

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

BARBARA F. CAMBRA,	)	CASE NO.: AB 2019-194(M)
	)	
Claimant-Appellee,	)	DCD No.: 7-89-00554
	)	D/A: December 27, 1988
vs.	)	
	)	
MAUI PINEAPPLE CO., LTD.,	)	
	)	
Employer-Appellee,	)	
	)	
and	)	
	)	
JOHN MULLEN & CO., INC.,	)	
	)	
Insurance Carrier-	)	
Appellee.	)	
	)	
BARBARA F. CAMBRA,	)	CASE NO.: AB 2019-194(M)
	)	
Claimant-Appellee,	)	DCD NO.: 7-00-02932
	)	D/A: July 13, 1999
vs.	)	
	)	
SEABURY HALL,	)	
	)	
Employer-Appellant,	)	May 13 2025, 9:26 am
	)	<b>FILED</b> <sub>akw</sub>
and	)	Labor and Industrial Relations
	)	Appeals Board
HAWAII INSURANCE GUARANTY	)	
ASSOCIATION,	)	
	)	
Insurance Carrier-	)	
Appellant.	)	

DECISION AND ORDER

**INTRODUCTION**

On August 23, 2019, the Director of Labor and Industrial Relations issued a Decision Supplemental to Award Dated 11/16/1989 ("August 23,

2019 Supplemental Decision”) determining that the Director does not have jurisdiction over Employer SEABURY HALL’s counsel’s June 5, 2003 Request for Attorney’s Fee filed in Case No. AB 2001-369(M), DCD Case No. 7-00-02932 (D/A: July 13, 1999)<sup>1</sup>, as said Request appears to relate to matters that were on appeal before the Labor and Industrial Relations Appeals Board (“Board”).

On September 3, 2019, Employer SEABURY HALL and Insurance Carrier HAWAII INSURANCE GUARANTY ASSOCIATION (collectively, “SEABURY HALL”) appealed the Director’s August 23, 2019 Supplemental Decision.

On September 15, 2020, the Board issued an Order Granting Motion to Dismiss Special Compensation Fund which dismissed the SPECIAL COMPENSATION FUND (“SCF”) as a party to the instant appeal.

On December 3, 2021, counsel for SEABURY HALL and counsel for Employer MAUI PINEAPPLE CO., LTD. and Insurance Carrier JOHN MULLEN & CO., INC. (collectively, “MAUI PINEAPPLE”) submitted a Stipulation to Waive Appearances, Cancel Trial and Submission of Position Statements. This stipulation was not approved by the Board.

Trial proceeded on December 6, 2021, with Darlene Y.F. Itomura, Esq. appearing on behalf of MAUI PINEAPPLE and Brian G.S. Choy, Esq. appearing on behalf of SEABURY HALL. No appearances were made on behalf

---

<sup>1</sup> Director’s Decision erroneously identifies Claimant’s date of accident in Disability Compensation Division (“DCD”) Case No. 7-00-02932 as July 17, 1999. This is considered a clerical error; the correct date of accident is July 13, 1999.

of Claimant BARBARA F. CAMBRA (“Claimant”)<sup>2</sup>. The Board accepted the submitted stipulation as counsel’s waiver of appearance at the December 6, 2021 trial.

On December 7, 2021, the Board issued a Post-Trial Order, which stated that the record on appeal was closed, except for the submission of simultaneous post-trial briefs due by March 7, 2022.

On March 7, 2022, MAUI PINEAPPLE submitted its Position Statement.

On March 7, 2022, SEABURY HALL submitted its Post-Trial Brief.

On March 29, 2022, the Board issued an Order Denying Motion for Reconsideration and Order for Further Briefing which, in part, ordered each party to submit supplemental post-trial briefing specifically addressing the impact on the issues on appeal, if any, of the denial stated in Rule 4(a)(3) of the Hawaii Rules of Appellate Procedure (“HRAP”) by April 30, 2022.

MAUI PINEAPPLE and SEABURY HALL submitted their respective supplemental post-trial briefings on April 29, 2022.

For the reasons stated below, the Director’s August 23, 2019 Supplemental Decision is MODIFIED.

### **ISSUES**

Pursuant to the Board’s September 15, 2020 Second Amended

---

<sup>2</sup> Claimant passed away on October 7, 2020. Despite the Board’s issuance of notices of the trial by publication, no court-appointed representative appeared on her behalf in these proceedings.

Pretrial Order<sup>3</sup> and May 18, 2021 Third Amended Pretrial Order, the following is the sole issue to be determined on this appeal:

Whether Maui Pineapple/John Mullen is liable for Seabury Hall/Hawaii Insurance Guaranty Association's fees and costs pursuant to Section 386-93(b), HRS.

### **FINDINGS OF FACT**

1. In 1988, Claimant was employed as a pineapple trimmer for MAUI PINEAPPLE. She had been so employed for about 20 years.

2. On or about December 27, 1988, Claimant sought treatment with William Mitchell, M.D. (“Dr. Mitchell”) for respiratory symptoms that she experienced over the previous several years, including shortness of breath and coughing. Dr. Mitchell evaluated Claimant and performed a chest x-ray. The results showed bibasilar interstitial and acinar infiltrates. Dr. Mitchell diagnosed Claimant with “hypersensitivity pneumonitis/fibrosis” related to her exposure to pineapple trimmings.

3. Claimant filed a claim for a December 27, 1988 industrial injury, alleging that she sustained “hypersensitivity pneumonia, fibrotic lung disease, hard of breath” as a result of exposure to smells and fumes at work. This case was designated as Disability Compensation Division (“DCD”) Case No. 7-89-00554. By Decision dated November 16, 1989, the Director determined that Claimant had sustained “hypersensitivity pneumonia” by accident arising out of and in the course of employment with MAUI PINEAPPLE

---

<sup>3</sup> The Second Amended Pretrial Order amended the issue on appeal as stated in the Board’s previously-issued Pretrial Orders.

on December 27, 1988.

4. Claimant eventually left her job with MAUI PINEAPPLE and took a new job as a janitor at SEABURY HALL, a private school, beginning December 10, 1989.

5. On January 29, 1990, Claimant was evaluated by Edward Morgan, M.D. ("Dr. Morgan"), an allergist and pulmonologist, who performed pulmonary function testing and confirmed the presence of pulmonary fibrosis.

6. Between 1989 and 1999, Claimant suffered from recurrent shortness of breath, wheezing, and coughing. She also developed recurrent pneumonia secondary to pulmonary fibrosis.

7. In May 1999, Claimant underwent a gallium lung scan which showed activity in the lungs suggestive of slowly progressing pulmonary fibrosis.

8. Claimant subsequently filed a workers' compensation claim against SEABURY HALL, alleging a new work injury on July 13, 1999.<sup>4</sup> This claim was designated as DCD Case No. 7-00-02932.

9. On August 3, 2001, the Director issued a Decision Supplemental to Award Dated November 16, 1989 ("August 3, 2001 Supplemental Decision"), having consolidated DCD Case No. 7-89-00554 (D/A: 12/27/1988) and DCD Case No. 7-00-02932 (D/A: 07/13/1999). The Director, in relevant part, denied Claimant's claim for injury on July 13, 1999 in DCD

---

<sup>4</sup> See WC-5 Employee's Claim for Workers' Compensation Benefits, dated June 23, 2000.

Case No. 7-00-02932 arising out of Claimant's employment with SEABURY HALL, finding that Claimant's treating physician continued to attribute her condition to the December 27, 1988 (DCD Case No. 7-89-00554) work injury with MAUI PINEAPPLE, that Claimant denied suffering a new injury while in the employ of SEABURY HALL, and that there was no medical evidence to support the claim of a new injury. The Director determined that Claimant continued to suffer the effects of her December 27, 1988 (DCD Case No. 7-89-00554) work injury with MAUI PINEAPPLE. Claimant was also awarded temporary total disability ("TTD") benefits to be paid by MAUI PINEAPPLE.

Prior Appeal to the Board: Case No. AB 2001-369(M)

10. On August 21, 2001, Claimant appealed the August 3, 2001 Supplemental Decision to the Board.

11. On August 23, 2001, MAUI PINEAPPLE also appealed the August 3, 2001 Supplemental Decision to the Board.

12. These appeals were designated as Case No. AB 2001-369(M) and pertained to both DCD Case No. 7-89-00554 (D/A: 12/27/1988) and DCD Case No. 7-00-02932 (D/A: 07/13/1999).

13. Claimant subsequently submitted a withdrawal of her appeal of the August 3, 2001 Supplemental Decision. See Claimant's Withdrawal of Appeal, filed October 8, 2001.

14. Thus, on October 29, 2001, the Board dismissed Claimant's appeal filed August 21, 2001 and designated MAUI PINEAPPLE as the appellant for purposes of Case No. AB 2001-369(M).

15. Following the dismissal of Claimant's appeal in Case No. AB 2001-369(M), by Pretrial Order issued December 5, 2001 in Case No. AB 2001-369(M), the issues on appeal were designated as follows:

- (a) Whether Claimant's current condition is causally related to her work injury of December 27, 1988.
- (b) If so, whether Maui Pineapple Company, Ltd. continues to be liable for medical and indemnity benefits after July 13, 1999.

16. On March 24, 2003, the Board issued a Decision and Order in Case No. AB 2001-369(M) which affirmed the Director's August 3, 2001 Supplemental Decision and found that Claimant's debilitating pulmonary condition was causally related to the work injury she sustained on December 27, 1988 while working for MAUI PINEAPPLE and was not the result of a new injury she sustained while working for her subsequent employer, SEABURY HALL. The Board further concluded that MAUI PINEAPPLE continued to be liable for medical and indemnity benefits after July 13, 1999.

17. On March 31, 2003, MAUI PINEAPPLE filed a Motion for Reconsideration regarding the Board's March 24, 2003 Decision and Order in Case No. AB 2001-369(M).

18. On May 29, 2003, the Board, in Case No. AB 2001-369(M), denied MAUI PINEAPPLE's Motion for Reconsideration.

19. On June 5, 2003, Brian G. S. Choy, Esq., attorney for SEABURY HALL, submitted a timely Request for Approval of Attorney's Fee, dated June 4, 2003, for services performed between September 1, 2001 and

May 30, 2003 (“fee request”), in Case No. AB 2001-369(M) (7-00-02932), to the Board for approval. The total amount requested was \$7,300.67 (\$6,652.50 in fees and \$647.17 for costs and tax).

20. SEABURY HALL’s fee request is considered a motion for attorney’s fees and costs for purposes of HRAP Rule 4(a)(3).

21. Pursuant to the fee request and § 12-43-37, Hawaii Administrative Rules (“HAR”), Board Rules of Practice and Procedure (“LAB Rules”), any party may file a written objection to the fee request no later than 10 calendar days after service of the fee request.

22. The fee request does not confirm upon whom it was served or when it was served.

23. On June 25, 2003, Stanford M. J. Manuia, Esq., attorney for MAUI PINEAPPLE, filed a letter, dated June 20, 2003, objecting to Mr. Choy’s/SEABURY HALL’s fee request in Case No. AB 2001-369(M).

24. The Board considers MAUI PINEAPPLE’s June 25, 2003 objection to the fee request as timely filed.

25. Ninety (90) days after June 5, 2003 is Wednesday, September 3, 2003.

26. The Board did not dispose of Mr. Choy’s/SEABURY HALL’s fee request in Case No. AB 2001-369(M) by entering an order upon the record within 90 days after June 5, 2003, the date upon which the fee request was filed.

27. On June 30, 2003, MAUI PINEAPPLE filed a timely notice of



appeal to the Intermediate Court of Appeals of the State of Hawai'i ("ICA") from the Board's March 24, 2003 Decision and Order and its May 29, 2003 Order Denying Motion for Reconsideration, in Case No. AB 2001-369(M).

28. On October 14, 2003, in Case No. AB 2001-369(M), the Board issued an Order Denying Seabury Hall/HH America Insurance Company's Request for Attorney's Fees to be Assessed Against [MAUI PINEAPPLE] ("October 14, 2003 Order"). The Board noted that Claimant withdrew her appeal, thereby effectively dismissing her issue on appeal with respect to SEABURY HALL. As a result, the issues on appeal and, therefore, the Board's determination, pertained only to MAUI PINEAPPLE. The Board further stated that while it was understandable that SEABURY HALL would take a cautious approach and remain in the case, this was an insufficient basis to assess fees and costs against MAUI PINEAPPLE.<sup>5</sup> The October 14, 2003 Order was not appealed by any party.

29. The Board's October 14, 2003 Order was issued 132 days after the June 5, 2003 fee request.

30. By way of Summary Disposition Order issued on August 11, 2006, the ICA determined that the Board, in Case No. AB 2001-369(M), properly denied MAUI PINEAPPLE's motion for reconsideration. The ICA also

---

<sup>5</sup> Based on the wording of the issues on appeal, as set forth in the December 5, 2001 Pretrial Order, it was possible for the Board to find that Claimant's condition was not causally related to her employment with MAUI PINEAPPLE. Thus, it was reasonable for SEABURY HALL to remain a party to that appeal for purposes of preserving its standing to further appeal the Board's determination if it so desired.

affirmed the Board's March 24, 2003 Decision and Order in Case No. AB 2001-369(M). Neither party applied for writ of certiorari.

31. MAUI PINEAPPLE is considered to have lost its appeal in Case No. AB 2001-369(M).

32. On September 6, 2006, counsel for SEABURY HALL filed with the ICA a Verified Bill of Costs and Request for Attorney's Fees.

33. On November 3, 2006, the ICA issued an Order Regarding Employer-Appellee and Insurance Carrier-Appellee's Request for Attorney's Fees Request and Compensation for Necessary Expenses which stated that SEABURY HALL's September 6, 2006 request included fees and costs related to proceedings before the Board, which should be considered and determined by the Board. The ICA ordered counsel for SEABURY HALL to submit an amended request for fees limited to the fees and costs related to the appellate court proceeding.

34. On December 6, 2006, the ICA issued an Order Regarding Employer-Appellee and Insurance Carrier-Appellee's Amended Request for Attorney's Fees Request and Compensation for Necessary Expenses which awarded SEABURY HALL attorney's fees and costs in the amount of \$4,073.11, against MAUI PINEAPPLE, pursuant to Section 386-93, Hawaii Revised Statutes ("HRS").

35. The Board takes notice that following the determinations made by the ICA relative to the appeal of Case No. AB 2001-369(M), the records and files in DCD Case No. 7-89-00554 (D/A: 12/27/1988) and DCD Case No.

7-00-02932 (D/A: 07/13/1999) were returned to the Director.

Proceedings before the Director after Case No. AB 2001-369(M)

36. On March 16, 2010, in DCD Case No. 7-89-00554 (D/A: 12/27/1988), the Director issued a Decision Supplemental to Award Dated 11/16/1989 which awarded Claimant additional TTD benefits, permanent total disability benefits, and benefit adjustment, payable to MAUI PINEAPPLE. The Director also denied MAUI PINEAPPLE's request for apportionment with the SCF and determined that Claimant did not sustain any disfigurement. The Director further determined that MAUI PINEAPPLE was entitled to a credit for TTD payments made after May 21, 2009.

37. Over 10 years after the ICA affirmed the Board's Decision and Order in Case No. AB 2001-369(M) and over 13 years after Mr. Choy/SEABURY HALL submitted the June 5, 2003 fee request in Case No. AB 2001-369(M), by letter dated August 23, 2017 to the DCD, counsel for SEABURY HALL, in DCD Case No. 7-89-00554 (D/A: 12/27/1988) and DCD Case No. 7-00-02932 (D/A: 07/13/1999), requested that the cases be transferred from the DCD to the Board for a determination on SEABURY HALL's counsel's Request for Approval of Attorney's Fees for fees and costs incurred in the appeal filed by MAUI PINEAPPLE in Case No. AB 2001-369(M).

38. On October 12, 2017, the Board, by way of an informal note, declined jurisdiction of DCD Case No. 7-89-00554 (D/A: 12/27/1988) and DCD Case No. 7-00-02932 (D/A: 07/13/1999), stating that the Board issued an order on October 14, 2003 and that there was nothing pending before the

Board. The case files in DCD Case No. 7-89-00554 (D/A: 12/27/1988) and DCD Case No. 7-00-02932 (D/A: 07/13/1999) were returned to the Director.

39. Approximately a year and a half later, on June 12, 2019, SEABURY HALL filed a WC-77 Application for Hearing with the Director, requesting an award of attorney's fees and costs for services performed in Case No. AB 2001-369(M), against MAUI PINEAPPLE.

40. On August 23, 2019, the Director issued a Decision Supplemental to Award Dated 11/16/1989 ("August 23, 2019 Supplemental Decision"), in DCD Case No. 7-89-00554 (D/A: 12/27/1988) and DCD Case No. 7-00-02932 (D/A: 07/13/1999), determining that the Director did not have jurisdiction over the June 5, 2003 fee request submitted by Mr. Choy/SEABURY HALL in Case No. AB 2001-369(M), because said fee request appeared to relate to matters that were on appeal.

Case No. AB 2019-194(M)

41. On September 3, 2019, SEABURY HALL appealed the Director's August 23, 2019 Supplemental Decision to the Board. This appeal is designated herein as Case No. AB 2019-194(M).

42. On March 27, 2020, SEABURY HALL filed a Non-Hearing Motion to Set Aside the October 14, 2003 Order. The basis for this Motion was that MAUI PINEAPPLE's appeal divested the Board of subject matter jurisdiction to enter the October 14, 2003 Order.

43. On October 26, 2021, the Board issued an Order Denying Motion to Set Aside.

44. On November 26, 2021, SEABURY HALL filed a Non-Hearing Motion for Reconsideration of the Order Denying Motion to Set Aside Entered October 26, 2021.

45. On December 1, 2021, the Board issued an Order Denying Motion for Reconsideration which, in relevant part, stated that it was more appropriate to dispose of the issue on appeal after a trial *de novo*.

46. Trial proceeded on December 6, 2021.

47. On December 14, 2021, the Board issued an Order Setting Aside Order Denying Motion for Reconsideration. SEABURY HALL was provided 17 days from the date of the Order to file a reply memorandum with respect to its Motion for Reconsideration.

48. On March 29, 2022, the Board issued an Order Denying Motion for Reconsideration and Order for Further Briefing which denied SEABURY HALL's Motion for Reconsideration filed on November 26, 2021. The Board stated that it was more appropriate to dispose of the issue on appeal after the Board had considered the parties' post-trial arguments.

#### Other Findings

49. The Board does not credit SEABURY HALL's argument that the Board was divested of jurisdiction upon the filing of MAUI PINEAPPLE's June 30, 2003 appeal to the ICA.

50. The Board's October 14, 2003 Order in Case No. AB 2001-369(M) was issued beyond 90 days from the date of SEABURY HALL's fee request.

51. The Board lacked the jurisdiction and/or authority to enter the October 14, 2003 Order in Case No. AB 2001-369(M).

52. The Board's October 14, 2003 Order in Case No. AB 2001-369(M) is therefore a nullity.

53. MAUI PINEAPPLE must be considered to have lost its appeal for purposes of HRS § 386-93(b).

54. MAUI PINEAPPLE is thus liable for SEABURY HALL's attorney's fees and costs incurred on appeal in Case No. AB 2001-369(M), as approved by the Board.

55. By way of the June 5, 2003 fee request, Mr. Choy/SEABURY HALL requested approval of Mr. Choy's fees at an hourly rate of \$120.00 and a total of \$7,300.67 in attorney's fees and costs as follows:

Fees	58 hours x \$120.00/hour	\$6,652.50
Tax	Calculated at 4.167%	\$ 277.21
Costs	Postage, Photocopies, Messenger Service	\$ 370.96
Total Fees and Costs Requested		\$7,300.67

56. The June 5, 2003 fee request contains mathematical errors as 58 hours at an hourly rate of \$120.00 is not equivalent to \$6,652.50.

57. The statement itemizing services attached to the June 5, 2003 fee request shows that SEABURY HALL's counsel billed as follows:

Fees ("BC")	50.7 hours x \$120.00/hour	\$6,084.00
Fees ("KMY")	3.7 hours x \$105.00/hour	\$ 388.00
Fees ("AM")	3.6 hours x \$50.00/hour	\$ 50.00
Total Fees Billed		\$6,652.50

Tax	Calculated at 4.167%	\$ 277.21
Costs	Postage, Photocopies, Messenger Service	\$ 370.96
Total Fees and Costs Requested		\$7,300.67

58. Thus, the June 5, 2003 fee request is understood to be a request for the Board's approval of the hourly rates of \$120.00, \$105.00, and \$50.00 and a total of \$7,300.67 in attorney's fees and costs.

59. Mr. Choy/SEABURY HALL requested approval of an hourly rate of \$120.00 for Mr. Choy, for this appeal.

60. Mr. Choy/SEABURY HALL also requested approval of an hourly rate of \$105.00 for "KMY," whom the Board takes notice to be Keith M. Yonamine, Esq.

61. Mr. Choy/SEABURY HALL also requested approval of an hourly rate of \$50.00 for "AM," whom the Board takes notice to be a paralegal for Mr. Choy.

62. Messrs. Choy and Yonamine, both having been admitted to the Hawai'i Bar in 1985, had been licensed to practice law in Hawaii for at least 17 years when Mr. Choy filed the fee request on June 5, 2003.

63. While on appeal in Case No. AB 2001-369(M), the parties addressed issues including but not limited to issues relating to compensability and liability for medical care and indemnity benefits. The issues presented were not novel, and the appeal was a typical workers' compensation appeal.

64. The itemized billing entries from Mr. Choy that were attached to the June 5, 2003 fee request did not lack supporting documentation, and MAUI PINEAPPLE did not object to any of the billed entries

on the basis that they lacked supporting documentation.

65. The itemized billing entries from Mr. Choy that were attached to the June 5, 2003 fee request did not reflect that services that were construed to be clerical in nature were billed, and MAUI PINEAPPLE did not object to any of the billed entries on the basis that they were clerical in nature.

66. The itemized billing entries from Mr. Choy that were attached to the June 5, 2003 fee request and the fees requested were not excessive in nature, and MAUI PINEAPPLE did not object to any of the billed entries as being excessive in nature.

67. The itemized billing entries from Mr. Choy that were attached to the June 5, 2003 fee request were not vague and/or ambiguous, and MAUI PINEAPPLE did not object to any of the billed entries on the basis that they were vague and/or ambiguous.

68. Although the itemized billing entries from Mr. Choy that were attached to the June 5, 2003 fee request reflected entries that were presented in a block billing format, the Board determines that the total fee requested for all of the services described in each block billed entry is reasonable.<sup>6</sup>

69. For purposes of the appeal in Case No. AB 2001-369(M), hourly rates of \$120.00, \$105.00, and \$50.00 as billed by Mr. Choy/SEABURY HALL are reasonable.

---

<sup>6</sup> See entries dated 9/1/01, 11/17/01, 11/29/01, 9/9/02, 10/21/02, 10/23/02, 11/2/02, 11/7/02, 12/20/02, 1/27/03, and 3/29/03.



70. The rates approved by the Board are consistent with the hourly rate customarily awarded to attorneys possessing similar skills and experience, for similar work performed on appeal, and for appeals occurring around the same period.

71. 50.7 hours billed at the hourly rate of \$120.00, 3.7 hours billed at the hourly rate of \$105.00, and 3.6 hours billed at the hourly rate of \$50.00 were reasonably required while Case No. AB 2001-369(M) was on appeal before the Board and to address the complexities of the issues involved on said appeal.

72. Attorney's fees in the amount of \$6,652.50 plus taxes (\$277.21)<sup>7</sup> for a total of \$6,929.71 are reasonable for Case No. AB 2001-369(M), while on appeal before the Board.

73. Costs in the amount of \$370.96 for photocopying, postage, and messenger services, as billed by Mr. Choy/SEABURY HALL, are reasonable for this case, while on appeal in Case No. AB 2001-369(M).

74. The total amount of \$7,300.67, including fees and costs, is reasonable for Case No. AB 2001-369(M), while on appeal before the Board.

75. The amount of \$7,300.67 for attorney's fees and costs of SEABURY HALL, as requested by their attorney, Mr. Choy, on June 5, 2003, is approved in Case No. AB 2001-369(M).

76. The approved sum of \$7,300.67 is payable to SEABURY

---

<sup>7</sup> Taxes were calculated at the same rate as used by Mr. Choy/SEABURY HALL in the June 5, 2003 fee request (rate of 4.167%).

HALL by MAUI PINEAPPLE.

### **ANALYSIS/DISCUSSION**

This appeal presents a rather unique situation wherein the Board must evaluate the circumstances of an attorney's fee request that was presented to it over 20 years ago, at which time, the Board believed the fee request to have been addressed by way of the Board's order denying the same. In summary, over two decades ago, MAUI PINEAPPLE appealed the August 3, 2001 Supplemental Decision of the Director, which, in essence, found MAUI PINEAPPLE, Claimant's first employer, liable for Claimant's ongoing medical condition and relieved SEABURY HALL, Claimant's second employer, of any liability. That appeal was designated as Case No. AB 2001-369(M), which is not the appeal, herein. The Board, on March 24, 2003, affirmed the Director's 2001 determination. SEABURY HALL, believing that MAUI PINEAPPLE was liable for its attorney's fees and costs on appeal, filed a fee request on June 5, 2003. MAUI PINEAPPLE objected to paying the attorney's fees and costs of SEABURY HALL. However, before the Board ruled on SEABURY HALL's fee request, MAUI PINEAPPLE appealed the Board's March 24, 2003 Decision and Order and May 29, 2003 Order Denying Motion to Reconsideration to the ICA. Thereafter, on October 14, 2003, or 132 days after submission of the June 5, 2003 fee request and after MAUI PINEAPPLE appealed the Board's Decision and Order to the ICA, the Board issued an order denying SEABURY HALL's request that its attorney's fees and costs be assessed against MAUI PINEAPPLE.

In this appeal, herein, although SEABURY HALL later moved to set

aside the October 14, 2003 Order, the Board denied this request as well as SEABURY HALL's subsequent request for reconsideration. Thus, the threshold question in this appeal is whether the Board had jurisdiction to enter the October 14, 2003 Order.

- I. The Board's October 14, 2003 Order denying SEABURY HALL's request to assess attorney's fees and costs against MAUI PINEAPPLE is a nullity because the Board did not have jurisdiction to enter the October 14, 2003 Order.

MAUI PINEAPPLE contends that SEABURY HALL's request to assess fees and costs against it is barred by the doctrine of *res judicata* because the Board's October 14, 2003 Order denied SEABURY HALL's request, and SEABURY HALL did not appeal that determination. MAUI PINEAPPLE further contends that the Board had jurisdiction over this case at the time it issued its October 14, 2003 Order because "Rule 4(a)(3) HRAP extends the time for filing the notice of appeal until 30 days after entry of an order disposing of the motion,"<sup>8</sup> in this case, the October 14, 2003 Order. MAUI PINEAPPLE requests that the Board uphold the October 14, 2003 Order.

SEABURY HALL argues that the Board's October 14, 2003 Order is invalid because (1) the Board was divested of jurisdiction over this appeal after MAUI PINEAPPLE filed its appeal to the ICA on June 30, 2003; and (2) the Board's October 14, 2003 Order was not issued within 90 days of either the date of the fee request or MAUI PINEAPPLE's appeal to the ICA, as required by HRAP Rule 4(a)(3). Thus, SEABURY HALL states that *res judicata* is

---

<sup>8</sup> See page 3 of MAUI PINEAPPLE's Supplemental Post-Trial Brief, filed April 29, 2022.

inapplicable, and it could not appeal the Board's invalid October 14, 2003 Order. SEABURY HALL further argues that MAUI PINEAPPLE exclusively relied on *res judicata* throughout the proceedings on remand from the ICA; thus, it has waived any argument that the denial provision of HRAP Rule 4(a)(3) applies.

At the time SEABURY HALL filed its June 5, 2003 fee request and at the time of MAUI PINEAPPLE's June 30, 2003 appeal of Case No. AB 2001-369(M), HRAP Rule 4(a)(3) read as follows:

*Time to Appeal Affected by Post-Judgment Motions.* If, not later than 10 days after entry of judgment, any party files a motion that seeks to reconsider, vacate, or alter the judgment, or seeks attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided, that failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute denial of the motion.

(italics in original; underline added).

The Board does not credit SEABURY HALL's argument that the Board was divested of jurisdiction upon the filing of MAUI PINEAPPLE's June 30, 2003 appeal to the ICA. In Buscher v. Boning, 114 Hawai'i 202, 221, 159 P.3d 814, 833 (2007), the Hawai'i Supreme Court held that the 1999 version of HRAP Rule 4(a)(3) "supersedes the line of cases standing for the proposition that the circuit court lacks jurisdiction to award costs after a notice of appeal is filed" and "provides that the court has 90 days to dispose of a post-judgment motion to reconsider, vacate, or alter the judgment, or seeks attorney's fees or

costs, regardless of when the notice of appeal was filed.” Although HRAP Rule 4(a)(3) has since been amended<sup>9</sup>, the language providing 90 days to dispose of a post-judgment motion remains substantively the same.

However, because the Board’s October 14, 2003 Order was issued

---

<sup>9</sup> Currently, HRAP Rule 4(a)(3) provides as follows, in part:

(3) Time to appeal affected by post-judgment motions. If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, **or for attorney’s fees or costs**, and court or agency rules specify the time by which the motion shall be filed, then the time for filing the notice of appeal is extended for all parties until 30 days after entry of an order disposing of the motion. The presiding court or agency in which the motion was filed shall dispose of any such post-judgment motion by entering an order upon the record within 90 days after the date the motion was filed. If the court or agency fails to enter an order on the record, then, within 5 days after the 90th day, the clerk of the relevant court or agency shall notify the parties that, by operation of this Rule, the post-judgment motion is denied and that any orders entered thereafter shall be a nullity. The time of appeal shall run from the date of entry of the court or agency’s order disposing of the post-judgment motion, if the order is entered within the 90 days, or from the filing date of the clerk’s notice to the parties that the post-judgment motion is denied pursuant to the operation of the Rule.

(emphasis added).

beyond 90 days from the date of SEABURY HALL's fee request, said Order is a nullity under HRAP Rule 4(a)(3). See Cole v. City and Cnty. of Honolulu, 154 Hawai'i 28, 31-32, 543 P.3d 460, 463-64 (2024) ("The second clause [of HRAP Rule 4(a)(3)] requires the court to enter that post-judgment order within 90 days after the party files the motion. . . . Courts have no power to rule on a post-judgment motion after the 90-day period. . . . [HRAP Rule 4(a)(3)] nullifies an order entered 90 days after a post-judgment motion.").

Since the Board's October 14, 2003 Order is a nullity, there was no valid order from which SEABURY HALL could appeal. Accordingly, the Board rejects MAUI PINEAPPLE's argument that SEABURY HALL, not having appealed the October 14, 2003 Order, is barred from "relitigating" this matter and that *res judicata* applies in this case. The Board cannot uphold an order that was invalid to begin with.

The Board also does not credit MAUI PINEAPPLE's argument that because HRAP Rule 4(a)(3) extends the time for filing the notice of appeal until 30 days after entry of an order disposing of the fee request, the Board retained jurisdiction to enter its October 14, 2003 Order. To credit this position would be contrary to a plain reading of HRAP Rule 4(a)(3). HRAP Rule 4(a)(3) clearly directed the Board to issue its order disposing of SEABURY HALL's fee request within 90 days of its filing, or on or before September 3, 2003. The Board did not do so, and therefore, when the Board entered its October 14, 2003 Order 132 days after the filing of the fee request, it did not possess the jurisdiction or authority to do so.

- II. Pursuant to HRS § 386-93(b), MAUI PINEAPPLE is liable for SEABURY HALL's attorney's fees and costs incurred on appeal in Case No. AB 2001-369(M), as approved by the Board.

Because the Board's October 14, 2003 Order is a nullity, the Board must address SEABURY HALL's June 5, 2003 fee request, specifically, whether SEABURY HALL's fees and costs in Case No. AB 2001-369(M) shall be assessed against MAUI PINEAPPLE. Thus, the next question to be addressed is whether HRS § 386-93(b) authorizes the assessment of SEABURY HALL's attorney's fees against MAUI PINEAPPLE in Case No. AB 2001-369(M).

SEABURY HALL states that it is entitled to recover attorney's fees and costs incurred during MAUI PINEAPPLE's unsuccessful appeal of the Director's August 3, 2001 Supplemental Decision since MAUI PINEAPPLE is the losing employer-appellant for purposes of HRS § 386-93(b). The Board agrees.

Section 386-93(b), HRS reads as follows:

(b) If an employer appeals a decision of the director or appellate board, the costs of the proceedings of the appellate board or the appellate court, together with reasonable attorney's fees, shall be assessed against the employer if the employer loses; provided that if an employer or an insurance carrier, other than the employer who appealed, is held liable for compensation, the costs of the proceedings of the appellate board or the appellate court, together with reasonable attorney's fees, shall be assessed against the party held liable for the compensation.

(emphasis added).

Pursuant to HRS § 386-93(b), an employer-appellant who does not

prevail on its appeal is liable for attorneys' fees and costs. In Case No. AB 2001-369(M), MAUI PINEAPPLE was the employer who appealed to the Board. It is clear that MAUI PINEAPPLE lost its appeal in HRS § 386-93(b) when the Board affirmed the Director's August 3, 2001 Supplemental Decision and the ICA, in turn, affirmed the Board.

By way of explanation, at the outset of the appeal in Case No. AB 2001-369(M), both Claimant and MAUI PINEAPPLE were designated as appealing parties because both appealed the Director's August 3, 2001 Supplemental Decision which denied the claim against SEABURY HALL. However, Claimant subsequently withdrew her appeal, and the Board designated MAUI PINEAPPLE as the "Appellant" in Case No. AB 2001-369(M).

After the Board designated MAUI PINEAPPLE as the sole appealing party in Case No. AB 2001-369(M), the Board set forth the issues in that appeal as follows:

- (a) Whether Claimant's current condition is causally related to her work injury of December 27, 1988.
- (b) If so, whether Maui Pineapple Company, Ltd. continues to be liable for medical and indemnity benefits after July 13, 1999.

By Decision and Order dated March 24, 2003, in Case No. AB 2001-369(M), the Board affirmed the Director's August 3, 2001 Supplemental Decision when it determined that Claimant's pulmonary condition was causally related to the work injury she sustained on December 27, 1988 while working for MAUI PINEAPPLE and was not the result of a new injury she sustained



while working for her subsequent employer, SEABURY HALL. The Board further concluded that MAUI PINEAPPLE continues to be liable for medical and indemnity benefits after July 13, 1999. Thus, MAUI PINEAPPLE lost both of its issues on appeal.

The ICA eventually affirmed the Board's March 24, 2003 Decision and Order in Case No. AB 2001-369(M). As a result, MAUI PINEAPPLE, as "employer" and the appealing party, must be considered to have lost its appeal in Case No. AB 2001-369(M), for purposes of HRS § 386-93(b).

The imposition of fees and costs against the employer who has lost its appeal before the Board is mandatory: "If an employer appeals a decision of the director. . . the costs of the proceedings of the appellate board. . . together with reasonable attorney's fees, shall be assessed against the employer if the employer loses." HRS § 386-93(b).

Accordingly, MAUI PINEAPPLE is liable for SEABURY HALL's attorney's fees and costs incurred on appeal, in Case No. AB 2001-369(M), as approved by the Board.

III. The Board approves the sum of \$7,300.67 for attorney's fees and costs of SEABURY HALL in Case No. AB 2001-369(M); this sum is payable to SEABURY HALL by MAUI PINEAPPLE.

Having concluded that MAUI PINEAPPLE is liable for SEABURY HALL's attorney's fees and costs incurred on appeal, in Case No. AB 2001-369(M), we now turn our attention to what reasonable attorney's fees and costs

incurred by SEABURY HALL should be assessed against MAUI PINEAPPLE.<sup>10</sup>

A. *Principles of Law Regarding Assessment of Fee Request*

HRS § 386-94 directs the Board to approve only those fees that are reasonable:

In all cases, reasonable attorney's fees shall be awarded.

The Supreme Court of the State of Hawai'i has also interpreted this sentence to mean that the Board is "require[d] . . . to reduce an attorney's hourly rate if it is unreasonably high." *Botelho v. Atlas Recycling Center*, 146 Haw. 435, 444, 463 P.3d 1092, 1101 (2020).

The Supreme Court of Hawai'i has determined that the most useful starting point for determining attorneys' fees, which carries a "strong presumption" of a reasonable fee, is the lodestar<sup>11</sup> method or approach by which "the number of hours reasonably expended are multiplied by a reasonable hourly rate." *Gurrobat v. HTH Corp.*, 135 Haw. 128, 138-39, 346 P.3d 197, 207-208 (2015) (citations and quotations omitted). *Accord Kaleikini v.*

---

<sup>10</sup> Although not specifically identified as an issue on appeal, herein, the issue regarding what are the reasonable fees owed by MAUI PINEAPPLE to SEABURY HALL naturally flows from the Board's determination that MAUI PINEAPPLE is liable to SEABURY HALL for attorney's fees and costs in Case No. AB 2001-369(M). Furthermore, MAUI PINEAPPLE had an opportunity to object to the June 5, 2003 fee request and has, in fact, filed its objection. Accordingly, judicial economy and common-sense dictate that the Board now address the issue regarding what are the reasonable fees incurred by SEABURY HALL in Case No. AB 2001-369(M).

<sup>11</sup> The factors in determining the hourly rate are established in Hawai'i workers' compensation statutes and case law as exemplified by the Hawai'i Supreme Court in *Botelho v. Atlas Recycling Center*, 146 Haw. 435, 463 P.3d 1092 (2020).

*Yoshioka*, 129 Haw. 454, 469, 304 P.3d 252, 267 (2013); *Schefke v. Reliable Collection Agency*, 96 Haw. 408, 446, 32 P.3d 52, 90 (2001).

While the Board may not rely upon a “predetermined hourly rate,” it is well-settled that the legislative history of HRS § 386-94 demonstrates that the “legislature intended to give LIRAB [the Board] the ability to adjust attorneys’ requested hourly rates” when approving attorneys’ fees. *Botelho*, 146 Haw. at 446, 448-449, 463 P.3d at 1103, 1105-1106. The Supreme Court of Hawai‘i has recognized that “an attorney’s requested hourly rate can be adjusted by the director, LIRAB, or a court when approving attorneys’ fees.” *Botelho*, 146 Haw. at 446, 463 P.3d at 1103.

In making its determination as to the reasonableness of fees requested by an attorney, the Board may consider several factors. HRS § 386-94 provides, in relevant part:

In approving fee requests, the director, appeals board, or court may consider factors such as the attorney’s skill and experience in state workers’ compensation matters, the amount of time and effort required by the complexity of the case, the novelty and difficulty of issues involved, the amount of fees awarded in similar cases, benefits obtained for the claimant, and the hourly rate customarily awarded attorneys possessing similar skills and experience.

(emphasis added). *See also Botelho*, 146 Haw. at 446, 450-451, 463 P.3d at 1103, 1107-1108 (HRS § 386-94 allows the Board to consider the hourly rates customarily awarded to attorneys possessing similar experience and skills to determine what is a reasonable attorney’s fee).

Additionally, Rule 1.5(a) of the Hawai'i Rules of Professional Conduct mandates that attorneys shall not charge or collect fees and expenses that are "unreasonable":

**(a) Reasonableness of Fee.** A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent, and in contingency fee cases the risk of no recovery and the conscionability of the fee in light of the net recovery to the client.

(boldface in original; underline added).

Additionally, the Hawai'i Supreme Court has directed that, in order

to be approved as reasonable, attorneys' fees should reflect that legal services were discharged in a cost-effective manner. *Schefke*, 96 Haw. at 458, 32 P.3d at 102, citing *Missouri v. Jenkins*, 491 U.S. 274, 288, 109 S.Ct. 2463 (1989). Thus, courts should "reduce an award of attorney's fees for. . . performance of clerical functions." *Id.* Similarly, in addition to reviewing fees for clerical functions, the Court indicated that fees may be reviewed for those that are duplicative or insufficiently documented. *Kaleikini*, 129 Haw. at 471, 304 P.3d at 269.

The Board is further guided by the Hawai'i Supreme Court's disdain for "block billing," wherein activities are lumped together in a single entry with no indication how much time was spent on each task. *Hawai'i Ventures, LLC v. Otaka*, 116 Haw. 465, 475, 173 P.3d 1122, 1132 (2007). Because this type of billing practice can make it impossible for a reviewing body to determine the reasonableness of the hours spent on each task, it "quite correctly raise[s] suspicions about whether all the work claimed was actually accomplished or whether it was necessary." *Id.*, quoting *Robinson v. City of Edmond*, 160 F.3d 1275, 1284 (10<sup>th</sup> Cir. 1998); see *Gurrobat*, 135 Haw. at 135, 346 P.3d at 204. However, where 0.1 hour is charged, block-billing is generally permissible as 0.1 hour is the shortest generally accepted unit of attorney time for billing purposes. *Gurrobat*, 135 Haw. at 135, 346 P.3d at 204.

In considering whether an attorney's fees are reasonable, HRS § 386-94 "does not limit LIRAB's [the Board's] considerations to submitted evidence." *Botelho*, 146 Haw. at 451, 463 P.3d at 1108. To be clear, the

Supreme Court of Hawai‘i explained:

Rather, HRS § 386-94 provides a non-exhaustive list of factors the director, LIRAB, or courts may consider, including the “amount of fees awarded in similar cases,[]” and “the hourly rate customarily awarded attorneys possessing similar skills and experience.” Therefore, while LIRAB should consider the record in awarding attorneys’ fees, its considerations are not limited to the evidence.

*Id.*

B. *SEABURY HALL’s June 5, 2003 Fee Request*

On June 5, 2003, Mr. Choy submitted his fee request on behalf of SEABURY HALL. Mr. Choy/SEABURY HALL requested approval of Mr. Choy’s fees at an hourly rate of \$120.00 and a total of \$7,300.67 in attorney’s fees and costs as follows:

Fees	58 hours x \$120.00/hour	\$6,652.50
Tax	Calculated at 4.167%	\$ 277.21
Costs	Postage, Photocopies, Messenger Service	\$ 370.96
Total Fees and Costs Requested		\$7,300.67

The June 5, 2003 fee request contains mathematical errors as 58 hours at an hourly rate of \$120.00 is not equivalent to \$6,652.50.

A closer examination of the statement itemizing services attached to the June 5, 2003 fee request shows that SEABURY HALL’s counsel billed as follows:

Fees (“BC”)	50.7 hours x \$120.00/hour	\$6,084.00
Fees (“KMY”)	3.7 hours x \$105.00/hour	\$ 388.00

Fees ("AM")	3.6 hours x \$50.00/hour	\$ 50.00
Total Fees Billed		\$6,652.50
Tax	Calculated at 4.167%	\$ 277.21
Costs	Postage, Photocopies, Messenger Service	\$ 370.96
Total Fees and Costs Requested		\$7,300.67

Thus, the fee request is understood to be a request for the Board's approval of the hourly rates of \$120.00, \$105.00, and \$50.00 and a total of \$7,300.67 in attorney's fees and costs.

C. *MAUI PINEAPPLE's Objections to the Fee Request*

MAUI PINEAPPLE entered its objections to the June 5, 2003 fee request on June 25, 2003 by way of a letter, dated June 20, 2003, from Mr. Manuia, its then-attorney. Notably, MAUI PINEAPPLE does not object to the reasonableness of the \$7,300.67 in fees and costs as requested by Mr. Choy/SEABURY HALL. MAUI PINEAPPLE does not object to the hourly rates of \$120.00, \$105.00, or \$50.00 and does not object to 58.0 hours of billed time. MAUI PINEAPPLE also does not object to any of the specific billing entries attached to the fee request. Also of note is that MAUI PINEAPPLE does not contest that it is the party that lost its appeal in Case No. AB 2001-369(M).

Rather, MAUI PINEAPPLE generally objects to being financially responsible to pay for SEABURY HALL's attorney's fees and costs pursuant to HRS § 386-93(b). MAUI PINEAPPLE argues that because neither Claimant nor MAUI PINEAPPLE ever raised an argument or claim against SEABURY HALL during the proceedings in Case No. AB 2001-369(M) and because the Board declined to dismiss SEABURY HALL from the proceedings in Case No. AB

2001-369(M), MAUI PINEAPPLE should not be liable for SEABURY HALL's attorney's fees and costs. The Board does not credit MAUI PINEAPPLE's arguments. As explained, *infra*, the imposition of fees and costs against the employer who has lost the appeal is mandatory. HRS § 386-93(b). Accordingly, given that MAUI PINEAPPLE does not contest that it lost its appeal in Case No. AB 2001-369(M), MAUI PINEAPPLE is liable for SEABURY HALL's attorney's fees and costs incurred, as approved by the Board, whilst this matter was on appeal in Case No. AB 2001-369(M).

D. *Reasonableness of the Requested Hourly Rate*

Pursuant to the Hawai'i Supreme Court's directive in *Botelho*, the Board must evaluate the reasonableness of an attorney's billing rate anew in each case. It would be inappropriate to award an attorney the same billing rate in every case, regardless of the level of complexity, the result obtained, and the other factors listed by the court. *Id.* In short, an attorney could be approved a different billing rate in each case in which they appeared before the Board.

Mr. Choy requested approval of an hourly rate of \$120.00 for himself, for this appeal. He also requested approval of an hourly rate of \$105.00 for "KMY," whom the Board understands to be Keith M. Yonamine, Esq., as well as an hourly rate of \$50.00 for "AM," whom the Board understands to be a paralegal for Mr. Choy. The Board approved Attorney's requested hourly rates of \$120.00, \$105.00, and \$50.00, as explained below.

1. ATTORNEY'S SKILL, EXPERIENCE, REPUTATION AND ABILITY.

Consistent with the legislative direction, the Board may properly



consider an attorney's skill and experience in state workers' compensation matters, as well as an attorney's reputation and ability.

Messrs. Choy and Yonamine, both having been admitted to the Hawai'i Bar in 1985, had been licensed to practice law in Hawaii for at least 17 years when Mr. Choy filed the fee request on June 5, 2003.

2. COMPLEXITY OF CASE AND NOVELTY AND DIFFICULTY OF ISSUES INVOLVED.

In considering the complexity of the case and the novelty and difficulty of issues involved and in order to ascertain an attorney's hourly rate, the Board understands that the more complex, novel, or difficult a case is, there is more reason to approve a higher hourly rate for that particular case.

While on appeal in Case No. AB 2001-369(M), the parties addressed issues including but not limited to issues relating to compensability and liability for medical care and indemnity benefits. The issues presented were not novel, and the appeal was a typical workers' compensation appeal.

3. HOURLY RATE CUSTOMARILY AWARDED ATTORNEYS WITH SIMILAR SKILLS AND EXPERIENCE.

The Board considered the hourly rate it has customarily awarded attorneys possessing similar skills and experience in its assessment of this attorney's fee request.

The rates approved are consistent with the hourly rate customarily awarded to attorneys possessing similar skills and experience, for similar work performed on appeal, and for appeals occurring around the same period.

E. *Reasonableness of the Time Billed*

In this case, Mr. Choy billed 50.7 hours for legal services; Mr. Yonamine billed 3.7 hours for legal services; and the paralegal billed 3.6 hours for legal services. As explained below, the Board approves Mr. Choy's/ SEABURY HALL's request for fees.

1. INSUFFICIENT DOCUMENTATION OF FEES.

The Board may reduce an attorney's fee for insufficient documentation of legal services performed. Mr. Choy's/SEABURY HALL's itemized billing entries did not lack supporting documentation, and MAUI PINEAPPLE did not object to any of the billed entries on the basis that they lacked supporting documentation.

2. CLERICAL.

Activities that are clerical in nature are not recoverable as attorney's fees. Clerical work would be included as a part of general overhead expenses incurred by an attorney and should be reflected in an attorney's hourly rate. The fee request did not reflect that services that were construed to be clerical in nature were billed, and MAUI PINEAPPLE did not object to any of the billed entries on the basis that they were clerical in nature.

3. EXCESSIVE.

The Board will also not approve fees that are excessive in nature. After considering the legal services described in Mr. Choy's/SEABURY HALL's billing statements and comparing this activity to the applicable record on appeal, the Board determines that the fees as requested are reasonable. MAUI PINEAPPLE did not object to any of the billed entries as being excessive in

nature.

4. VAGUE AND AMBIGUOUS.

The Board, to ensure that all fees approved are reasonable, will not engage in pure conjecture or speculation where an attorney's billing description is relatively devoid of reasonably expected details or specifics. A fee applicant should maintain billing records in a manner that enables a reviewing body to easily identify the hours reasonably expended. Entry descriptions that are vague, generic, incomplete, and/or lacking in information may be reduced if it cannot be determined whether the billed time was reasonably expended. Mr. Choy's/SEABURY HALL's itemized billing entries were not vague and/or ambiguous. MAUI PINEAPPLE did not object to any of the billed entries on the basis that they were vague and/or ambiguous.

5. BLOCK BILLING. Entries presented in a block billing format may also be reduced because this format can make it impossible for a reviewing body to determine the reasonableness of the time spent on each task. Although the itemized statement of services reflected entries that were presented in a block billing format, the Board determines that the total fee requested for all of the services described in each block billed entry is reasonable.<sup>12</sup> Mr. Choy is cautioned that future requests for approval of attorney's fees should include an itemized statement for services that are not presented in a block billing format.

---

<sup>12</sup> See entries dated 9/1/01, 11/17/01, 11/29/01, 9/9/02, 10/21/02, 10/23/02, 11/2/02, 11/7/02, 12/20/02, 1/27/03, and 3/29/03.

6. ATTORNEY'S APPROVED FEE AND FEES AWARDED IN SIMILAR CASES.

A total of 50.7 hours at an hourly rate of \$120.00, 3.7 hours at an hourly rate of \$105.00, and 3.6 hours at an hourly rate of \$50.00 was thus reasonably required while this case was on appeal. The resulting attorney's fee of \$6,652.50 is similar to fees awarded in cases involving limited work on appeal, occurring around the same period, and involving attorneys possessing skills and years of experience similar to those of Messrs. Choy and Yonamine.

F. *Reasonableness of Costs Billed*

Costs in the amount of \$370.96 for photocopying, postage, and messenger services, as billed by Mr. Choy/SEABURY HALL, are reasonable.

**CONCLUSIONS OF LAW**

1. It is concluded that the "Order Denying Seabury Hall/HHI America Insurance Company's Request for Attorney's Fees to be Assessed Against Maui Pineapple Company, Ltd.," filed by the Board on October 4, 2003, is a nullity.

2. It is concluded that Employer MAUI PINEAPPLE CO., LTD. and Insurance Carrier JOHN MULLEN & CO., INC. are liable for Employer SEABURY HALL and Insurance Carrier HAWAII INSURANCE GUARANTY ASSOCIATION's attorney's fees and costs in Case No. AB 2001-369(M), pursuant to HRS § 386-93(b).

3. For purposes of the appeal in Case No. AB 2001-369(M), hourly rates of \$120.00, \$105.00, and \$50.00 as billed by Mr. Choy/SEABURY HALL are reasonable.

4. 50.7 hours billed at the hourly rate of \$120.00, 3.7 hours billed at the hourly rate of \$105.00, and 3.6 hours billed at the hourly rate of \$50.00 were reasonably required while Case No. AB 2001-369(M) was on appeal before the Board and to address the complexities of the issues involved on said appeal.

5. Attorney's fees in the amount of \$6,652.50 plus taxes (\$277.21)<sup>13</sup> for a total of \$6,929.71 are reasonable for Case No. AB 2001-369(M), while on appeal before the Board.

6. Costs in the amount of \$370.96 are reasonable for this case, while on appeal in Case No. AB 2001-369(M).

7. The total amount of \$7,300.67, including fees and costs, is reasonable for Case No. AB 2001-369(M), while on appeal before the Board.

### **ORDER**

1. In accordance with the foregoing, the Director's August 23, 2019 Supplemental Decision is MODIFIED.

2. The "Order Denying Seabury Hall/HHI America Insurance Company's Request for Attorney's Fees to be Assessed Against Maui Pineapple Company, Ltd.," filed by the Board on October 4, 2003, is a nullity.

3. Employer MAUI PINEAPPLE CO., LTD. and Insurance Carrier JOHN MULLEN & CO., INC. are liable for Employer SEABURY HALL and Insurance Carrier HAWAII INSURANCE GUARANTY ASSOCIATION's

---

<sup>13</sup> Taxes were calculated at the same rate as used by Mr. Choy/SEABURY HALL in the June 5, 2003 fee request (rate of 4.167%).

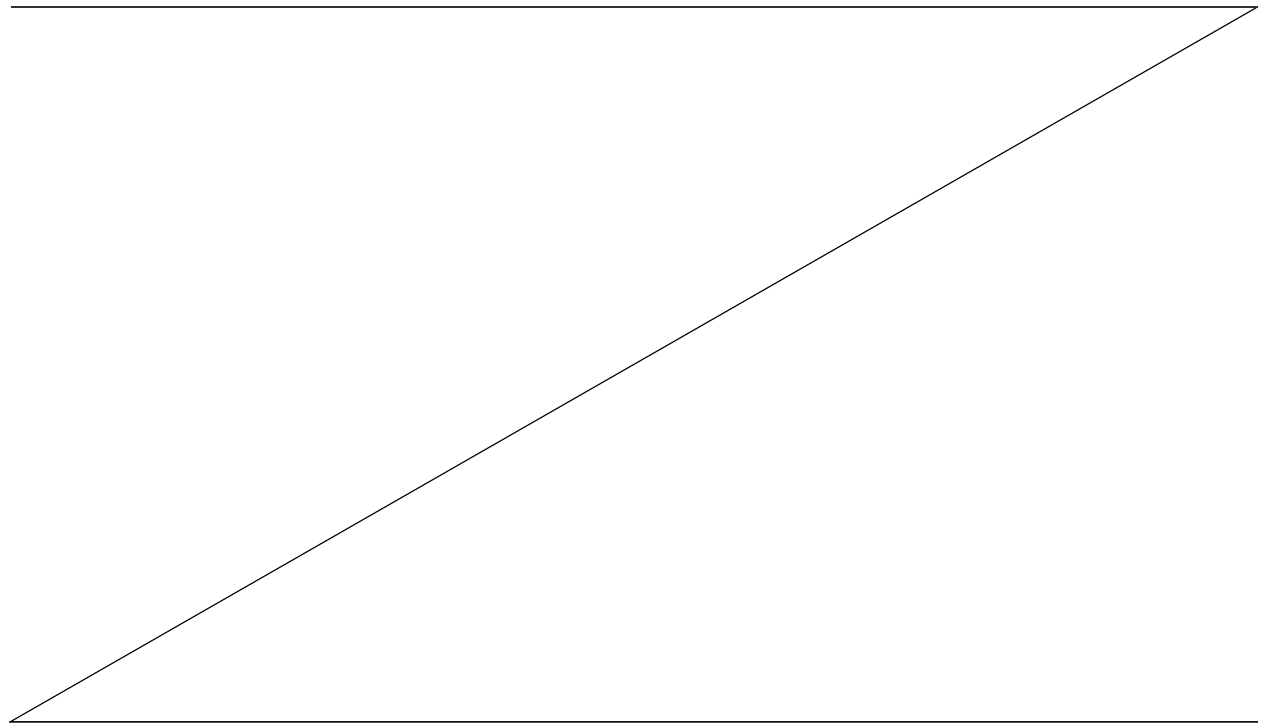
attorney's fees and costs in Case No. AB 2001-369(M).

4. The amount of \$7,300.67 for attorney's fees and costs of Employer SEABURY HALL and Insurance Carrier HAWAII INSURANCE GUARANTY ASSOCIATION, as requested by their attorney, Brian G.S. Choy, Esq. on June 5, 2003, is approved in Case No. AB 2001-369(M).

5. The approved sum of \$7,300.67 is payable to Employer SEABURY HALL and Insurance Carrier HAWAII INSURANCE GUARANTY ASSOCIATION by Employer MAUI PINEAPPLE CO., LTD. and Insurance Carrier JOHN MULLEN & CO., INC.

6. The caption in this case shall be amended as reflected above.

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



Dated: Honolulu, Hawai'i,

May 13 2025

---



---

DAMIEN A. ELEFANTE, Chair



---

MARIE C.L. LADERTA, Member

**EXCUSED**

---

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.

---

*Barbara F. Cambra v. Maui Pineapple Co., Ltd., et al.; AB 2019-194(M); Decision and Order*

Brian G. S. Choy, Esq.  
For Employer/Insurance  
Carrier-Appellant SEABURY HALL

Buena Allyn Cabral  
For Employer/Insurance Carrier-Appellee  
MAUI PINEAPPLE CO., LTD.

Li-Ann Yamashiro, Esq. (courtesy copy)  
For SPECIAL COMPENSATION FUND

A certified copy of the foregoing was served upon the above-captioned parties or their legal representatives on the date of filing noted above.

May 13 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 [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

---

*Barbara F. Cambra v. Maui Pineapple Co., Ltd., et al.*; AB 2019-194(M); Decision and Order

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

/s/ *H. Watanabe* for LIRAB