

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 26932

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

EMERSON M.F. JOU, M.D., Provider-Appellant-Appellant,
v.
GOVERNMENT EMPLOYEES INSURANCE CO.,
Respondent-Appellee-Appellee,
and
J.P. SCHMIDT, Insurance Commissioner,
Appellee-Appellee

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAII

2007 DEC 21 AM 7:37

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 04-1-0196)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

In this secondary appeal, Provider-Appellant-Appellant Emerson M. F. Jou, M.D. (Jou) appeals from the Judgment filed on October 4, 2004 in the Circuit Court of the First Circuit (circuit court),^{1/} in favor of Respondent-Appellee-Appellee Government Employees Insurance Company (GEICO) and Appellee-Appellee J.P. Schmidt, Insurance Commissioner, (Insurance Commissioner) and against Jou. The circuit court affirmed the January 5, 2004 Commissioner's Final Order granting GEICO's consolidated motion for summary judgment.^{2/}

On appeal, Jou alleges the circuit court

1. erroneously gave deference to the agency ruling in a case dealing with a question of statutory construction, i.e., whether Hawaii Revised Statutes (HRS) § 431:10C-315(a) (1993) may be tolled by an automobile insurer's partial payment to a doctor;

^{1/} The Honorable Eden Elizabeth Hifo presided.

^{2/} The five cases which were consolidated originated as docket numbers MVI-2002-31-P, MVI-2002-37-P, MVI-2002-38-P, MVI-2002-39-P, and MVI-2002-40-P.

2. violated the Hawaii Administrative Procedures Act by affirming the Insurance Commissioner's illegal rulemaking;

3. reversibly signed off on the Hearings Officer's September 23, 2003 "Findings of Fact, Conclusions of Law, and Recommended Order Granting Respondent's Consolidated Motion for Summary Judgment" (HORO);

4. erroneously refused to make findings and instead delegated the task to litigants;

5. violated Jou's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, § 5 of the Hawai'i Constitution by affirming the Insurance Commissioner's rulemaking, thereby reactivating tolled statutes of limitations retrospectively to Jou in this and pending cases;

6. violated Jou's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, § 5 of the Hawai'i Constitution by affirming the Insurance Commissioner's rulemaking;

7. violated Jou's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, § 5 of the Hawai'i Constitution when Judge Hifo did not disqualify herself; and

8. violated Jou's rights under the Takings Clause of the Fifth Amendment to the United States Constitution and Article I, § 5 of the Hawai'i Constitution.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we conclude that Jou's appeal is without merit.

Therefore,

The Judgment filed on October 4, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 21, 2007.

On the briefs:

Steven M. Shaw
for Provider-Appellant-Appellant.

Kathy K. Higham
(Kessner Duca Umebayashi
Bain & Matsunaga)
for Respondent-Appellee-Appellee.

David A. Webber,
Deborah Day Emerson,
Deputy Attorneys General,
for Appellee-Appellee
J.P. Schmidt

Cornie K A Watanabe

Presiding Judge

Daniel R. Foley

Associate Judge

Alan A. Su'ujin

Associate Judge