
NO. 22092

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BUDDY KIMURA, Deceased, Claimant-Appellant,

vs.

STATE OF HAWAI'I, DEPARTMENT OF CORRECTIONS,
Employer-Appellee, Self-Insured,

and

SPECIAL COMPENSATION FUND, Appellee.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS
APPEALS BOARD
(CASE NO. AB 97-286 (2-86-35921))

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Town, assigned by reason of vacancy)

The special administrator for the estate of claimant-appellant Buddy Kimura [hereinafter, the Estate] appeals from the August 27, 1997 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB), dismissing as untimely the May 12, 1997 appeal of the decision and order of the Director of Labor and Industrial Relations (Director), filed on June 19, 1989. The Estate claims that it was not given proper notice of the June 19, 1989 decision and, therefore, contends that the LIRAB erred in dismissing the appeal as untimely.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we conclude that:

(1) immediately upon the death of an injured employee, the right to compensation payments vests with the surviving dependents, if any, and not with the decedent's estate, see HRS § 386-34 (1993); and (2) the one recognized exception to this general rule, see HRS § 386-41(a), is not applicable to the instant case.

Therefore, because the Estate was not aggrieved by the Director's June 19, 1989 decision, it lacked standing to pursue an appeal of that decision under HRS § 91-14 (1993). Cf. Jordan v. Hamada, 64 Haw. 451, 458, 643 P.2d 73, 75-76 (1982). Accordingly,

IT IS HEREBY ORDERED that the LIRAB's August 27, 1997 decision and order, dismissing the May 12, 1997 appeal of the decision and order of the Director filed on June 19, 1989 is affirmed.¹

DATED: Honolulu, Hawai'i, May 2, 2003.

On the briefs:

Mark R. Thomason,
for Special Administrator
for the Estate of Buddy
Kimura, Deceased

Elton K. Suzuki and
Steve K. Miyasaka,
Deputy Attorneys General,
for State of Hawai'i

Frances E. H. Lum and
Nelson T. Higa, Deputy
Attorneys General, for
Special Compensation Fund

¹ The record indicates that an application to re-open this case was filed on behalf of the estate of Nancy Tokie Kimura, mother of decedent Buddy Kimura. We emphasize that, in affirming the LIRAB's dismissal of Buddy Kimura's estate's appeal, we express no opinion regarding the procedural or substantive merits of the application to re-open.