

NO. 28796

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

CRAIG A. GOMES,
Claimant-Appellant,

v.

HAWAIIAN ELECTRIC COMPANY, INC.,
Employer-Appellee, Self-Insured.

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 FEB 28 AM 10:29

FILED

APPEAL FROM THE LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2007-462 (2-07-04707))

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Claimant-Appellant Craig Gomes's (Appellant Gomes) appeal from Labor and Industrial Relations Appeals Board Chairperson Roland Q. F. Thom's (LIRAB Chairperson Thom) August 31, 2007 letter and September 14, 2007 letter.

Under Hawaii Administration Rules (HAR) 12-10-75(c), the medical examination order issued to Appellant Gomes by the Director of the Department of Labor and Industrial Relations was not appealable. In addition, neither the August 31, 2007 nor the September 14, 2007 letter issued by LIRAB Chairperson Thom is an appealable final decision and order under Hawai'i Revised Statutes (HRS) § 91-14(a) (1993 & Supp. 2007) and HRS § 386-88 (Supp. 2007). Pursuant to HRS § 91-14(a) (1993 & Supp. 2007) and HRS § 386-88 (Supp. 2007), an aggrieved party may appeal a decision

and order by the Labor and Industrial Relations Appeal Board (the LIRAB) directly to the intermediate court of appeals.

The appeal of a decision or order of the LIRAB is governed by HRS § 91-14(a), the statute authorizing appeals in administrative agency cases. HRS § 91-14(a) authorizes judicial review of a final decision and order in a contested case or a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief. For purposes of HRS § 91-14(a), we have defined "final order" to mean an order ending the proceedings, leaving nothing further to be accomplished.

Bocalbos v. Kapiolani Medical Center for Women and Children, 89 Hawai'i 436, 439, 974 P.2d 1026, 1029 (1999) (citation and some internal quotation marks omitted). According to the rules governing the LIRAB, all "[d]ecisions and orders of the board shall be signed by at least two members." Hawai'i Administrative Rules (HAR) § 12-47-3(c) (2008); see also HRS § 371-4(c) (Supp. 2007) ("A decision concurred in by any two members shall constitute a decision of the board."). "Other board actions, including notices, subpoenas, and ministerial matters, may be issued under the signature of the chairperson, member, or chief clerk." HAR § 12-47-3(c) (2008).

In his August 31, 2007 and September 14, 2007 letters, LIRAB Chairperson Thom addresses Appellant Gomes's request for appellate review of a May 31, 2007 decision by the Director of the Department of Labor and Industrial Relations (the Director) that compelled Appellant Gomes to undergo a medical examination

relating to Appellate Gomes's workers' compensation claim. However, neither of LIRAB Chairperson Thom's two letters constitutes a decision and order by the LIRAB because neither of the two letters is signed by two members of the LIRAB. Therefore, neither letter is an appealable decision and order under HRS § 386-88 (Supp. 2007) and HRS § 91-14(a) (1993 & Supp. 2007). Absent a final decision and order by the LIRAB, we do not have appellate jurisdiction over this case under HRS § 386-88 (Supp. 2006) and HRS § 91-14(a) (1993 & Supp. 2006). Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 28, 2008.

Mon Randall

Chief Judge

Corinne K A Watanabe

Associate Judge

Craig S. Nekomun

Associate Judge