

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

EARL K. FUJIKAWA,)	CASE NO.: AB 2015-189(H)
)	DCD No: 1-13-00100
Claimant-Appellee,)	
)	
vs.)	D/A: February 11, 2013
)	
FLEMING AND ASSOCIATES, LLC,)	
)	
Employer-Appellant,)	
)	
and)	Jul 10 2025, 11:34 am
)	FILED _{akw}
FIREMAN'S FUND INSURANCE)	Labor and Industrial Relations
COMPANY,)	Appeals Board
)	
Insurance Carrier-)	
Appellant,)	
)	
and)	
)	
GALLAGHER BASSETT SERVICES,)	
INC.,)	
)	
Insurance Adjuster-)	
Appellant,)	
)	
and)	
)	
SPECIAL COMPENSATION FUND,)	
)	
Appellee.)	

ORDER HOLDING CASE IN ABEYANCE

On May 6, 2015, Employer FLEMING AND ASSOCIATES, LLC
appealed the Director's April 17, 2015 Decision to the Labor and Industrial
Relations Appeals Board ("Board").

Pursuant to the Board's Fourth Amended Pretrial Order, filed

March 12, 2019 and the Board's Third Amended Pretrial Order, filed January 10, 2018, the issues to be determined on appeal are:

- a. Whether Claimant [EARL K. FUJIKAWA] sustained a personal injury involving his left ankle, left leg, both hips, and low back on November 12, 2013 as a compensable consequence of the February 11, 2013 work injury to his left knee. (Employer's issue.)
- b. Whether Claimant is entitled to, and Employer is liable for the July 10, 2014 treatment plan from Carol Orr, M.D. for a consultation with Sydney Smith, M.D. (Claimant and Employer's issue.)
- c. What is the period of Claimant's entitlement to temporary total disability benefits. (Employer's issue.)

Trial proceeded on February 3, 2020.

Thereafter, the parties engaged in settlement negotiations and conferences.

On or about July 14, 2023, Claimant's attorney, BreeAnn A. Larios, Esq. withdrew as counsel.

On November 17, 2023, Employer's attorney, Matthew K. Wong, Esq., submitted a copy of a letter to Claimant, confirming that the parties reached a settlement in this matter.

On December 26, 2023, the parties submitted a settlement document to the Board for its review and approval.

On February 27, 2024, Employer requested that the Board not

approve the settlement document previously submitted on December 26, 2023. Employer represented that on or about January 4, 2024, Claimant passed away.

On July 7, 2025, Employer submitted a settlement document to the Board for the Board's review and approval. The settlement document significantly altered the caption in this case to exclude Claimant EARL K. FUJIKAWA, did not identify the SPECIAL COMPENSATION FUND ("SCF") as a party to this appeal, and reflected that "Jarrod Thoni" was the "Authorized representative for Survivors of EARL FUJIKAWA Claimant-Appellee." The Board has no other information regarding "Jarrod Thoni" and has not received any documents or notice of appearance from "Jarrod Thoni." The settlement document was not signed by the SCF and/or its attorney of record.

Attached to the settlement document was a Certificate of Death from the State of Hawaii, Department of Health confirming that EARL KAZUICHI FUJIKAWA died on January 4, 2024.

To date, no court-appointed personal representative or special administrator of Claimant EARL K. FUJIKAWA's estate has appeared in this appeal.

The Board does not recognize "Jarrod Thoni" as a party to the above-referenced appeal and/or a representative of a party of this appeal.

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.)

“As a general rule, the authority of counsel to proceed with a case is terminated upon the death of the party being represented . . . but the courts can pass upon questions raised and listen to suggestions as to their disposal from an attorney who is an officer of the court” *Id.*

“ . . . 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 HRCF 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.”

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.¹

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

¹ The order which follows is also consistent with the tenet of fairness. In this case, Claimant died before the Board issued a Decision and Order. It would be unfair if the Board were to issue a Decision and Order in this matter, at this juncture, without offering the opportunity for a proper, legal representative of the deceased to substitute in as a party in this proceeding. This is, if the Board were to issue a Decision and Order in this matter, at this juncture, query as to who would protect Claimant’s right to request reconsideration or appeal.

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.² The reasonableness of the ICA in effecting such a procedure is apparent. The Employer, as one of the two remaining parties to this appeal, is the Appellant in this appeal and 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

² 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.

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 (electronic³ or otherwise) of the Hawai‘i State Judiciary court records will quickly reveal if a special administrator or personal representative has been appointed.

The Board’s order and notice of intention to dismiss herein will be published on the Board’s 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.⁴

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

³ E.g., eCourt* Kokua:
<http://jimspss1.courts.state.hi.us:8080/eCourt/ECC/ECCDisclaimer.iface;jsessionid=0F58DB78EAA3F8907C968D76149C0FAF>

⁴ 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.

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.”

Being fully advised in the premises,

IT IS HEREBY ORDERED that the above-captioned appeal be held in abeyance until **Friday, November 7, 2025**, pending either the Board’s receipt of:

1. Written notice from Employer FLEMING AND ASSOCIATES, LLC withdrawing the above-referenced appeal; or
2. Written appearance by a court-appointed personal representative or special administrator of Claimant’s estate. Such appearance is to be made on or before **Friday, November 7, 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 a withdrawal of appeal by Employer or any of the above-referenced, written appearances on or before **Friday, November 7, 2025** and no extension of this deadline is granted by the Board, IT IS HEREBY ORDERED that Employer FLEMING AND ASSOCIATES, LLC will have until **Friday, November 28, 2025** to confirm, in writing, whether or not a

special administrator or personal representative of Claimant's estate was appointed on or before **November 7, 2025**, and:

1. If a special administrator or personal representative of Claimant's estate was not appointed on or before November 7, 2025 Employer shall file a declaration with the Board that confirms this, on or before **Friday, November 28, 2025**.
2. If a special administrator or personal representative of Claimant's estate has been appointed, Employer shall, on or before **Friday, November 28, 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 **January 6, 2026**, 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.

IT IS FURTHER ORDERED that Employer and the SCF shall be responsible for providing appropriate and timely publication/notice of its pleadings, correspondence, documents, and/or materials filed with the Board, as may be required by law, as long as there exists no court-appointed personal representative or special administrator of Claimant's estate and until such time as Employer's appeal is dismissed by the Board.

Dated: Honolulu, Hawai'i,

Jul 10 2025



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member



HARRY YEE, Member

Earl K. Fujikawa v. Fleming and Associates, LLC, et al.; AB 2015-189(H); Order
Holding Case in Abeyance

Earl K. Fujikawa
For Claimant-Appellee

Matthew K. Wong, Esq.
For Employer/Insurance
Carrier/Insurance Adjuster-Appellant

William N.K. Crowell, Esq.
For Special Compensation Fund-
Appellee

A digital copy of this order will also be posted on the Board's website and will remain on the Board's website for at least 180 days from the date of filing.

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

Jul 10 2025

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 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
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TDD/TTY Dial 711 then ask for (808) 586-8600

Earl K. Fujikawa v. Fleming and Associates, LLC, et al.; AB 2015-189(H); Order Holding Case in Abeyance