

NO. 28796

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

CRAIG A. GOMES, Claimant-Appellant,

v.

HAWAIIAN ELECTRIC COMPANY, INC., Employer-Appellee.

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

ORDER GRANTING IN PART AND DENYING IN PART  
THE MARCH 10, 2008 MOTION FOR RECONSIDERATION  
OF FEBRUARY 28, 2008 ORDER OF DISMISSAL  
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of (1) this court's February 28, 2008 order dismissing this appeal for lack of jurisdiction (Order of Dismissal), (2) the March 10, 2008 motion by Claimant-Appellant Craig Gomes (Appellant Gomes) to reconsider the Order of Dismissal pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP) (Reconsideration Motion), and (3) the record, it appears that Appellant Gomes's Reconsideration Motion warrants a clarification of our Order of Dismissal. We thus grant the Reconsideration Motion, in part, for the limited purpose of clarifying the Order of Dismissal as set forth below, but otherwise affirm the Order of Dismissal and its dismissal of this case for lack of appellate jurisdiction.

1. Our dismissal of this case for lack of appellate jurisdiction was based on the ground that there was no final and

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appealable order issued by the Labor and Industrial Relations Appeals Board (LIRAB). As we noted in the Order of Dismissal, Appellant Gomes has attempted to appeal, pursuant to Hawai'i Revised Statutes (HRS) § 91-14(a) (1993 & Supp. 2007) and HRS § 386-88 (Supp. 2007), from letters from LIRAB Chairperson Roland Q. F. Thom (LIRAB Chairperson Thom), dated August 31, 2007 and September 14, 2007. Both letters purport to deny Appellant Gomes's request for the LIRAB to provide appellate review of the May 31, 2007 decision by the Director of the Department of Labor and Industrial Relations (the Director) compelling Appellant Gomes to undergo a medical examination. However, the law governing the LIRAB requires that 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."). Neither of LIRAB Chairperson Thom's letters is an appealable final decision and order under HRS § 91-14(a) and HRS § 386-88, because neither of the two letters is signed by at least two members of the LIRAB. Absent a final decision and order by the LIRAB, we do not have appellate jurisdiction over this case under HRS § 386-88 and HRS § 91-14(a).

2. We note, however, that if the LIRAB intended to dismiss Appellant Gomes's request for the LIRAB to review the

Director's May 31, 2007 decision, then it should have entered a valid decision and order (i.e., a decision and order signed by at least two members of the LIRAB) that formally dismissed Appellant Gomes's request for an appeal to the LIRAB so that the LIRAB's decision on the issue of the LIRAB's appellate jurisdiction would be preserved for possible future review by the appellate courts. We are not aware of any reason or authority for the LIRAB to dispose of Appellant Gomes's request for review without issuing a valid decision and order.

3. Our dismissal of this case for lack of appellate jurisdiction is without prejudice to Appellant Gomes seeking relief by means of a writ of mandamus.

IT IS HEREBY ORDERED that Appellant Gomes's Reconsideration Motion is granted in part and denied in part as set forth above.

DATED: Honolulu, Hawai'i, March 20, 2008.

*Mimi Richter*

Chief Judge

*Corinne Ka Watanabe*

Associate Judge

*Craig H. Mearns*

Associate Judge

