

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO.: AB 2025-034
Attorney's Fees Pertaining to)	DCD No.: 2-08-06899
)	
DAVID J. MIKONCZYK, ESQ.,)	
)	D/A: 6/6/2008
Appellee, Deceased,)	
)	
In the Case of)	
)	
MADELINE MENDES,)	
)	Oct 21 2025, 9:39 am
Claimant-Appellant,)	FILED _{alew}
)	Labor and Industrial Relations
vs.)	Appeals Board
)	
CITY AND COUNTY OF HONOLULU,)	
DEPARTMENT OF PARKS AND)	
RECREATION,)	
)	
Employer-Appellee, Self-)	
Insured,)	
)	
and)	
)	
CITY AND COUNTY OF HONOLULU,)	
DEPARTMENT OF HUMAN)	
RESOURCES/ISWC,)	
)	
Insurance Adjuster-)	
Appellee.)	

DECISION AND ORDER

INTRODUCTION

This workers' compensation case is before the Labor and Industrial Relations Appeals Board on appeal by Claimant MADELINE MENDES from the Approval of Attorney's Fees, entered by the Director of Labor and Industrial

Relations on October 19, 2021 (“Decision”).

For the reasons stated below, the Director’s October 19, 2021 Decision is VACATED.

FINDINGS OF FACT

1. Claimant MADELINE MENDES is currently a self-represented litigant in the above-referenced appeal.
2. Claimant was previously represented by DAVID J. MIKONCZYK, ESQ. (“Attorney MIKONCZYK”) in the above-referenced workers’ compensation case.
3. The Board takes judicial notice that Attorney MIKONCZYK died on or about July 28, 2020.
4. The Board takes judicial notice that Attorney MIKONCZYK was a solo practitioner.
5. The Board takes judicial notice that Attorney MIKONCZYK was survived by his spouse, Deborah Mikonczyk.
6. The Board takes judicial notice that Deborah Mikonczyk is not an attorney.

Re: Claimant’s Appeal to the Board

7. On August 5, 2021, Deborah Mikonczyk filed a Request for Approval of Attorney’s Fees, dated August 2, 2021, on behalf of Attorney MIKONCZYK, requesting that the Director approve attorney’s fees and costs in the amount of \$17,496.22 (“fee request”).
8. In response to Deborah Mikonczyk’s August 5, 2021 fee

request, the Director entered an Approval of Attorney's Fee on October 19, 2021, awarding Attorney MIKONCZYK \$17,496.22 in attorney's fees and making this amount a lien on compensation awarded in this case ("Decision").

9. The Director did not certify on what date a true and correct of this October 19, 2021 Decision was served upon the parties.

10. Twenty (20) days after October 19, 2021 is November 8, 2021.

11. Claimant filed her appeal of the Director's October 19, 2021 Decision on April 3, 2025, more than 3 years after November 8, 2021.

12. On April 15, 2025, the Board entered an Order Holding Case in Abeyance.

13. Pursuant to the Board's April 15, 2025 Order Holding Case in Abeyance, between April 15, 2025 and October 21, 2025, the Board held this appeal in abeyance in order to allow time for a court-appointed personal representative or special administrator of the Estate of Attorney MIKONCZYK, if any, to appear in this matter and to substitute in as a party for Attorney MIKONCZYK.

14. A true and correct copy of the Board's April 15, 2025 Order Holding Case in Abeyance was continuously posted on the Board's website since April 15, 2025, for at least 180 days.

15. A true and correct copy of the Board's April 15, 2025 Order Holding Case in Abeyance was mailed to Attorney MIKONCZYK's last known mailing address via U.S. Mail on April 15, 2025.

16. The true and correct copy of the Board's April 15, 2025 Order Holding Case in Abeyance that was mailed to Attorney MIKONCZYK on April 15, 2025 was returned to the Board as "UNABLE TO FORWARD" and "NO SUCH NUMBER."

17. The Board takes judicial notice that, to date, no court-appointed personal representative or special administrator of the Estate of Attorney MIKONCZYK has been appointed or appeared in this workers' compensation case.

18. On October 21, 2025, the Board lifted the abeyance of this appeal.

Re: Deborah Mikonczyk's Fee Request

19. The August 5, 2021 fee request was not signed by Attorney MIKONCZYK.

20. The August 5, 2021 fee request was signed by Deborah Mikonczyk.

21. In support of the August 5, 2021 fee request, Deborah Mikonczyk filed a Declaration on August 5, 2021 stating that she was "authorized to request attorney [sic] fees on behalf of attorney David J. Mikonczyk."

22. The record does not not include any confirming order or notice by the State of Hawaii, Office of Disciplinary Counsel or order issued by a Probate Court of the State of Hawaii authorizing Deborah Mikonczyk to request and/or receive attorney's fees and costs on behalf of Attorney

MIKONCZYK.

23. Deborah Mikonczyk did not possess the requisite authority or standing to request attorney's fees and costs on behalf of Attorney

MIKONCZYK.

24. Because the August 5, 2021 fee request was deficient, the Director did not have the authority to enter the October 19, 2021 Decision awarding fees in favor of Attorney MIKONCZYK.

25. The Director's October 19, 2021 Approval of Attorney's Fees ("Decision") is VACATED.

ANALYSIS/DISCUSSION

1. Timeliness of Claimant's Appeal of the Director's October 19, 2021 Decision

The threshold question that must first be addressed is whether Claimant's appeal of the Director's October 19, 2021 Decision (Approval of Attorney's Fees) is timely.

It is well-settled that "[a] decision of the director shall be final and conclusive between the parties. . . unless within twenty days after a copy has been sent to each party, either party appeals therefrom to the appellate board by filing a written notice of appeal with the appellate board or the department." HRS § 386-87(a).

The Hawai'i Supreme Court has declared that the time for filing a written notice of appeal is mandatory. *Kissell v. Labor and Industrial Relations Appeals Board*, 57 Hawai'i 37, 38, 549 P.2d 470 (1976).

However, the Hawai'i Supreme Court has also held that "it [is]

incumbent on [the original agency] to determine and prove the date of mailing.” *Dean v. State of Hawaii, Dept. of Education*, 154 Hawai‘i 298, 301, 550 P.3d 1156, 1159 (Haw.2024) (brackets in original, quoting *Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of City & Cnty. of Honolulu*, 86 Hawai‘i 343, 350, 949 P.2d 183, 190 (App. 1997)). In addressing its prior holding in *Kissell*, the *Dean* Court clarified that “[a]ll *Kissell* said in its two pages is that the plain language of a deadline statute applies.” *Dean*, 154 Hawai‘i at 302, 550 P.3d at 1160. The Court further explained that *Kissell* “did not speak to the amount of evidence needed to establish when a decision was sent.” *Id.* The *Dean* Court made clear that the “DCD must show, and the LIRAB [Board] must have sufficient basis to find, when the decision was sent.” *Dean*, 154 Hawai‘i at 301, 550 P.3d at 1159. Here, DCD must show, and the LIRAB must have sufficient basis to find, when the Decision was sent.

The injured worker, in *Dean*, appealed a decision of the Director, filed on March 9, 2022. The worker, however, did not file her appeal until the 21st day after March 9, 2022. As a result, the Board dismissed her appeal as untimely, and on appeal to the Hawai‘i Intermediate Court of Appeals (“ICA”), the ICA affirmed the Board’s dismissal of the worker’s appeal. In vacating the ICA’s order, the Hawai‘i Supreme Court determined that the record must include a “validated document, like a certificate of service or a postal certificate of mailing” that “shows. . . the decision was sent to a worker on a specific date,” suggesting that the DCD “could adopt a certificate of service from Form E-3 of the Rules of the Circuit Courts of the State of Hawai‘i.” *Dean*, 154

Hawai‘i at 302, 550 P.3d at 1160. The Court reasoned that “because DCD controls the start time to appeal its decision and order, and by extension the end time, it must establish the start date by clear, direct evidence.” *Id.*

The record on appeal, in *Dean*, contained a Record of Distribution sheet from the DCD which the Board interpreted to mean that the DCD had mailed the decision to the worker on the same date that the decision was filed by the Director. The Hawai‘i Supreme Court disagreed.¹ In finding that the DCD’s Record of Distribution sheet was not sufficient for purposes of confirming when a decision was mailed to the parties, the Court remarked upon the inadequacy of the Record of Distribution sheet:

Here, DCD’s form preprinted two events (“Date of Decision/Date Mailed:”) followed by a roomy line. The person who processed the form listed only one date. The decision *might* have been made and mailed on the same day. But there is no evidence of mailing.

Dean, 154 Hawai‘i at 301, 550 P.3d at 1159 (italics in original). The Court concluded that “the ‘Processed by’ line and the composite ‘Date of Decision/Date Mailed’ line with only one written date proves little.” *Dean*, 154 Hawai‘i at 302, 550 P.3d at 1160.

In allowing the worker to proceed on appeal before the Board,

¹ “The LIRAB reasons that a line on a cover sheet to the Director’s decision [Record of Distribution sheet] sufficiently shows two things: (1) DCD decided Dean’s case on March 9, 2022; and (2) DCD sent Dean the decision on the same day. . . . The LIRAB *assumes* that the decision date and the mailing date are the same – March 9. We conclude that the compound ‘Date of Decision/Date Mailed’ with a single written date does not justify that assumption.” *Dean*, 154 Hawai‘i at 301, 550 P.3d at 1159 (italics in original).

despite the worker having filed her appeal more than 20 days after the date of the Director's decision, the *Dean* Court noted that the worker was acting *pro se*. In announcing that "[t]his court also cuts self-represented litigants some slack to access justice," the Court stated that it "construe[s] self-represented filings to pave a route to relief and an opportunity to be heard." *Dean*, 154 Hawai'i at 302, 550 P.3d at 1160. Citing the "broad humanitarian purpose" of HRS Chapter 386, the Court stated that "[t]he policy rationales behind workers' compensation and access to justice for do-it-yourself parties inform our application of a clear and direct evidentiary standard." *Id.*

In the matter presently before the Board, Claimant, much like the claimant in *Dean* is a "do-it-yourself," self-represented litigant, and the Board recognizes the Court's preference to "cut[] self-represented litigants some slack to access justice. . . ." Also, like the record in *Dean*, the record before the Board is absent any validated document, such as a certificate of service, confirming when a true and correct copy of the October 19, 2021 Decision (Approval of Attorney's Fees) was sent to Claimant. Thus, the Director did not establish the start date of the appeals period by clear, direct evidence. Accordingly, because there is no sufficient evidence to establish when the October 19, 2021 Decision was sent, the Board determines that Claimant's appeal is timely, and the Board has jurisdiction over Claimant's appeal of the Director's October 19, 2021 Decision.

2. Director's October 19, 2021 Decision is VACATED.

This appeal arises out of Claimant's appeal of the Director's

October 19, 2021 Decision (Approval of Attorney's Fees), approving attorney's fees in favor of Attorney MIKONCZYK, in the amount of \$17,496.22 as a lien upon Claimant's workers' compensation benefits. The next question that must be addressed is whether or not the Director erred in his issuance of the October 19, 2021 Decision based upon the August 5, 2021 fee request filed by Attorney MIKONCZYK's widow, Deborah Mikonczyk.

Because of the unique circumstances presented in this appeal and in order to promote judicial economy, the Board, *sua sponte*, and without the necessity of a hearing, determines that the Director's October 19, 2021 Decision must be VACATED because it arises from an invalid Request for Approval of Attorney's Fee.

The facts regarding this issue are undisputed. On or about July 28, 2020, Attorney MIKONCZYK died. Attorney MIKONCZYK was a solo practitioner, and there was no firm of which he was a part to seek and collect his attorney's fees and costs. The record is also clear that there is no person who is legally authorized to act on Attorney MIKONCZYK's behalf to seek attorney's fees and costs for legal services rendered prior to his death; to date, there is no court-appointed personal representative or special administrator of Attorney MIKONCZYK's Estate who is authorized to request and/or receive attorney's fees and costs on behalf of Attorney MIKONCZYK. While his widow, Deborah Mikonczyk, declared that she is legally authorized to seek the approval of fees and costs on her deceased husband's behalf, the record is devoid of any court order appointing her as the personal representative or

special administrator of Attorney MIKONCZYK's Estate or a confirmation from the Office of Disciplinary Counsel, permitting her to do. Thus, when Deborah Mikonczyk signed and filed a Request for Approval of the Attorney's Fee on August 5, 2021, well after the death of Attorney MIKONCZYK, the Director should have disregarded this fee request because the fee request was signed and submitted by someone who was not authorized to seek or claim attorney's fees and/or costs, much less the attorney's fees and/or costs on behalf of Attorney MIKONCZYK. Thus, the Director should not have entered an Approval of Attorney's Fees on October 19, 2021 in response to Deborah Mikonczyk's August 5, 2021 fee request.

Accordingly, the Approval of Attorney's Fees ("Decision"), filed on October 19, 2021 by the Director is VACATED in its entirety.

CONCLUSIONS OF LAW

1. Based on the foregoing, Claimant's appeal of the Director's October 19, 2021 Approval of Attorney's Fees ("Decision") is not dismissed as untimely.

2. The Approval of Attorney's Fees ("Decision"), filed on October 19, 2021 by the Director is VACATED in its entirety.

ORDER

In accordance with the foregoing, Claimant's appeal of the Director's October 19, 2021 Approval of Attorney's Fees ("Decision") is not dismissed as untimely.

It is further ordered that the Approval of Attorney's Fees

("Decision"), filed on October 19, 2021, by the Director, is VACATED in its entirety.

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

Oct 21 2025


Dated: Honolulu, Hawai'i,



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member



HARRY YEE, Member

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

In the Matter of Attorney's Fees Pertaining to David J. Mikonczyk, Esq. in the Case of Madeline Mendes v. City and County of Honolulu, Department of Parks and Recreation, et al.; AB 2025-034; Decision and Order

A digital copy of this document was posted on the Board's website and will remain on the Board's website for at least 180 days from the date of filing noted above.

Madeline Mendes
For Claimant-Appellant

David J. Mikonczyk, Esq.
For Appellee, Deceased

Romney Bitanga
For Employer, Self-
Insured/Insurance Adjuster-
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.

Oct 21 2025

Decision and Order Mailed: _____

LABOR APPEALS BOARD - 830 PUNCHBOWL ST, RM 404, HONOLULU, HI 96813 - (808)586-8600

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In the Matter of Attorney's Fees Pertaining to David J. Mikonczyk, Esq. in the Case of Madeline Mendes v. City and County of Honolulu, Department of Parks and Recreation, et al.; AB 2025-034; Decision and Order

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