

*** NOT FOR PUBLICATION ***

NO. 23585

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SURVIVORS OF SANDRA H. CHING, DECEASED, Claimant-Appellant,

vs.

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

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 96-440)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

The claimants-appellants Survivors of Sandra H. Ching, deceased (the "Survivors"), appeal from the June 16, 2000 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB), reversing the decision of the Director of Labor and Industrial Relations (the "Director"), dated July 2, 1996, which, inter alia, ordered the employer-appellee State of Hawai'i, Department of Health (the "DOH"), to reimburse the Survivors as follows: (1) the sum of \$23,695.69, because the DOH was allegedly credited twice for the foregoing amount as reimbursement of its workers' compensation lien on third-party settlement proceeds, pursuant to Hawai'i Revised Statutes (HRS) § 386-8 (1993); and (2) the sum of \$2,423.11 for unpaid out-of-pocket medical expenses owed to the Survivors. On appeal, the Survivors contend that the LIRAB erred in failing to rule as

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follows: (1) that, as a matter of law, the DOH bore the burden of proof, including the burden of producing evidence and the burden of persuasion; (2) that the Survivors are entitled to reimbursement of medical expenses paid by the Survivors in the amount of \$2,423.11; and (3) that the Survivors are entitled to reimbursement in the amount of \$23,695.69 for mistaken double payment of the DOH's workers' compensation lien on third-party settlement proceeds. In response, the DOH argues (1) that, based on the record on appeal, the findings of fact (FOFs) issued by the LIRAB in the June 16, 2000 decision and order were not clearly erroneous, and (2) that the LIRAB's conclusions of law (COLs) were correct.

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 affirm the LIRAB's June 16, 2000 decision and order.

The Survivors have not shown that their "substantial rights . . . have been prejudiced" by the LIRAB's FOFs or COLs. Flor v. Holquin, 94 Hawai'i 70, 76, 9 P.3d 382, 388 (2000). In particular, in light of the record, including the testimony adduced at the hearing before the LIRAB, the FOFs were not "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," and the COLs did not violate "constitutional or statutory provisions," did not exceed "the statutory authority or jurisdiction of the agency," and were not "affected by other error of law." Id. Therefore,

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IT IS HEREBY ORDERED that the LIRAB's June 16, 2000 decision and order is affirmed.

DATED: Honolulu, Hawai'i, March 18, 2004.

On the briefs:

Stephen T. Hioki,
for the claimant-appellant
Survivors of Sandra H. Ching,
deceased

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State of Hawai'i,
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