

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29714

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LOLA SUZUKI, Claimant-Appellant/Appellant,

v.

HEALTHWAYS, INC., Employer-Appellee/Appellee,

and

ST. PAUL TRAVELERS, Insurance Carrier-Appellee/Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NOS. AB 2007-497 and 2007-498)

ORDER GRANTING THE MAY 27, 2009 MOTION TO DISMISS APPEAL
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) the May 27, 2009 motion by Employer/Appellee/Appellee Healthways, Inc. (Appellee Healthways), and Insurance Carrier/Appellee/Appellee St. Paul Travelers (Appellee St. Paul Travelers) to dismiss this appeal, (2) the June 12, 2009 memorandum by Claimant-Appellant/Appellant Lola Suzuki (Appellant Suzuki) in opposition to Appellee Healthways and Appellee St. Paul Travelers' May 27, 2009 motion to dismiss this appeal, and (3) the record, it appears that Appellee Healthways and Appellee St. Paul Travelers' May 27, 2009 motion to dismiss this appeal has merit, because Appellant Suzuki is appealing from the following six March 16, 2009 pretrial interlocutory orders by the Labor and Industrial Relations Appeals Board (the LIRAB)¹ that do not end the proceedings in the two ongoing administrative appeals for Appellant Suzuki's workers' compensation claims that are still pending in Case No. AB 2007-497 and Case No. AB 2007-498:

¹ On March 16, 2009, the Labor and Industrial Relations Appeals Board (the LIRAB) was composed of Chairperson Roland Q. G. Thom, Member Melanie S. Matsui, and Member David A. Pendleton.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

- (1) a March 16, 2009 "Order Denying Motion to Correct";
- (2) a March 16, 2009 "Order Denying Motion for Summary Judgment and Declaratory Order";
- (3) a March 16, 2009 "Order Granting Motion to Compel Claimant Lola L. Suzuki's Attendance at Independent Medical Examination";
- (4) a March 16, 2009 "Order Denying Motion to Strike Respondent-Appellee's Response Filed December 23, 2008";
- (5) a March 16, 2009 "Order Denying Motion for Sanctions & Order to Show Cause"; and
- (6) a March 16, 2009 "Order Granting, in Part, Motion for Reconsideration of Order Denying Claimant-Appellant's Motion for a Qualified Protective Order Filed December 22, 2008").

Pursuant to Hawaii Revised Statutes (HRS) § 386-88 (Supp. 2008)² and HRS § 91-14(a) (1993 & Supp. 2008),³ an aggrieved party may appeal a decision and order by the LIRAB directly to the intermediate court of appeals:

² "The decision or order of the appellate board shall be final and conclusive, except as provided in section 386-89, unless within thirty days after mailing of a certified copy of the decision or order, the director or any other party appeals to the intermediate appellate court, subject to chapter 602, by filing a written notice of appeal with the appellate board." HRS § 386-88 (Supp. 2008) (in part).

³ HRS § 91-14(a) (1993 & Supp. 2008) provides:

§ 91-14. Judicial review of contested cases.

(a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term "person aggrieved" shall include an agency that is a party to a contested case proceeding before that agency or another agency.

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). Appellant Suzuki is appealing from the six March 16, 2009 pretrial interlocutory orders that did not end the proceedings before the LIRAB in Case No. AB 2007-497 and Case No. AB 2007-498. According to the records on appeal for Case No. AB 2007-497 and Case No. AB 2007-498, the LIRAB has scheduled a trial in these matters that will take place on a future date. Therefore, the LIRAB has not yet issued final decisions and orders in Case No. AB 2007-497 or Case No. AB 2007-498. Consequently, the LIRAB's six March 16, 2009 pretrial interlocutory orders are not appealable final decisions and orders under HRS § 386-88 (Supp. 2008) and HRS § 91-14(a) (1993 & Supp. 2008). Absent an appealable final decision and order by the LIRAB, we lack jurisdiction over this appeal.

Accordingly, IT IS HEREBY ORDERED that Appellee Healthways and Appellee St. Paul Travelers' May 27, 2009 motion to dismiss this appeal is granted, and appellate court case number 29714 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 24, 2009.


Presiding Judge


Associate Judge


Associate Judge