

NO. 28451

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DAVID D. MAXWELL, Claimant-Appellant, v.
KAISER FOUNDATION HOSPITAL, Employer-Appellee, Self-Insured

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2006-145)
(2-05-061221)

SUMMARY DISPOSITION ORDER

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

Claimant-Appellant David D. Maxwell (**Maxwell**) appeals pro se from the Decision and Order of the Labor and Industrial Appeals Board (**LIRAB**) in Case No. AB 2006-145, filed on February 28, 2007, which affirmed the February 13, 2006 Decision of the Director of Labor and Industrial Relations (**Director**) denying Maxwell's workers' compensation claim. On appeal, Maxwell appears to contend that: (1) there are documents missing in the record of the agency proceedings; and (2) Appellee Kaiser Foundation Hospital (**Kaiser**) and the State of Hawai'i, Department of Labor, committed fraud and Maxwell was denied due process in conjunction with the denial of Maxwell's second workers' compensation claim, filed on April 29, 2005, for an injury related to an alleged June 4, 2001 incident, which Maxwell contends was not precluded by the LIRAB's Decision and Order in Case No. AB 2004-353, dated March 8, 2005, for an injury related to an alleged June 4, 2001 incident, which was administratively dated June 5, 2001.

Kaiser argues that Maxwell's Opening Brief fails to substantially comply with Hawai'i Rules of Appellate Procedure (**HRAP**) 28, making it impossible to identify the points of error and difficult to formulate a response. Although we agree that

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Maxwell failed to even marginally comply with HRAP 28, we decline to strike Maxwell's brief and dismiss the appeal, as requested by Kaiser. We will instead resolve this appeal on the merits.

After a careful review of the record and the arguments presented by the parties, as well as the applicable authorities, we resolve Maxwell's appeal as follows:

Maxwell does not point to where in the record below he challenged or objected to missing documents in the agency record, therefore, this point of error is waived. HRAP Rule 28(b)(4). Maxwell does not point to where in the record he alleged fraud by Kaiser or the State of Hawai'i, Department of Labor, therefore, this point of error is waived. HRAP Rule 28(b)(4). The record on appeal does not support Maxwell's claim.

It appears from the record that Maxwell's workers' compensation claim, filed on April 29, 2005, merely restated the same claim decided against Maxwell in the LIRAB's Decision and Order in Case No. 2004-353, dated March 8, 2005. Therefore, the claim is barred by res judicata.

For these reasons, the LIRAB's February 28, 2007 Decision and Order is affirmed.

DATED: Honolulu, Hawai'i, October 23, 2008.

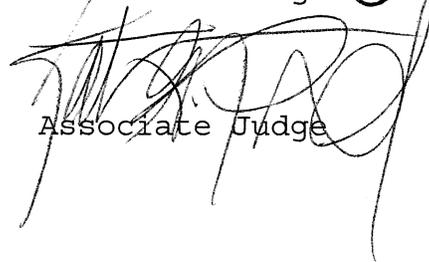
On the briefs:

David D. Maxwell
Claimant-Appellant Pro Se

Laurie E. Keeno, Esq.
(Char Hamilton Campbell & Yoshida)
for Employer-Appellee, Self-Insured


Presiding Judge


Associate Judge


Associate Judge