules or orders, which amounts shall be deposited into the special compensation fund created by section 386-151.

Section 12-47-11 of the Hawaii Administrative Rules (“HAR”), Board Rules of Practice and Procedure states, in relevant part, that any person who appears before the Board shall “maintain the respect due the board. . .” Similarly, HAR § 12-47-48 states that the Board may impose sanctions upon any person “who has refused to comply with an order of the board.”

Despite the Board’s August 22, 2023 reminder to Employer of the existence of the Board’s May 25, 2023 Order Holding Case in Abeyance and Notice of Intention to Dismiss which specifically ordered Employer to submit a written confirmation regarding the status of the court-appointment, if any, of a personal representative or special administrator of Claimant’s estate by October 11, 2023, and despite the Board allowing Employer to submit this written confirmation by August 26, 2024 (more than 10 months after its original deadline) by way of its August 12, 2024 OSC, Employer failed to comply with the Board’s orders. It is noted that the Board also provided Employer with guidance as to how it could comply with its orders by providing a resource, having provided Employer with the link to eCourt* Kokua in both its May 25, 2023 order and its August 12, 2024 OSC. Employer, however, neither heeded the Board’s orders and reminders nor did it utilize the resource provided, and, to date, Employer has not filed the requested written confirmation with the Board.

Further, Employer, not having responded to the Board's August 12, 2024 OSC, has ignored the Board's orders and has not demonstrated respect towards the Board, in violation of HAR §§ 12-47-11 and 12-47-48.

Timely compliance with the Board's orders is necessary for the orderly administration of appeals before the Board, and failure to timely respond to the Board's orders is a refusal to comply with the orders of the Board and a failure to show the respect due to the Board.

CONCLUSIONS OF LAW

The Board makes the following Conclusions of Law. If it should be determined that these Conclusions of Law should have been set forth as a Finding of Fact, then it shall be deemed as such.

1. Employer refused to comply with the Board's May 25, 2023 Order Holding Case in Abeyance and Notice of Intention to Dismiss and the Board's August 12, 2024 Order to Show Cause.

2. Employer did not present good cause for failing to comply with the Board's May 25, 2023 Order Holding Case in Abeyance and Notice of Intention to Dismiss and the Board's August 12, 2024 Order to Show Cause.

3. Employer is subject to a monetary sanction of FIFTY AND NO/100 DOLLARS (\$50.00), payable to the SPECIAL COMPENSATION FUND.

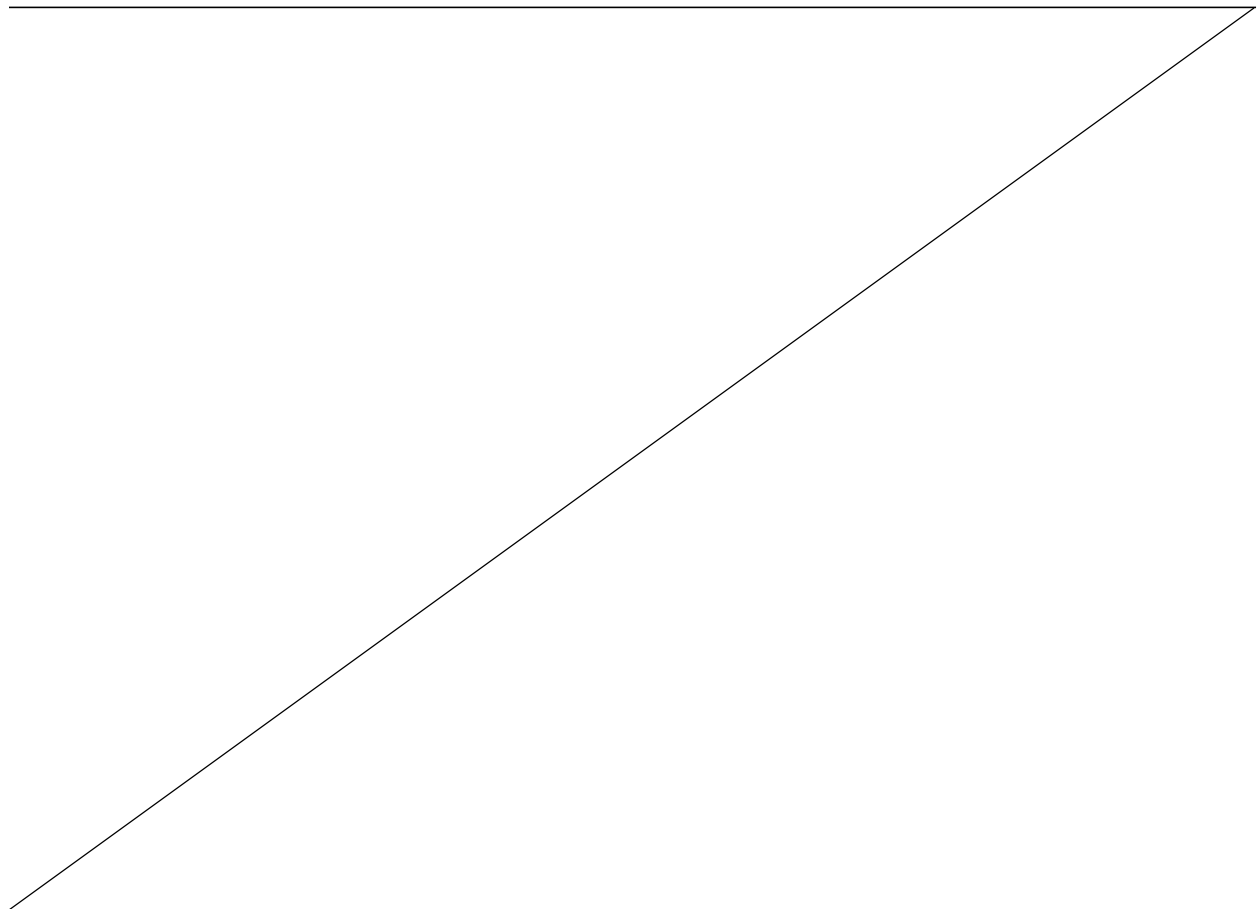
ORDER

IT IS HEREBY ORDERED that Employer be assessed a monetary sanction of FIFTY AND NO/100 DOLLARS (\$50.00), payable to the SPECIAL COMPENSATION FUND.

The Board FURTHER orders that Employer present full payment of the sanction at the Board's office no later than February 10, 2025.

The Board FURTHER orders that Employer shall file a declaration on the status of Employer's search of a court-appointed special administrator or personal representative for Claimant's estate no later than January 24, 2025. Employer's failure to do so may result in the imposition of further monetary sanctions pursuant to HRS § 371-4(k).

If any part of this Decision and Order should have been set forth as a Finding of Fact or a Conclusion of Law, then it shall be deemed as such.



Jan 10 2025

Dated: Honolulu, Hawai'i,



DAMIEN A. ELEFANTE, Chair

EXCUSED

MARIE C.L. LADERTA, Member



HARRY YEE, Member

APPEAL: Pursuant to Section 386-88, Hawaii Revised Statutes (“HRS”), the Decision and Order of the Board shall be final and conclusive, except as provided in HRS Section 386-89, unless within 30 days after mailing of a certified copy of the Decision and Order, a party appeals to the Intermediate Court of Appeals of Hawai‘i by filing a written notice of appeal with the Board or by electronically filing a notice of appeal.

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

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

Jan 10 2025

Decision and Order Mailed: _____

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 dhir.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.

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

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

/s/ L. Watande for LIRAB