

NO. 29086

IN THE SUPREME COURT OF THE STATE OF HAWAII

CRAIG A. GOMES, Petitioner,

vs.

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD, Respondent.

NORMA T. YERA
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STATE OF HAWAII

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FILED

ORIGINAL PROCEEDING
(AB 2007-462 (2-07-04707))ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of petitioner Craig A. Gomes's petition for a writ of mandamus and the papers in support, it appears that the August 31, 2007 and September 14, 2007 decisions denying petitioner's appeal of the May 31, 2007 medical examination order to the Labor and Industrial Relations Appeals Board (LIRAB) -- even if concurred and signed by at least two LIRAB members -- were not appealable to the intermediate court of appeals inasmuch as the decisions did not finally end petitioner's workers' compensation case and were not of the nature that deferral of review pending entry of a subsequent final decision would deprive petitioner of adequate relief. See HRS § 91-14 (1993 and Supp. 2007); Bocalbos v. Kapiolani Medical Center, 89 Hawai'i 436, 439, 974 P.2d 1026, 1029 (1999). The medical examination order was affirmed by the labor director after a hearing, and over petitioner's objections, by decision and order of October 19, 2007. The October 19, 2007 decision and order has been timely appealed by petitioner to the LIRAB, which

will hold a full hearing de novo on the appeal. See HRS § 386-87(b) (1993). The LIRAB's decision in such appeal, if adverse to petitioner, will be appealable by petitioner to the intermediate court of appeals. See HRS § 91-14 (1993 and Supp. 2007); Tam v. Kaiser Permanente, 94 Hawai'i 487, 494-95, 17 P.3d 219, 226-27 (2001). Therefore, petitioner is not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of other means to redress adequately the alleged wrong or obtain the requested action. Such writs are not intended to serve as legal remedies in lieu of normal appellate procedures.); In Re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999) (Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual only if the individual's claim is clear and certain, the official's duty is ministerial and so plainly prescribed as to be free from doubt, and no other remedy is available.). Accordingly,

IT IS HEREBY ORDERED that the petition for writ of mandamus is denied.

DATED: Honolulu, Hawai'i, April 21, 2008.



Steven Stevenson

Anna C. Nakayama



Kama E. Duddy, Jr.