

TESTIMONY OF THE
LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

BEFORE THE

Senate Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Tuesday, February 5, 2008
9:00 A.M. in Conference Room 016
State Capitol

IN SUPPORT OF

Senate Bill 3088 - Relating to the Labor and Industrial Relations Appeals Board

Chair Taniguchi, Vice Chair Hee, and Members of the Senate Committee:

My name is Roland Thom. I am the Chairman of the Labor and Industrial Relations Appeals Board.

On behalf of the Membership of the Board, I thank you for scheduling this measure for a committee hearing. I am here to testify in support of this measure and urge the Committee to pass it.

The Board is established by §371-4, *HRS*. It is comprised of three members appointed by the Governor and confirmed by the State Senate to ten-year terms. By statute, the Board has the power to decide appeals from decisions and orders of the Director of Labor and Industrial Relations issued under the workers' compensation law (Chapter 386, *HRS*).

Essentially, the Board's function is to adjudicate appeals of workers' compensation cases. Parties on appeal are entitled to receive a full hearing *de novo*. The Board receives sworn testimony from witnesses who are subject to cross-examination and renders a decision and order. While it is considered an administrative law forum, the process is nonetheless legally rigorous and thorough, assuring that parties have a full opportunity to present their cases to the Board for a fair and impartial determination.

Parties have a statutory right, thereafter, to appeal the decision and order of the Board to the Intermediate Court Of Appeals.

Annually, the Board receives several hundred appeals from decisions and orders of the Director. For example, from July 1, 2005 through June 30, 2006, 709 appeals of Director's decisions were brought to the Board. From July 1, 2006 through June 30, 2007, 614 appeals were filed with the Board.

Each of these appeals can require between four and eight hours of trial or hearing time. The Board schedules these appeals for trial in the order in which they are received. Presently we have four trials set per day between the present and late Fall 2008.

The Board presides over trials as a panel, so hearings cannot be expedited solely because they are more time-sensitive than others, absent the proposed organizational change of this measure to add a hearings officer.

The purpose of this measure is to authorize the Board to employ and utilize a hearings officer by expressly adding the words "hearings officer" to the statute. The hearings officer would conduct a hearing and prepare a proposed decision and order for review and approval by the Board.

It needs to be said that the addition of a hearings officer to the Board's staff would not reduce the workload or shorten the workday of the Board. The Board will try cases every day as usual but the time needed to determine special types of issues in certain cases would be shortened. The specific issues would be fast-tracked, as it were, by the hearings officer. The hearing itself would not be shortened or rushed; it would just occur sooner in the appeal hearing process. The Board believes that procedures can be readily developed that would prevent litigants from trying to manipulate the issues on appeal for earlier hearings on less time sensitive issues.

There are at least three reasons to pass this measure. First, passage of this bill will promote and support timely decisions. It is not reasonable for parties or physicians to have determinations made on the reasonableness and necessity of a particular treatment plan made a year after the plan was recommended. A patient's condition could change, and the physician's opinion could change, or medical advances could affect the propriety of a treatment plan. A hearings officer could hold hearings on treatment plans in a more efficiently-sized conference room, while the Board is conducting trials in other cases in the main hearings room. This would, in effect, allow the Board to conduct two hearings at once, thus expediting time sensitive portions of any appeal.

Second, passage of this measure would support cost-effective decisions. Funding of the hearings officer position would provide a cost-effective option that would simulate an additional panel for decision-making. It would enable expedited determination of issues involving temporary total disability, vocational rehabilitation, and medical service benefits. In the last legislative session, expediting hearings before the Board was a concern, and the Legislature contemplated changes to the law to expedite decision-making. Funding the hearings officer position would allow this to happen without a change to the substantive workers' compensation statute at far less than the cost of creating another administrative panel.

Third, passage of this measure would best ensure issuance of meaningful and case relevant decisions. The Board is committed to conducting trials fairly and impartially and to rendering decisions and orders which are based on the law and facts of each particular appeal. Without the ability to separate time-sensitive matters for review and

recommendation of a hearings officer, time-sensitive matters would be heard in the same proceeding as other more complex entitlement issues which would require substantial additional discovery by the parties. Completion of the discovery in the case preparation phase may moot some of the treatment recommendations unless they could be expeditiously processed through a proposed decision from a hearings officer. Relevancy of a treatment recommendation made now could only erode with the passage of time, and would likely be much less meaningful a year down the road. Processing a proposed decision by a hearings officer would make such determinations closer to the time treatment recommendations, vocational rehabilitation, or disability awards are made.

A few closing comments are in order. As previously stated, the proposed bill would not lessen the workload of the Board whose duties would continue daily unchanged. What this bill enables, however, is to reduce the time it would take to receive a decision from the Board on certain issues. Basically, it shortens the line of appeal on certain matters. At the same time, it does not increase the length of time for other appeals to be adjudicated. Fundamentally, there is only an up side to passing this measure for the Board to improve its service to litigation customers.

I also want to comment on a term heard from time to time characterizing the time between an appeal of a Director's decision to a trial before the Board. That term is "backlog"; as I said, use of that term is actually inaccurate and a misnomer. Appeals are handled on a first-in, first-out basis and the more appeals that are filed, the longer the queue. The Board has no control over the number of appeals taken from the Director's decisions (709 appeals of Director's decisions two years ago, and 614 appeals last year).

The Board is currently setting trials for Fall 2008. The only reason the Board Chair is able to testify before this Committee today is that the trial scheduled for this time slot settled. There are numerous hearings officers at the Disability Compensation Division who can conduct multiple hearings, issuing multiple decisions and orders on a daily basis. Because the Board must sit as a panel, it can at the most conduct a morning and afternoon trial. This is a partial explanation of why we are scheduling hearings for the upcoming Fall. To shorten the length of the appeal line, the Board sets four trials per day knowing that it must settle at least two of those trials, as it is physically impossible to conduct more than one trial at a time and then prepare decisions. This makes the settlement conference portion of the process critical to the ongoing Board operation.

Finally, passage of this bill will require an appropriation. Presently, there is a line item in the budget for which the Legislature has annually appropriated approximately \$15,000. That amount, of course, is grossly insufficient to employ an educated, trained and experienced attorney to serve in the hearings officer position. We have requested that the appropriation be increased by \$65,000 to a total of \$80,000 annually; that amount is reflected in the Governor's Supplemental Budget Proposal.

For all of the foregoing reasons, I ask this Committee to pass this measure.



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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LATE TESTIMONY

February 4, 2008

To: The Honorable Brian Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: February 5, 2008

Time: 9:00 a.m.

Place: Conference Room 016, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in Opposition
of
Senate Bill 3088 – Relating to the Labor and Industrial Relations Appeals
Board**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 3088 is an Administration bill which proposes to authorize the Labor and Industrial Relations Appeals Board ("Board") to employ a hearings officer in order for the Board to expedite hearings on certain workers' compensation matters. The hearings officer would hear certain types of appeals and propose a decision and order for review and approval by the full board. This would allow for expedited resolution of those appeals.

II. CURRENT LAW

Currently, the Board is not authorized to allow a hearings officer to hold hearings in regards to controverted medical issues.

III. SENATE BILL

The Department strongly supports this bill as it would result in faster adjudication of time sensitive issues, such as medical treatment disputes, on appeal from the Department of Labor and Industrial Relations. This will ensure quicker resolution to injured workers and employers.

S.B. 2594

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Certain issues appealed from decisions of the Director of Labor and Industrial Relations to the Board, including workers' compensation treatment plan issues, vocational rehabilitation issues, and temporary total disability issues are time-sensitive as they are critical to the employee in terms of continuing benefits and to the employer in terms of determining liability.

Expediting decision making on such appeals can be achieved through fast-tracking these particular appeals through a hearings officer trained, employed, and directed by the chair and members of the Board. A proposed decision and order prepared by the hearings officer would then be reviewed and approved by the Board.



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February 5, 2008

To: Senate Committee on Judiciary & Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

From: Cynthia J. Goto, M.D., President
Linda Rasmussen, M.D., Legislative Co-Chair
Philip Hellreich, M.D., Legislative Co-Chair
Paula Arcena, Executive Director
Dick Botti, Government Affairs Liaison

Re: SB 3088 Relating to Labor & Industrial Relations Appeals Board

The Hawaii Medical Association supports SB 3088.

There have been a number of bills addressing the problem relating to disputes between injured workers and employers that have requested Independent Medical Examinations that differ from the findings of the injured worker's medical provider. Each of these measures address a symptom, and not the cause of delays in medical treatment.

We currently have a balanced law, where the employee chooses the treating physician, and the employer choosing for and paying for the IME. Delays occur because of delays created by the workload placed on the Labor and Industrial Relations Appeals Board. This measure addresses the problem rather than the symptom. We fully support this measure.

PLEASE DELIVER
Senate Judiciary &
Labor Committee
LATE TESTIMONY for
Monday
2-5-08
9:00am

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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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and Members of the Senate Committee on Judiciary and Labor

Date: February 5, 2008

Time: 9:00 a.m.

Place: Conference Room 016, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

(Revised)
Testimony in Strong Support
of
Senate Bill 3088 – Relating to the Labor and Industrial Relations Appeals
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