

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28680

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

RAMONA M.U. SMITH, Claimant-Appellant, v.  
STRAUB CLINIC & HOSPITAL, INC. and  
HAWAII INSURANCE GUARANTY ASSOCIATION,  
Employer-Appellee and Insurance Carrier-Appellee

K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2008 NOV -6 AM 8:06

FILED

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(Case No. AB 2000-278) (2-96-06907)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Fujise and Leonard, JJ.)

Claimant-Appellant Ramona M.U. Smith (**Smith**) appeals the Order of Dismissal (**Order of Dismissal**) issued by the Hawai'i Labor and Industrial Relations Appeals Board (**LIRAB**) on July 3, 2007.<sup>1/</sup>

On appeal, Smith contends that the LIRAB: (1) erred when it rescinded its Decision and Order, issued on January 13, 1999, and reopened the case; (2) erred when it denied Smith's motion for summary judgment; and (3) violated Smith's due process rights when it sanctioned Smith by dismissing her appeal before the LIRAB.

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, we resolve Smith's points of error as follows:

---

<sup>1/</sup> Board Members Roland Q.F. Thom (excused), Carol K. Yamamoto, and David A. Pendelton.

(1) Smith waived any objection to the February 3, 1999 Decision and Order, which rescinded the January 13, 1999 Decision and Order, when she filed a request for a hearing to determine compensability of the subject claim on April 30, 1999. The February 3, 1999 Decision and Order also clearly states that the reason for rescinding the January 13, 1999 Decision and Order was because, contrary to the grounds stated in the January 13, 1999 Decision and Order, Straub had not accepted liability and no hearing on compensability had been held. Thus, HRS § 91-12 was satisfied. Smith did not oppose Employer-Appellee Straub's (**Straub's**) request to reopen the case and thus this argument was waived. Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 28(b)(4).

(2) Smith does not provide any facts or explanation in her Opening Brief to support her claim that she is entitled to summary judgment as a matter of law. Smith also made two motions for summary judgment during the proceedings. Smith does not identify which summary judgment ruling she is contesting. Smith did not cite where in the record she objected or provide any argument, therefore, the point of error is waived. HRAP Rule 28(b)(4) and (7).

(3) An August 1, 2006 Order explicitly stated that less drastic sanctions of imposing no-show fees and late fees had proven unavailing. LIRAB had twice ordered Smith to pay fees for failing to attend two IMEs. Straub's motion specifically

requested that Smith be penalized by striking the issues she raised on appeal. Smith was given notice and an opportunity to oppose Straub's motion for sanctions but failed to do so. LIRAB discussed previous sanctions but ultimately held that they were unavailing and that Smith's conduct was dilatory and contumacious. Therefore, under the circumstances, LIRAB did not abuse its discretion by dismissing Smith's issues on appeal as a sanction. Aloha Unlimited, Inc. v. Coughlin, 79 Hawai'i 527, 533-34, 904 P.2d 541, 547-48 (App. 1995).

For these reasons, LIRAB's July 3, 2007 Order of Dismissal is affirmed.

DATED: Honolulu, Hawai'i, November 6, 2008.

On the briefs:

Ramona M.U. Smith  
Claimant-Appellant Pro Se

Brian G.S. Choy, Esq.  
Karen R. Tashima, Esq.  
Keith M. Yonamine, Esq.  
(Choy & Tashima)  
for Employer-Appellee and  
Insurance Carrier-Appellee

  
Chief Judge

  
Associate Judge

  
Associate Judge