

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAI'I

JANELL K. AULD,) CASE NO.: AB 2025-138(M)
) DCD No.: 7-2025-333679
 Claimant-Appellee,)
 Deceased,)
) D/A: January 29, 2025
 vs.)
)
 FOODLAND SUPER MARKET LTD.,)
)
 Employer-Appellant,) **Jan 28 2026, 9:51 am**
)
 and)
)
 FIRST INDEMNITY INSURANCE OF)
 HAWAII, LTD.,)
)
 Insurance Carrier-)
 Appellant,)
)
 and)
)
 SPECIAL COMPENSATION FUND,)
)
 Appellee.)
)

 SURVIVOR(S) OF JANELL K. AULD,)
)
 Claimant-Appellee,)
)
 vs.)
)
 FOODLAND SUPER MARKET LTD.,)
)
 Employer-Appellant,)
)
 and)
)
 FIRST INDEMNITY INSURANCE OF)
 HAWAII, LTD.,)
)

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Labor and Industrial Relations
Appeals Board

Insurance Carrier-)
Appellant,)
)
and)
)
SPECIAL COMPENSATION FUND,)
)
Appellee.)

ORDER HOLDING CASE IN ABEYANCE AND ORDER TO AMEND CAPTION

On January 29, 2025, Claimant JANELL K. AULD was “working with [a] customer at check stand #3 when she experienced stroke symptoms and slid to [the] ground,” according to a WC-1 Employer’s Report of Industrial Injury, filed by Employer FOODLAND SUPER MARKET LTD. and Insurance Carrier FIRST INDEMNITY INSURANCE OF HAWAII, LTD. (collectively, “Employer”) on February 20, 2025. Said workers’ compensation claim has been designated as above-referenced *Janell K. Auld v. Foodland Super Market Ltd.*, et al., DCD No. 7-2025-333679.

Claimant JANELL K. AULD (hereinafter “Decedent”) passed away on January 30, 2025, according to a Certificate of Death, issued by the State of Hawaii, Department of Health on February 4, 2025.

On March 10, 2025, **Anuhea A. Rodrigues** (“Ms. Rodrigues”) filed a WC5A Dependents’ Claim for Compensation in DCD No. 7-2025-333679. Ms. Rodrigues claimed that she was a dependent of and the daughter of Decedent. Said claim for dependents’ benefits has been designated as above-referenced *Survivor(s) of Jannell K. Auld v. Foodland Super Market Ltd.*, et al., DCD No. 7-2025-333679.

On November 5, 2025, the Director of Labor and Industrial Relations issued a Decision (“Decision”) which determined that Decedent sustained an injury (stroke resulting in death) by accident arising out of and in the course of employment on January 29, 2025. The Director further determined that Ms. Rodrigues was not entitled to death benefits, noting that Ms. Rodrigues’s birth certificate does not confirm that Decedent was her mother and that no other documentation was provided to confirm Ms. Rodrigues’s dependency upon Decedent.

On November 24, 2025, Employer filed a Request for Reconsideration of the Director’s Decision of 11/5/2025 or, in the Alternative, an Appeal.

On December 8, 2025, the Disability Compensation Division denied Employer’s motion for reconsideration and treated Employer’s November 24, 2025 pleading as an appeal.

On December 4, 2025, Employer filed a Motion for Stay of Director’s Decision Dated 11/5/2025 (“Motion for Stay”). A hearing on Employer’s Motion for Stay came before the Board on January 8, 2026. During the course of this hearing, it came to the Board’s attention that Employer is challenging the Director’s November 5, 2025 finding of compensability in the workers’ compensation claim of *Janell K. Auld v. Foodland Super Market Ltd., et al.*, DCD No. 7-2025-333679. It also came to the Board’s attention that although Ms. Rodrigues did not appeal the Director’s November 5, 2025 Decision, Ms. Rodrigues intends to challenge the Director’s finding that she is

not a dependent in *Survivor(s) of Jannell K. Auld v. Foodland Super Market Ltd.*, et al., DCD No. 7-2025-333679, through Employer's appeal, herein.

Because the Director has determined that Ms. Rodrigues is not a dependent of Decedent, the Board does not recognize Ms. Rodrigues as a member of the party, "Survivor(s) of Jannell K. Auld." However, as Ms. Rodrigues has indicated her disagreement with this determination by the Director, the Board will consider Ms. Rodrigues as a party to Employer's appeal of the Director's November 5, 2025 Decision in *Survivor(s) of Jannell K. Auld v. Foodland Super Market Ltd.*, et al., DCD No. 7-2025-333679.

To date, no court-appointed personal representative or special administrator of Decedent's estate has appeared in this appeal, and, as such, no one has been substituted for Claimant JANELL K. AULD as a party in *Janell K. Auld v. Foodland Super Market Ltd.*, et al., DCD No. 7-2025-333679 and *Survivor(s) of Jannell K. Auld v. Foodland Super Market Ltd.*, et al., DCD No. 7-2025-333679.

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

“The majority rule in other jurisdictions is that only judicially appointed representatives may be substituted for a decedent party.” *Id.* (Citations omitted.)

§ 12-47-25, LAB Rules: “Upon motion and for good cause shown, the board may order substitution of parties, except that in the case of a party’s death, substitution may be ordered without filing a motion.”

§ 371-4(k), HRS: “The board may make or issue any order or take other appropriate steps as may be necessary to enforce its rules and orders and to carry into full effect the powers and duties given to it by law.”

§ 560:1-302(a), HRS: “To the full extent permitted by the Constitution and except as otherwise provided by law, the court has jurisdiction over all subject matter relating to: (1) Estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons”

§ 560:3-103, HRS: “Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.”

§ 560:3-105: “Persons interested in decedents’ estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court’s jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents’ estates, subject to the laws of this State, are to be administered, expended, and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.”

§ 560:3-703(c): “Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent’s death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as the decedent had immediately prior to death.”

The Board’s order herein is consistent with the common law principle that “if a party dies before a verdict or decision is rendered, the action abates as to him and must be dismissed unless it is revived by substitution of a personal representative.” *Bagalay*, 60 Haw. 135 (emphasis added). Our Hawai‘i Supreme Court has made it clear that it is improper to continue legal proceedings because a “deceased person cannot be a party to a legal

proceeding, and the effect of death is to suspend the action as to the decedent until his legal representative is substituted as a party." *Id.* (Emphasis added.) In this respect, the order that follows is consistent with and mindful of practice and precepts of common law.

This order concerns ascertaining the identity of a possible person who may be substituted for a party who is now deceased. The Board's order, herein, is consistent with the procedure undertaken by the Intermediate Court of Appeals of the State of Hawai'i ("ICA") in *City and County of Honolulu v. Sharon Black*, CAAP-11-0000748, (Haw. App. 2013), wherein a self-represented appellant died after filing an opening brief at the ICA. Although *Black* is not a published decision and is of limited precedential value, it is noteworthy that in its effort to ascertain the identity of a proper person to substitute for the deceased appellant, the ICA placed the onus on the appellee to confirm with the court whether a special administrator or personal representative had been appointed to represent the appellant's estate and to give the personal representative or special administrator, if any, notice: (1) of the pending appeal, copies of the opening brief, and copies of the answering brief; (2) that s/he must enter an appearance to indicate the estate's plan to continue with the appeal within the time frame specified by the ICA; and (3) that failure to do so in a timely manner may result in the dismissal of the appeal. The ICA also ordered the appellee to file a declaration indicating compliance with the foregoing.

Just as the ICA placed the onus on the appellee to confirm whether a personal representative had been appointed and to provide relevant notice of and documents pertaining to the pending appeal to the court, the Board, by way of this order, orders Employer to do the same.¹ The reasonableness of the ICA in effecting such a procedure is apparent. The Employer, as the appellant to this appeal, is the 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 Decedent (Claimant JANELL K. AULD) can be approved only by Hawai'i's Circuit Court, a search (electronic² or otherwise) of the Hawai'i State Judiciary court records will quickly reveal if a special administrator or personal representative has been appointed.

¹ 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.

² E.g., eCourt* Kokua:

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

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 Decedent's name will yield instant retrieval of this order and notice, available for review without incurring any subscription costs or membership.³

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

Being fully advised in the premises,

³ 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.

IT IS HEREBY ORDERED that the caption in case shall be amended as reflected above.

IT IS HEREBY FURTHER ORDERED that the above-captioned appeal be held in abeyance until **May 28, 2026**, pending the Board's receipt of a written appearance by a court-appointed personal representative or special administrator of The Estate of Janell K. Auld (Claimant or Decedent, herein).⁴ Such appearance is to be made on or before **May 28, 2026**. Extensions by the Board may be granted upon good cause shown or at the discretion of the Board.

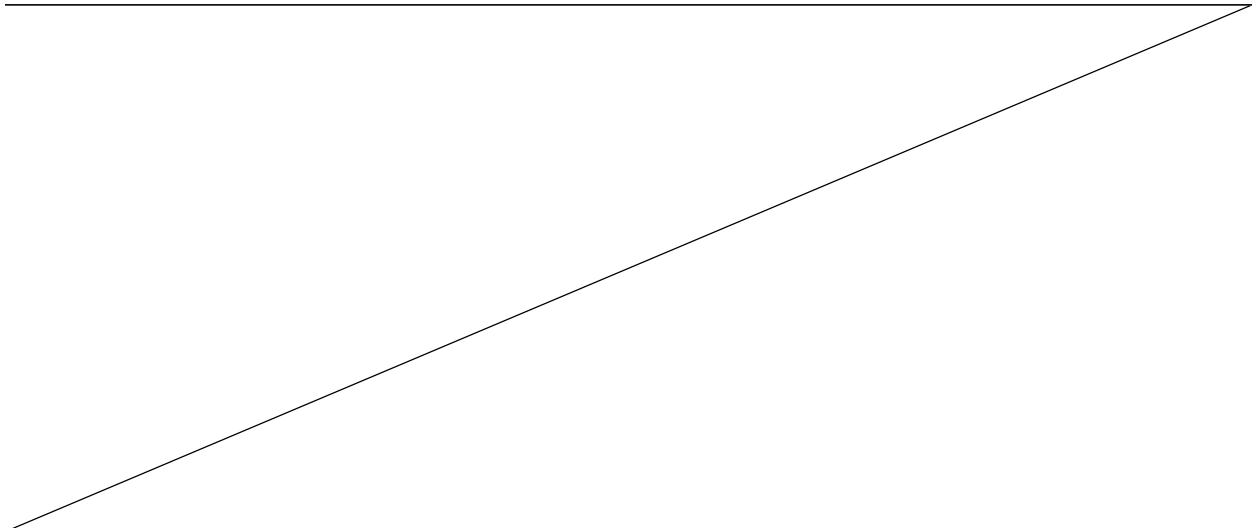
If the Board does not receive any of the above-referenced, written appearances on or before **May 28, 2026** and no extension of this deadline is granted by the Board, IT IS HEREBY ORDERED that Employer will have until **June 17, 2026** to confirm, in writing, whether or not a special administrator or personal representative of Decedent's estate was appointed on or before May 28, 2026 and by describing, at minimum, its search result(s) of the Hawai'i State Judiciary court records (e.g., eCourt* Kokua), and:

1. If a special administrator or personal representative of Decedent's estate was not appointed on or before May 28, 2026, Employer shall file a declaration with the Board that confirms this, on or before **June 17, 2026**.
2. If a special administrator or personal representative of Decedent's estate has been appointed, Employer shall, on or before **June 17, 2026**:

⁴ So that there is no confusion, this confirms that the initial conference that was scheduled for February 18, 2026 at 10:30 a.m. is cancelled, consistent with this order.

- 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 **July 27, 2026**, the special administrator or personal representative must enter an appearance in this appeal and indicate whether the estate plans to substitute in as a party to the appeal; 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 Decedent's estate.

IT IS FURTHER ORDERED that Employer 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 Decedent's estate and until such time as Employer's appeal is dismissed by the Board.



Dated: Honolulu, Hawai'i,

Jan 28 2026



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member



HARRY YEE, Member

Janell K. Auld, Deceased v. Foodland Super Market Ltd, et al. and Survivor(s) of Janell K. Auld v. Foodland Super Market Ltd., et al.; AB 2025-138(M); Order Holding Case in Abeyance and Order to Amend Caption

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.

Janell K. Auld
Claimant, Deceased

Leilani A. DeCourcy, Esq.
For Employer/Insurance
Carrier-Appellant

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

Anuhea Rodrigues (courtesy copy)

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

Jan 28 2026

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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upon request to individuals with disabilities.
TDD/TTY Dial 711 then ask for (808) 586-8600

*Janell K. Auld, Deceased v. Foodland Super Market Ltd, et al. and Survivor(s) of
Janell K. Auld v. Foodland Super Market Ltd., et al.; AB 2025-138(M); Order
Holding Case in Abeyance and Order to Amend Caption*

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