

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

KENNETH W. MCHENRY,	)	CASE NO. AB 92-028(WH)
	)	DCD No.: 9-89-01972
Claimant-Appellee,	)	9-91-00794
	)	
vs.	)	D/A: August 30, 1987
	)	March 6, 1989
KAISER PERMANENTE DBA HAWAII	)	
PERMANENTE MEDICAL GROUP,	)	
	)	
Employer-Appellant,	)	<b>Nov 06 2025, 8:44 am</b>
Self-Insured.	)	<b>FILED</b> <sub>akw</sub>
	)	Labor and Industrial Relations
	)	Appeals Board
	)	
	)	
	)	
	)	

---

ORDER HOLDING CASE IN ABEYANCE

On December 19, 1991, the Director of Labor and Industrial Relations issued a Decision in Disability Compensation Division (“DCD”) Case Nos. 9-89-01972 and 9-91-00794 regarding claims filed by Claimant KENNETH W. MCHENRY, who, at the time, was represented by Lowell K.Y. Chun-Hoon, Esq. (“Mr. Chun-Hoon”).

On January 2, 1992, Employer KAISER PERMANENTE DBA HAWAII PERMANENTE MEDICAL GROUP appealed the Director’s December 19, 1991 Decision to the Labor and Industrial Relations Appeals Board, and said appeal was designated as Case No. AB 92-028(WH).

In response to Employer’s January 10, 1992 Motion for Stay of Payments and Benefits, on February 25, 1992, the Board issued an Order

Granting Motion for Stay of Payments and Benefits.

A trial in this appeal was scheduled before the Board for November 18, 1992 at 10:30 a.m. However, on November 10, 1992, attorney for Employer informed the Board that a trial was not necessary because the parties had agreed to a settlement, in principle.

Between November 1992 and 2000, for a period of almost eight (8) years, it appears that Employer and Claimant KENNETH W. MCHENRY agreed to settle this matter, but a settlement document was not executed by the parties and submitted to the Board.

On July 13, 2000, the Board issued an Order Suspending All LAB Trials.

The following year, the Board Chair, on July 25, 2001, inquired of Mr. Chun-Hoon, attorney for Claimant KENNETH W. MCHENRY, as to the status of the settlement in this case. Not having received a response, the Board Chair inquired again on August 14, 2001. No responses from Claimant KENNETH W. MCHENRY's attorney, Mr. Chun-Hoon, appear in the record.

Approximately 2 years later, on June 10, 2003, the Board issued a Notice of Status Conference for a conference scheduled for June 26, 2003.

On July 29, 2003, the Board entered a Stipulation for Remand, wherein Employer and Claimant KENNETH W. MCHENRY agreed to temporarily remand this matter to the Director. The stipulation did not identify the issues to be determined by the Director on remand.

Two and a half years later, or on February 16, 2006, the DCD

returned this matter to the Board. The DCD explained that the parties had not requested a hearing before the Director and had not identified any issue to be heard by the Director.

On April 30, 2007, the Board entered a second Stipulation for Remand wherein Employer and Claimant KENNETH W. MCHENRY agreed to temporarily remand this matter to the Director. The stipulation did not identify the issues to be determined by the Director on remand.

Claimant KENNETH W. MCHENRY died on September 18, 2020.<sup>1</sup>

On February 24, 2023, Employer forwarded to the Board a settlement agreement for the Board's review.

Between April 30, 2007 and February 24, 2023, the Director did not take any action in this matter. It appears that the parties did not request a hearing before the Director and had not identified any issue to be heard by the Director. Upon receipt of the settlement agreement and upon becoming aware of Claimant KENNETH W. MCHENRY's death, the Board requested that the Director return this matter to the Board's jurisdiction.

On September 22, 2025, the Director returned jurisdiction of this matter to the Board.

It has been more than 33 years since Employer appealed the Director's December 19, 1991 Decision which is the subject of the appeal,

---

<sup>1</sup> The Board was not informed of the death of Claimant KENNETH W. MCHENRY until February 24, 2023 when Employer forwarded a settlement document for the Board's review. Attached to that settlement document is a "Certificate of Death" issued by the Utah County Health Department, dated September 21, 2020.

herein; almost 33 years since Employer and Claimant KENNETH W. MCHENRY represented that a settlement agreement had been reached; more than 18 years since this matter was last temporarily remanded to the Director; more than 5 years since Claimant KENNETH W. MCHENRY passed away; and to date, there is no resolution of the above-referenced appeal.

Although it has been more than 5 years since Claimant KENNETH W. MCHENRY's death, to date, the Board has not received written notice from Mr. Chun-Hoon that he is no longer representing Claimant KENNETH W. MCHENRY. As a general rule, the authority of counsel to proceed with a case is terminated upon the death of the party being represented.

Although it has been more than 5 years since Claimant KENNETH W. MCHENRY's death, to date, the record does not reflect that a Hawaii court-appointed personal representative or special administrator of Claimant KENNETH W. MCHENRY's Estate has appeared in this appeal.<sup>2</sup>

Pursuant to a letter from Mr. Chun-Hoon, dated November 3, 2025, Mr. Chun-Hoon appeared as the attorney for the **Estate of Kenneth Wayne McHenry**. Mr. Chun-Hoon included a letter from **Kenneth Wayne McHenry, Jr.** attesting that he is the "duly appointed personal Representative and Administrator of the Estate of Kenneth Wayne McHenry, Deceased. . . ." However, the Board is not in receipt of a copy of the order from a court which

---

<sup>2</sup> The Board understands from the settlement agreement previously submitted on February 24, 2023 that Claimant KENNETH W. MCHENRY's son, Kenneth Wayne McHenry, Jr., was named as a Successor Trustee of a Trust entitled "Ken & Betty McHenry Trust." However, a trustee does not have the authority to waive a decedent's rights and obligations.

confirms **Kenneth Wayne McHenry, Jr.**'s appointment as the personal representative and administrator of the Estate of Claimant KENNETH W. MCHENRY.

On November 4, 2025, the Board issued a letter to Mr. Chun-Hoon requesting a copy of the order from a court which confirms **Kenneth Wayne McHenry, Jr.**'s appointment as the personal representative and administrator of the Estate of Claimant KENNETH W. MCHENRY. In the event that this order was not issued by the Probate Court of the State of Hawaii, the Board requested that Mr. Chun-Hoon also submit the appropriate court order issued by a court in the State of Hawaii that the out-of-state order appointing **Kenneth Wayne McHenry, Jr.** personal representative and administrator of the Estate of Claimant KENNETH W. MCHENRY was domiciled in the State of Hawaii.

On November 5, 2025, the Board held a status conference via interactive videoconference technology, in the above-entitled appeal, with Mr. Chun-Hoon for the Estate of Claimant KENNETH W. MCHENRY and with Kenneth Goya, Esq. for Employer. During this conference, Mr. Chun-Hoon confirmed that he attempted to contact **Kenneth Wayne McHenry, Jr.** to obtain the documents requested by the Board<sup>3</sup> and that it was his intention to

---

<sup>3</sup> During the conference, Mr. Chun-Hoon explained that he was not in possession of the court order (or a copy of the order) appointing **Kenneth Wayne McHenry, Jr.** personal representative and administrator of the Estate of Claimant KENNETH W. MCHENRY and that he did not have knowledge of the expiration date of this court order. Mr. Chun-Hoon further indicated his belief that this order would likely have been issued in the State of Utah and that this order was not yet domiciled by a State of Hawaii court.

provide the Board with the documents as requested in the Board's November 4, 2025 letter. Mr. Chun-Hoon also confirmed that upon submission of the requested documents, he would request that **Kenneth Wayne McHenry, Jr.** be substituted as Claimant for purposes of the above-referenced appeal. Both Mr. Chun-Hoon and Mr. Goya confirmed that, thereafter, the parties intended to submit a settlement agreement to the Board for its review and approval.

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.”

As a courtesy to Mr. Chun-Hoon, Claimant KENNETH W.

MCHEMRY’s former attorney and attorney for the **Estate of Kenneth Wayne McHenry**, a copy of this order is being provided to him.

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.<sup>4</sup>

---

<sup>4</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



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

---

reasonable course of action is to seek guidance from higher courts and established rules.

way of this order, orders Employer to do the same.<sup>2</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>5</sup> 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 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.<sup>6</sup>

---

<sup>5</sup> E.g., eCourt\* Kōkua:

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

<sup>6</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

Being fully advised in the premises,

IT IS HEREBY ORDERED that the above-captioned appeal be held in abeyance until **Tuesday, May 5, 2026**, pending the Board's receipt of a written appearance by a court-appointed personal representative or special administrator of Claimant's estate (the Estate of KENNETH W. MCHENRY), including, but not limited to: (1) A copy of the order from a court which confirms **Kenneth Wayne McHenry, Jr.**'s appointment as the personal representative and administrator of the Estate of Claimant KENNETH W. MCHENRY; and (2) In the event that this order was not issued by the Probate Court of the State of Hawaii, a copy of the appropriate court order issued by a court in the State of Hawaii that the out-of-state order appointing **Kenneth Wayne McHenry, Jr.** personal representative and administrator of the Estate of Claimant KENNETH W. MCHENRY was domiciled in the State of Hawaii. Such appearance and the submission of the above-referenced documents are to be made on or before **Tuesday, May 5, 2026**. Extensions by the Board may be granted upon good cause shown or at the discretion of the Board.

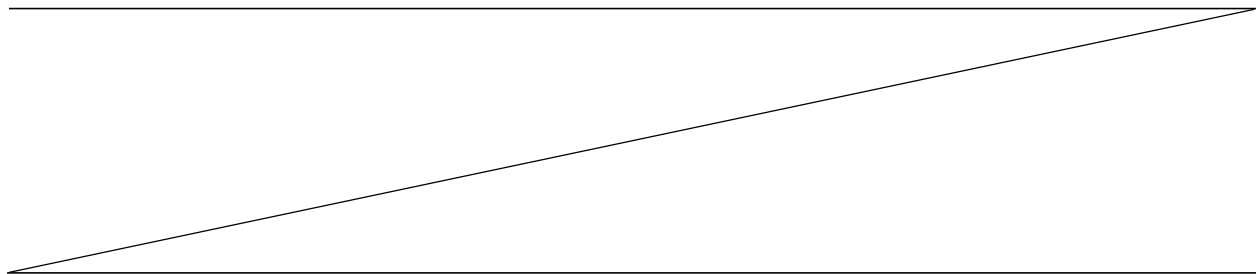
If the Board does not receive any of the above-referenced, written appearance and documents on or before **Tuesday, May 5, 2026** and no extension of this deadline is granted by the Board, IT IS HEREBY ORDERED that Employer KAISER PERMANENTE DBA HAWAII PERMANENTE MEDICAL

---

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.

GROUP will have until **Tuesday, May 26, 2026** to confirm, in writing, whether or not a special administrator or personal representative of Claimant's estate (the Estate of KENNETH W. MCHENRY) was appointed by a State of Hawaii court on or before **Tuesday, May 5, 2026** and:

1. If a special administrator or personal representative of Claimant's estate was not appointed by a State of Hawaii court on or before **Tuesday, May 5, 2026** Employer shall file a declaration with the Board that confirms this, on or before **Tuesday, May 26, 2026**.
2. If a special administrator or personal representative of Claimant's estate has been so appointed, Employer shall, on or before **Tuesday, May 26, 2026**:
  - 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 **Monday, July 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 abeyance will be lifted; 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.



Dated: Honolulu, Hawai'i,

Nov 06 2025



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member



HARRY YEE, Member

---

*Kenneth W. McHenry v. Kaiser Permanente dba Hawaii Permanente Medical Group, et al.; AB 92-028(WH); Order Holding Case in Abeyance*

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

Kenneth W. McHenry, Deceased  
For Claimant-Appellee

Kenneth T. Goya, Esq.  
For Employer/Insurance  
Carrier-Appellant

Lowell K. Y. Chun-Hoon, Esq.  
For the Estate of Kenneth  
Wayne McHenry and formerly,  
for Claimant-Appellee,  
Deceased

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

Order mailed: Nov 06 2025

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

---

*Kenneth W. McHenry v. Kaiser Permanente dba Hawaii Permanente Medical Group, et al.; AB 92-028(WH); Order Holding Case in Abeyance*

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