

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
Deceased,)	
)	D/A: August 30, 1987
vs.)	March 6, 1989
)	
KAISER PERMANENTE DBA HAWAII)	
PERMANENTE MEDICAL GROUP,)	May 21 2026, 10:39 am
)	FILED <small>akw</small>
Employer-Appellant,)	Labor and Industrial Relations
Self-Insured.)	Appeals Board
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ORDER DENYING EMPLOYER’S MOTION FOR EXTENSION OF TIME

This workers’ compensation case arises out of an appeal by Employer, Self-Insured KAISER PERMANENTE DBA HAWAII PERMANENTE MEDICAL GROUP from a Decision of the Director of Labor and Industrial Relations, filed on December 19, 1991.

On November 6, 2025, the Board issued an Order Holding Case in Abeyance. In relevant part, the Board ordered that this appeal be held in abeyance until May 5, 2026, pending the Board’s receipt of a written appearance by a court-appointed personal representative or special administrator of the Estate of Claimant, Deceased KENNETH W. MCHENRY. The November 6, 2025 Order Holding Case in Abeyance also imposed a deadline of May 26, 2026 for Employer to submit a declaration to the Board

regarding whether or not a personal representative or special administrator of the Estate of Claimant, Deceased KENNETH W. MCHENRY was appointed on or before May 5, 2026.

On May 19, 2026, Employer submitted a Motion for Extension of Time (“motion”) which moved this Board for an “[o]rder extending the deadline imposed in the Board’s Order Holding Case in Abeyance filed on November 6, 2025” and which is the subject of this order. Employer filed this motion as a non-hearing motion.

Because no personal representative or special administrator of the Estate of Claimant, Deceased KENNETH W. MCHENRY has entered an appearance in this matter and has been substituted as a party for Claimant, Deceased KENNETH W. MCHENRY, Employer’s motion is unopposed.

FINDINGS OF FACT

1. 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”)¹ and who, at the time, was alive.

2. On or about December 27, 1991, Mr. Chun-Hoon submitted a Request for Approval of Attorney’s Fee with the Director. However, the Director did not enter an order approving Mr. Chun-Hoon’s fees and costs.

¹ The Board’s records reflect that Mr. Chun-Hoon began representing Claimant on September 15, 1989.

3. 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).

4. 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.

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

6. The Board's records reflect that Kenneth T. Goya, Esq. ("Mr. Goya"), attorney for Employer, represented that he provided a settlement document to Mr. Chun-Hoon for his review on November 27, 1992. The Board credits Mr. Goya's statement in this regard.

7. The Board's records reflect that on October 1, 1993, Mr. Goya wrote to Mr. Chun-Hoon inquiring as to the status of settlement. Therein, Mr. Goya reminded Mr. Chun-Hoon that a settlement document had been originally sent to him on November 27, 1992; that 4 months later, on April 9, 1993, Mr. Chun-Hoon requested changes to the settlement document; and that 2 months later, on June 2, 1993, Mr. Goya provided him with another settlement document with the requested changes. Mr. Goya requested that Mr. Chun-Hoon return the executed settlement document forthwith. The Board

credits Mr. Goya's representations in this regard.

8. Not having received a fully executed settlement agreement, the Board Chair (then, Frank Yap, Jr.) wrote to Messrs. Goya and Chun-Hoon on June 20, 1995 and requested a status regarding settlement.

9. Mr. Chun-Hoon responded on July 27, 1995 to the Board Chair's inquiry, stating that the parties would move forward with settlement once Employer's LTDI carrier confirmed its lien rights.

10. On December 14, 1995, per a letter from Mr. Goya to Mr. Chun-Hoon, Mr. Goya confirmed that the LTDI carrier would continue benefits payments subject to a monthly offset and requested that Mr. Chun-Hoon confirm the settlement reached.

11. The Board's records are devoid of any documents referring to settlement until May 22, 1997 when Mr. Goya inquired of Mr. Chun-Hoon as to the reason for the delay in settlement and whether Claimant was willing to sign the settlement documents.

12. On July 13, 2000, the Board issued an Order Suspending All LAB Trials, as result of the enactment of Act 87, Privacy of Health Care Information.

13. The following year, the Board Chair (then, Randall Y. Iwase) , on July 25, 2001, inquired of Mr. Chun-Hoon as to the status of the settlement in this case.

14. Not having received a response, the Board Chair (then, Randall Y. Iwase) again inquired of Mr. Chun-Hoon as to the status of

settlement, on August 14, 2001.

15. No responses from Mr. Chun-Hoon to the Board Chair appear in the record.

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

17. Between November 1992 and July 2003, for a period of over ten (10) 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.

18. 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.

19. Two and a half (2½) 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.

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

21. Claimant KENNETH W. MCHENRY died on September 18,

2020 in the State of Utah.² However, the Board was not informed of Claimant, Deceased KENNETH W. MCHENRY's (hereinafter, "Claimant") death until over 2 years later, on February 24, 2023.

22. On February 24, 2023, Employer forwarded to the Board a settlement agreement for the Board's review. This settlement document did not include any record confirming the existence of a court-appointed personal representative and/or special administrator of Claimant's Estate. At the time the settlement agreement was submitted to the Board, no person had substituted in this appeal, for Claimant, as a court-appointed personal representative and/or special administrator of Claimant's Estate.

23. 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.

24. 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.

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

26. Upon this matter's return to the Board, on October 2, 2025,

² 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.

the Board issued a Notice of Status Conference for November 5, 2025.

27. 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. . .”

28. However, the Board is not in receipt of a copy of the order from a court which confirms **Kenneth Wayne McHenry, Jr.**’s appointment as the personal representative and administrator of Claimant’s Estate.

29. 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 Claimant’s Estate. 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 was domiciled in the State of Hawaii.

30. 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 and with Mr. Goya 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

Board³ and that it was his intention to 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.

31. On November 6, 2025, the Board entered an Order Holding Case in Abeyance which is incorporated by reference.

32. It has been more than 34 years since Employer appealed the Director's December 19, 1991 Decision which is the subject of the appeal, herein, and this appeal is not yet resolved.

33. It has been more than 33 years since Employer and Claimant represented that a settlement agreement had been reached, and no settlement agreement in this matter has been executed and approved and filed by the Board.

34. Almost 28 years elapsed between the time Employer informed the Board that this matter settled (November 10, 1992) and Claimant's death (September 18, 2020), and the parties did not execute a

³ 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.

settlement agreement during this period of time.

35. Upon the death of Claimant on September 18, 2020, the authority of Mr. Chun-Hoon to proceed in this matter, as the attorney for Claimant, terminated. Accordingly, Mr. Chun-Hoon is not recognized by this Board as the attorney for Claimant.

36. It has been 5 years and 8 months since Claimant died.

37. A deceased person, such as Claimant, cannot be a party to a legal proceeding, and therefore, Claimant is not considered a party to this proceeding on appeal.

38. Since Claimant's death, which occurred 5 years and 8 months ago, no person has presented himself/herself/themselves to the Board as the personal representative of the Estate of Claimant, and no person has been substituted as Claimant, in this appeal.

39. The Board, by way of its November 6, 2025 Order Holding Case in Abeyance, gave notice to both Employer and Mr. Chun-Hoon, as well as generalized notice via the Board's website, that a court-appointed personal representative or special administrator of Claimant's Estate would have to make an appearance in this appeal on or before May 5, 2026, or within 6 months of the Board's Order Holding Case in Abeyance.

40. To the extent that Mr. Chun-Hoon has represented that he is the attorney for Claimant's Estate, and considering that no representative of Claimant's Estate has demonstrated that he/she/they is/are the personal representative or special administrator for Claimant's Estate and who has been

substituted as Claimant, in this appeal, Mr. Chun-Hoon has no legal authority to proceed in this appeal.

41. An heir of an estate who has not been judicially appointed as the personal representative of a decedent's estate is not a proper party for substitution. Thus, to the extent that Mr. Chun-Hoon may be the attorney for **Kenneth W. McHenry, Jr.**, son of Claimant, Mr. Chun-Hoon has no legal authority to proceed in this appeal.

42. Mr. Goya is the attorney for Employer. The Board credits Mr. Goya's Declaration attached to Employer's motion wherein Mr. Goya states that although it was his understanding that **Kenneth W. McHenry, Jr.** was appointed as the personal representative and/or administrator for Claimant's Estate, he (Mr. Goya) is not in possession of any court document from the State of Utah verifying this alleged appointment.

43. The Board credits Mr. Goya's Declaration attached to Employer's motion wherein Mr. Goya states that Mr. Chun-Hoon attempted, without success, to contact **Kenneth W. McHenry, Jr.** and **Kent McHenry, Jr.**, Claimant's other son, who reside in Utah, to request a copy of the court order appointing a personal representative and/or special administrator for Claimant's Estate.

44. The Board credits Mr. Goya's Declaration attached to Employer's motion wherein Mr. Goya states that Mr. Chun-Hoon's multiple emails and telephone calls to **Kenneth W. McHenry, Jr.** and **Kent McHenry, Jr.** have gone unanswered and unreturned.

45. The Board credits Mr. Goya's Declaration attached to Employer's motion wherein Mr. Goya states that Mr. Chun-Hoon conducted a search within Utah State court records, having purchased a subscription to the State of Utah public records, State judiciary website and having purchased a subscription to a private, commercial internet service, and could not locate any court order appointing a personal representative and/or special administrator for Claimant's Estate.

46. The Board credits Mr. Goya's Declaration attached to Employer's motion wherein Mr. Goya states that Mr. Chun-Hoon contacted Scott Solderberg, Esq., an attorney in Utah who prepared Claimant's trust, and that Mr. Solderberg informed Mr. Chun-Hoon that he was not the attorney for Claimant's Estate and could not help with the provision of any court order regarding the appointment of a personal representative and/or special administrator for Claimant's Estate.

47. The Board credits Mr. Goya's Declaration attached to Employer's motion wherein Mr. Goya states that he retained a private investigator in Utah who has not found any useful information regarding the court appointment of a personal representative and/or special administrator for Claimant's Estate.

48. Mr. Goya represented in the declaration that was attached to Employer's motion that Mr. Chun-Hoon wanted to settle the outstanding claims of Claimant for \$25,000.00 and to have his approved attorney's fees deducted from this amount with the balance (if any) conveyed to Claimant's

Estate.

49. The record reflects no approval of attorney's fees and costs in favor of Mr. Chun-Hoon, either entered by the Board or Director.

50. Although it has been 5 years and 8 months since Claimant died, to date, the record does not reflect that a Hawaii court-appointed personal representative or special administrator of Claimant's Estate has appeared in this appeal, and the record does not reflect that any out-of-state court order appointing a personal representative or special administrator of Claimant's Estate has been domiciled in the State of Hawaii.⁴

ANALYSIS

Employer's motion herein requests that the Board extend its abeyance of this matter, beyond May 5, 2026, for another 6 months. The sole reason for Employer's request is so that Employer may settle this case with Claimant, now deceased.

While the Board recognizes that Employer's motion is unopposed, Employer does not present good cause for the requested extension of time. This appeal has been languishing before the Board **for more than 34 years**, since 1991, without any trial or resolution. Even more egregious is that **the parties, who were both represented by counsel, had almost 28 years (from November 1992 through September 18, 2020), while Claimant was still**

⁴ 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.

alive, to execute a settlement document – but they did not do so.

Claimant and Employer had apparently agreed to a settlement in November of 1992, over 3 decades ago, but no settlement document was approved or filed with the Board before Claimant's death on September 18, 2020. During that time, the Board recognizes that Employer did timely forward a settlement document to Mr. Chun-Hoon, who was Claimant's attorney, on November 27, 1992, but that Mr. Chun-Hoon did not respond for 4 months, at which time he then requested changes to the settlement document. While the Board recognizes that Employer responded to the request for changes in 2 months, or by June 2, 1993 – after June of 1993, the record is devoid of any follow-up by Employer or Claimant regarding settlement. Instead, 2 years passed before Board Chair Frank Yap, Jr. inquired, in June 1995, as to the status of the settlement. It appears that the parties were resolving LTDI issues but that these issues were resolved by December of 1995. Yet, Claimant and Mr. Chun-Hoon did not execute the settlement document. Over a year and a half (1½ years) passed until Mr. Goya, in May of 1997, inquired of Mr. Chun-Hoon as to the status of settlement; Mr. Chun-Hoon did not respond. Four (4) more years passed without any activity until Board Chair Iwase made 2 inquiries of Mr. Chun-Hoon as to the status of settlement, in July and August of 2001, to no avail. After that time, from July 29, 2003 through February 24, 2023, for a period of nearly 20 years, it appears that the parties insisted on temporarily remanding this matter to the Director, during which times, no hearing was requested of the Director, and no effort was made by the parties to

return to the Board to finalize a settlement of this case. Accordingly, given the decades that Employer and Claimant were given to settle, and considering the numerous efforts made by both Mr. Goya and the Board to urge Claimant and Mr. Chun-Hoon to execute the settlement agreement, Employer's pleas for more time to settle this matter ring hollow.

Once Claimant died in September of 2020, the Board appreciates that any settlement agreement in this case needed to be executed on Claimant's behalf by someone with the proper, legal authority to do so, namely, by a court-appointed personal representative and/or special administrator of Claimant's Estate ("PR"), whether that appointment was made by the Probate Court of the State of Hawaii or whether an out-of-state appointment was domiciled by the Probate Court of the State of Hawaii. In addition, that PR would have to be substituted as Claimant in this workers' compensation proceeding. The Board has allowed more than sufficient time for all of this to occur, and yet, it has not.

It is noted that the Hawaii Rules of Civil Procedure (Rule 25) mandates that substitution of a deceased party be made within 180 days of death. Had the Board adopted a similar rule or if the Board held the parties to a similar standard in this appeal, substitution for Claimant would have to have been made by March 17, 2021, or more than 5 years ago. That is, within 6 months of Claimant's death, a PR would have to be appointed and substituted as a party to this appeal. However, the Board has generously afforded **5 years and 8 months** since Claimant's death for a PR to be appointed, and, yet, no

court-appointed PR has appeared in this case. More importantly, the record reflects that no such PR exists, even after almost 6 years since Claimant's passing. Accordingly, more than sufficient time has elapsed for a PR to be appointed for Claimant's Estate.

Moreover, Employer inasmuch admits the futility of extending the abeyance. There is absolutely no indication in Employer's motion and Mr. Goya's supporting declaration that a PR is likely to appear and substitute as Claimant in this appeal, for purposes of effectuating a settlement, within the next 6 months. To the contrary, Mr. Goya's declaration confirms that:

1. Even though Mr. Chun-Hoon represented that Claimant's son, **Kenneth Wayne McHenry, Jr.**, was the PR for Claimant's Estate, Mr. Chun-Hoon is not in possession of any court record, from any state, confirming this;
2. Even though Mr. Chun-Hoon represented that Claimant's son, **Kenneth Wayne McHenry, Jr.**, was the PR for Claimant's Estate, Mr. Chun-Hoon's own search of Utah State court records does not confirm that **Kenneth Wayne McHenry, Jr.** was or is the PR for Claimant's Estate;
3. Even though Mr. Chun-Hoon represented that Claimant's son, **Kenneth Wayne McHenry, Jr.**, was the PR for Claimant's Estate, Mr. Chun-Hoon's communication with Claimant's trust attorney did not yield any confirmation that **Kenneth Wayne McHenry, Jr.** was or is the PR for Claimant's Estate;
4. Even though Mr. Chun-Hoon represented that he was the attorney for Claimant's Estate and that Claimant's son, **Kenneth Wayne McHenry, Jr.**, was the PR for Claimant's Estate, **Kenneth Wayne McHenry, Jr.** has not responded to any of Mr. Chun-Hoon's attempts to contact him;
5. Likewise, Mr. Chun-Hoon's attempts to contact **Kent McHenry**, Claimant's other son, have gone unanswered; and
6. The private investigator retained by Employer/Mr. Goya in

Utah did not find any useful information regarding the court appointment of a PR for Claimant's Estate.

Accordingly, there is nothing in Employer's motion and its supporting documents which even suggests that an additional 6 months will yield anything different.

Finally, the Board is cognizant that Employer's proposed settlement accounts for payment of Mr. Chun-Hoon's attorney's fees and costs, as approved by the Board and the Director. However, to the extent that Employer desires an extension of time for a PR to appear in case so that Mr. Chun-Hoon's attorney's fees and costs are accounted for, this argument holds little merit. Whilst Claimant was alive, Mr. Chun-Hoon had ample opportunity to seek the Director's approval of his attorney's fees and costs. It is noted that on or about December 27, 1991, Mr. Chun-Hoon submitted a Request for Approval of Attorney's Fee with the Director. However, the Director did not approve these requested fees, presumably because Employer appealed the Director's December 19, 1991 Decision. Mr. Chun-Hoon could have, but did not, pursue these fees when this matter was temporarily remanded to the Director on July 29, 2003 or when this matter was again temporarily remanded to the Director on April 30, 2007. Now that Claimant is deceased, without a PR for Claimant's Estate who has substituted as Claimant for purposes of this workers' compensation case, any request for approval of fees by Mr. Chun-Hoon cannot be approved by either the Board or the Director since there is no entity to defend against such requests for fees. Thus, Mr. Chun-Hoon's fees are dependent upon the appearance and substitution of a PR for Claimant's Estate

– which, as already discussed, appears highly unlikely under the circumstances.

Thus, Employer has shown no good cause to extend the deadlines as set forth in the Board’s Order Holding Case in Abeyance, filed November 6, 2025. Accordingly, Employer’s motion is DENIED. Employer is reminded to submit the appropriate declaration to the Board on or before May 26, 2026, pursuant to the Board’s November 6, 2025 order.

ORDER

Having considered Employer’s motion and being fully apprised in the premises,

IT IS HEREBY ORDERED that Employer’s motion be and hereby is DENIED.

Dated: Honolulu, Hawai‘i,

May 21 2026



DAMIEN A. ELEFANTE, Chair



MARIE C.L. LADERTA, Member

EXCUSED

HARRY YEE, Member

Kenneth W. McHenry v. Kaiser Permanente dba Hawaii Permanente Medical Group, et al.; AB 92-028(WH); Order Denying Employer’s Motion for Extension of Time

A digital copy of the Board's Order Denying Employer's Motion for Extension of Time, herein, 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

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

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

Kenneth W. McHenry v. Kaiser Permanente dba Hawaii Permanente Medical Group, et al.; AB 92-028(WH); Order Denying Employer's Motion for Extension of Time

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