

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

LIONEL N. LIMA, JR.,	)	CASE NO.: AB 2017-326(T)(S)
	)	DCD No.: 2-03-08023
Claimant-Appellant,	)	
	)	
vs.	)	D/A: December 18, 2002
	)	
SAFETY NATIONAL-WORK COMP	)	
HI/WAILUNA RECREATION	)	
ASSOCIATION,	)	
	)	<b>Jan 27 2025, 12:18 pm</b>
Employer-Appellee,	)	<b>FILED</b> <sub>akw</sub>
	)	Labor and Industrial Relations
and	)	Appeals Board
	)	
ACCLAMATION INSURANCE	)	
MANAGEMENT SERVICES,	)	
	)	
Third-Party	)	
Administrator-Appellee.	)	
	)	

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ORDER HOLDING CASE IN ABEYANCE;  
ORDER DENYING EMPLOYER'S MOTION;  
AND  
NOTICE OF INTENTION TO DISMISS

This workers' compensation case is before the Labor and Industrial Relations Appeals Board on appeal by Claimant LIONEL N. LIMA, JR. from the Decision Supplemental to Award Dated 4/5/2004, filed on December 19, 2017 by the Director of Labor and Industrial Relations ("Director") and from the Decision Supplemental to Award Dated 4/5/2004, filed on June 21, 2018, by the Director.

On December 19, 2017, the Director entered a Decision Supplemental to Award Dated 4/5/2004 ("December 19, 2017 Supplemental

Decision”). In relevant part, the Director denied Claimant’s request for mileage, citing the lack of medical certification that Claimant is unable to use public conveyances because of a physical condition, the nature of the injury, or geographical location.

On December 26, 2017, Claimant appealed the Director’s December 19, 2017 Supplemental Decision to the Board.

At Claimant’s request, on March 14, 2018, the Board issued an Order Temporarily Remanding Proceeding, temporarily remanding this matter to the Director for a determination of the compensability of a psychological injury and temporary total disability (“TTD”) benefits and for determination of any other issue the Director deemed appropriate.

On June 21, 2018, the Director entered a Decision Supplemental to Award Dated 4/5/2004 (“June 21, 2018 Supplemental Decision”). In relevant part, the Director determined that no additional TTD resulted from this claim. The Director also stated that issues of compensability of a psychological injury and TTD were previously determined.

On June 27, 2018, Claimant appealed the Director’s June 21, 2018 Supplemental Decision to the Board.

On September 6, 2018, the Board filed a Pretrial Order. Trial was scheduled in this matter for March 8, 2019. The issues to be determined on appeal were identified as follows:

- a. Whether Claimant is entitled to temporary total disability benefits from December 19, 2007. If so, what is the period of additional temporary total disability.

- b. Whether Claimant is entitled to mileage reimbursements. If so, what is the amount of mileage reimbursement.

On March 4, 2019, the Board filed an Order Regarding Matters Heard by Hearings Officer.

On May 1, 2019, the Board entered an Order Granting Motion to Continue and to Set Status Conference. At Employer SAFETY NATIONAL-WORK COMP HI/WAILUNA RECREATION ASSOCIATION's request, the March 8, 2019 trial was continued. A status conference was scheduled for May 21, 2019 at 2:30 p.m.

On June 5, 2019, Claimant filed a Notice of Appeal to the Intermediate Court of Appeals of the State of Hawaii ("ICA") regarding the Board's (1) March 4, 2019 Order Regarding Matters Heard by Hearings Officer; and (2) May 1, 2019 Order Granting Motion to Continue and to Set Status Conference.

On February 25, 2020, the ICA entered an Order Dismissing Appeal for Lack of Appellate Jurisdiction.

On March 16, 2020, the Board issued a Notice of Initial Conference, scheduling an initial conference in this matter for April 1, 2020.

The Board's processes, however, were interrupted due to the COVID-19 pandemic and orders/declarations, including but not limited to Governor David Ige's March 4, 2020 declaration of public health emergency; a March 17, 2020 announcement from Governor Ige requiring all non-essential government employees to work from home; a March 23, 2020 Stateside Stay

Home Order; and Mayor Kirk Caldwell's August 25, 2020 Stay-at-Home, Work-from-Home Order, resulting in the postponement and rescheduling of all proceedings before the Board, as well as the closure of the Board's office from on or about March 24, 2020 through on or about December 1, 2021.

Pursuant to the Board's May 28, 2020 Order No. 5 and June 29, 2020 Order No. 6, all conferences, motion hearings, and trials scheduled through August 31, 2020 were postponed and to be rescheduled, unless otherwise ordered by the Board.

Pursuant to the Board's July 16, 2020 Order No. 7, all conferences, motion hearings, and trials scheduled through October 31, 2020 were postponed and to be rescheduled, unless otherwise ordered by the Board.

On October 2, 2020, Claimant filed a non-hearing motion for a decision; on October 27, 2020, Claimant requested a hearing to address various issues; and on October 29, 2020, Claimant again requested a hearing to address various issues.

On January 7, 2021, the Board issued a Notice of Initial Conference, scheduling an initial conference on January 25, 2021 as a remote proceeding.

On February 8, 2021, by way of a letter, dated February 5, 2021, Claimant requested that the Board transfer this matter to the Director to address compensation for TTD benefits.

Following the January 25, 2021 initial conference, on February 10, 2021, the Board issued an Order and Notice of Non-Hearing Motion. In relevant

part, the Board denied Claimant's October 2020 motions as moot, and trial was set for June 2, 2021. The Board notified the parties that it considered Claimant's February 5, 2021 request as a non-hearing motion for temporary remand.

On March 16, 2021, the Board issued a First Amended Pretrial Order. The issues to be determined on appeal were previously identified follows:

- c. Whether Claimant is entitled to temporary total disability benefits from December 19, 2007. If so, what is the period of additional temporary total disability.
- d. Whether Claimant is entitled to mileage reimbursements. If so, what is the amount of mileage reimbursement.

Trial was scheduled for June 2, 2021.

On March 16, 2021, the Board denied Claimant's motion for temporary remand.

On June 2, 2021, a hearing (trial) was held before the Board's Hearings Officer. Claimant's spouse, Barbara Ann Delizo-Lima ("Ms. Delizo-Lima") attended the hearing on Claimant's behalf.

On December 26, 2024, Employer filed a Motion for Official Notice of Claimant's Death and to Dismiss this Case. A hearing on Employer's motion is set for February 6, 2025 at 11:00 a.m. Employer requested that the Board take official notice of Claimant's death, referring to an obituary regarding Claimant; however, a copy of the obituary was not provided. Employer's counsel, Katharine Nohr, Esq., also referenced a letter from "Ms. Lima. . . dated

01/19/2024” pertaining to Claimant’s death as Exhibit 1 to her declaration; however, no such exhibit was attached.

On January 7, 2025, Ms. Delizo-Lima filed a letter, dated January 6, 2025 with the Board, stating that Claimant passed away on October 10, 2023.

On January 8, 2025, the Board responded to Ms. Delizo-Lima’s letter filed January 7, 2025, requesting that she provide written confirmation that identifies the court-appointed personal representative or special administrator for Claimant’s estate. The letter explained that the court-appointed personal representative or special administrator for Claimant’s estate may be substituted as party to this appeal.

On January 23, 2025, Ms. Delizo-Lima filed a letter, dated January 22, 2025, stating that she would provide the Board with Claimant’s death certificate and that she was in the process of “petitioning the court” to appoint her as the court-appointed personal representative or special administrator for Claimant’s estate. Ms. Delizo-Lima requested that she be substituted for Claimant as a party to this appeal. Ms. Delizo-Lima requested a “motion for STAY” while she obtained the necessary court order.

The Board recognizes that, prior to Claimant’s death, Claimant authorized Ms. Delizo-Lima to act as his representative. The Board understands from Ms. Delizo-Lima that she held Claimant’s power of attorney. However, upon his death, her authority to proceed as his representative ceased.

## DISCUSSION/ANALYSIS

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.)

“ . . . 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 HRCP Rule 25(a)(1) and citations omitted).

“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.”



To date, no court-appointed personal representative or special administrator of Claimant's estate has appeared in this appeal. However, Ms. Delizo-Lima, Claimant's widow, has, prior to Claimant's passing, been understood to be Claimant's representative and has most recently confirmed that she is in the process of becoming the court-appointed personal representative or special administrator for Claimant's estate and that upon appointment, she requests to be substituted for Claimant as a party to this appeal. Ms. Delizo-Lima's request for a "stay" is understood by the Board to be a request to hold this appeal in abeyance to allow Ms. Delizo-Lima additional time to become the court-appointed personal representative or special administrator for Claimant's estate. The Board finds Ms. Delizo-Lima's request to be reasonable, and the Board's order herein allows Ms. Delizo-Lima additional time to become the court-appointed personal representative or special administrator for Claimant's estate.

Additionally, 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*, 60 Haw. 135 (emphasis added). Our Hawai'i Supreme Court has made it clear that it is improper to continue legal proceedings because 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." *Id.*

(Emphasis added.) In this respect, the order that follows is consistent with and mindful of practice and precepts of common law.

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, (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 special administrator or 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.

Just as the ICA placed the onus on the appellee to confirm whether a personal representative had been appointed and to provide relevant notice of and documents pertaining to the pending appeal to the court, the Board, by

way of this order, orders Employer to do the same.<sup>1</sup> The reasonableness of the ICA in effecting such a procedure is apparent. The Employer, as the remaining party to this appeal, is the only party that has a vested interest in resolving the appeal, whether by dismissal or decision.

Further, the Board's order for the Employer to assist in ascertaining the identity of a person who may be lawfully substituted for a party who is now deceased requires only a quick, electronic search because that person must be appointed by the circuit court. *See generally*, HRS Chapter 560, Uniform Probate Code. Because the person who may be lawfully substituted for Claimant can be approved only by Hawai'i's Circuit Court, a search (electronic<sup>2</sup> or otherwise) of the Hawai'i State Judiciary court records will quickly reveal if a special administrator or personal representative has been appointed.

Although Ms. Delizo-Lima has expressed her intention to be identified as the court-appointed personal representative or special administrator for Claimant's estate, because no such representative or administrator for Claimant's estate has, in fact, entered an appearance in this case, the Board's orders and notice herein will be published on the Board's

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<sup>1</sup> The Board is quasi-judicial in nature; thus, where there exists no statutory authority or specific guidance regarding the exact manner by which an appeal to the Board should be handled upon the death of a party, as here, a reasonable course of action is to seek guidance from higher courts and established rules.

<sup>2</sup> E.g., eCourt\* Kokua:

<http://jimspss1.courts.state.hi.us:8080/eCourt/ECC/ECCDisclaimer.iface;jsessionid=0F58DB78EAA3F8907C968D76149C0FAF>

website for at least 180 days. The inherent capabilities of the internet allow this order and notice to reach a world-wide public audience because the order and notice will be available for viewing 24 hours a day, 7 days a week, for as long as it is posted. Further, an internet search of Claimant's name will yield instant retrieval of this order and notice, available for review without incurring any subscription costs or membership.<sup>3</sup>

Publication of the Board's order herein and its notice of intention to dismiss this appeal provides additional notice beyond what the ICA or the court rules provide. In *Black*, the ICA did not publish a notice of intent to dismiss before dismissing the appellant/decedent's appeal. Rather, the ICA noted that no one representing appellant/decedent's estate moved to substitute as a party for appellant/decedent and ordered the appeal dismissed. Similarly, there is no publication requirement in Rule 25(a)(1) of the Hawai'i Rules of Civil Procedure, which states that "[i]f a party dies and the claim is not thereby extinguished," "[u]nless the motion for substitution is made not later than 120 days after the death is suggested. . . the action shall be dismissed as to the deceased party."

In light of the Board's order, herein, Employer's December 26, 2024 motion is denied as moot.

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<sup>3</sup> Publication via the Board's website is far superior to placement of a legal notice publication in a newspaper of general circulation, where the notice may only appear once in each of 2 successive weeks, on random dates and, perhaps, on a Sunday, and may only be available to subscribers of that particular newspaper publication.

## ORDER

Being fully advised in the premises,

IT IS HEREBY ORDERED that the above-captioned appeal be held in abeyance until **Tuesday, May 27, 2025**, 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 **Tuesday, May 27, 2025**. 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 **Tuesday, May 27, 2025** and no extension of this deadline is granted by the Board, IT IS HEREBY ORDERED that **Employer SAFETY NATIONAL-WORK COMP HI/WAILUNA RECREATION ASSOCIATION** will have until **Monday, June 16, 2025** to confirm, in writing, whether or not a special administrator or personal representative of Claimant's estate was appointed on or before May 27, 2025, and:

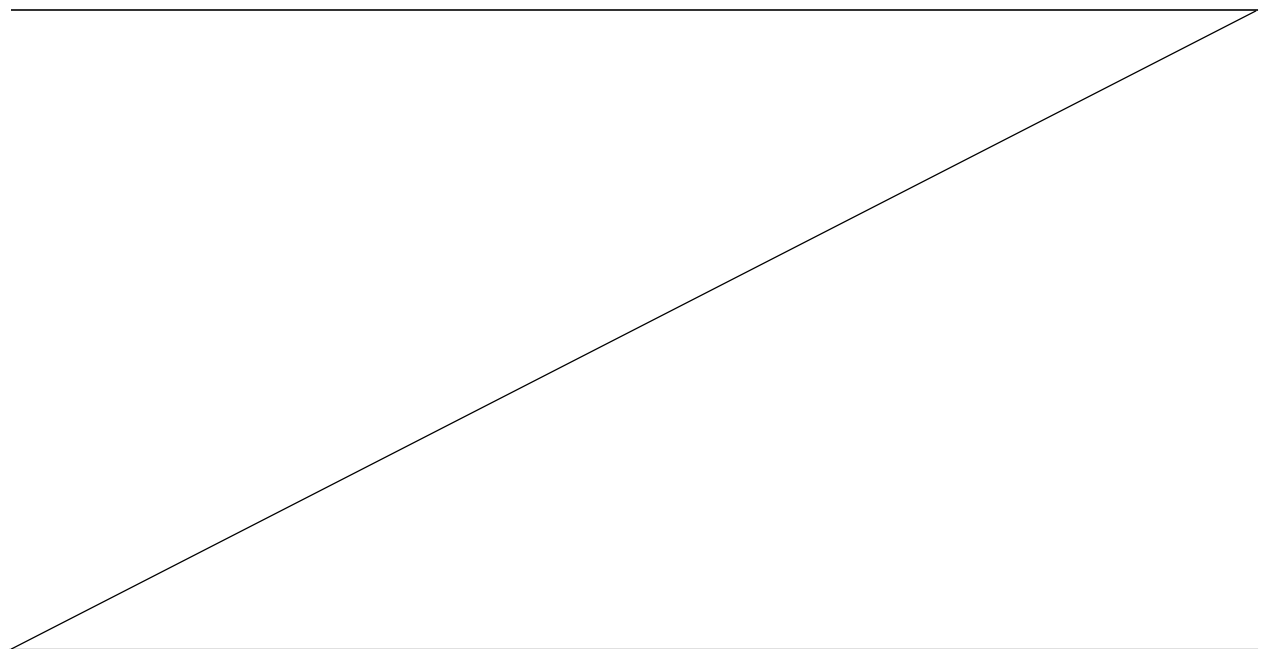
1. If a special administrator or personal representative of Claimant's estate was not appointed on or before May 27, 2025 Employer shall file a declaration with the Board that confirms this, on or before **Monday, June 16, 2025**.
2. If a special administrator or personal representative of Claimant's estate has been appointed, Employer shall, on or before **Monday, June 16, 2025**:
  - 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 **June 28, 2025**, 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 **Tuesday, May 27, 2025**, 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.

IT IS FURTHER HEREBY ORDERED that Employer's December 26, 2024 Motion for Official Notice of Claimant's Death and to Dismiss this Case is DENIED as moot.



Jan 27 2025

Dated: Honolulu, Hawai'i,



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member



HARRY YEE, Member

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*Lionel N. Lima, Jr. v. Safety National – Work Comp HI/AOAO Wailuna Recreation Association, et al.; AB 2017-326(T)(S); Order Holding Case in Abeyance; Order Denying Employer's Motion; and Notice of Intention to Dismiss*

Lionel N. Lima, Jr., Deceased (LIRAB website)  
Claimant-Appellant

Barbara Ann Delizo-Lima (courtesy copy)

Katharine M. Nohr, Esq.  
For Employer/Third-Party  
Administrator-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](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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*Lionel N. Lima, Jr. v. Safety National – Work Comp HI/AOAO Wailuna Recreation Association, et al.; AB 2017-326(T)(S); Order Holding Case in Abeyance; Order Denying Employer’s Motion; and Notice of Intention to Dismiss*

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

/s/ *A. Watanabe* for LIRAB