

TESTIMONY

SB 2339

LATE



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

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January 28, 2010

To: The Honorable Dwight Takamine, Chair  
and Members of the Senate Committee on Labor

Date: Thursday, January 28, 2010

Time: 2:45 p.m.

Place: Conference Room 224, State Capitol

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

LATE

**Testimony in OPPOSITION**

to

**S.B. 2339 – Relating to Workers' Compensation**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

SB 2339 proposes to amend Section 386-86(a), HRS, by repealing the possibility of the director extending the due date for written decisions on the outcome of workers' compensation cases.

**II. CURRENT LAW**

Section 386-86(a), HRS, requires the director, upon receipt of a claim for compensation, to investigate and render a decision by stating the findings of fact and conclusions of law in awarding or denying compensation within sixty days after the conclusion of the hearing. Currently, this section allows for an extension past the sixty-day due date for the decision to be issued if there is good cause and agreement by all parties. Decisions are issued in writing and a copy is sent to all parties.

Occasionally, extensions for issuance of decisions past the sixty-day period are granted when one party at the hearing submits new evidence just prior to or at the hearing. The extension is granted to give the other party their due process by allowing the opposing

party to review and respond to the new evidence. On other occasions, extensions are granted in highly complex multiple-issue cases to allow parties to clarify their positions by submitting written position memorandums to the hearings officer. In all cases, the extension must be agreed to by both parties, allowing either to contest the extension.

### III. SENATE BILL

The Department opposes this bill. Removing the possibility of extending the due date will not allow opposing parties adequate time to investigate and respond to the newly introduced evidence, essentially undermining the parties' rights to due process. If the director is unable to extend the decision deadline, the parties will not be allowed to introduce new evidence resulting in the director's decision being appealed to the Labor and Industrial Relations Appeals Board. The Board may then remand the case back to the director to address the newly introduced evidence, resulting in another workers' compensation hearing and lengthening the adjudication process and delaying potential payments and treatments for years to the injured claimant.

Currently, in the past year, there were a negligible number of cases in which extensions were granted. Of the 1,547 cases heard in 2009, only 22 extension waivers were granted. Eliminating the director's ability to extend the due date of written decisions will serve little purpose to the workers' compensation hearings system.

The Department, therefore, opposes the proposed amendment for the reasons cited above.



**THE LAW OFFICES OF DOUGLAS THOMAS MOORE**

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February 3, 2010

VIA EMAIL TO BILL KUNSTMAN

TO: Senate Labor Committee                      House Labor Committee  
      Hon. Sen. Dwight Takamine, Chair        Hon. Rep. Karl Rhoads, Chair

Re: PROPOSED AMENDMENTS TO SB 2339/HB 2079

Dear Sen. Takamine and Rep. Rhoads :

As you know, I represent injured workers in their workers' compensation claims. I support SB 2339/HB 2079 as do injured workers, their physicians, therapists, voc rehab counselors, and attorneys who belong to the Hawai'i Injured Workers Alliance (HIWA). The intention of these bills is to protect the rights of injured workers by expediting the investigation of claims and the conduct of hearings to award or deny compensation. However, we do not think the already proposed amendments to HRS 386-86 properly address our concerns.

Just briefly, employers and insurance carriers have the right to investigate claims. However, they do not have the right to abuse this process while investigating claims. Stall tactics such as denying or deferring compensability of the claims pending their investigations hurt the injured worker. The injured worker typically does not receive medical benefits/treatment and/or TTD wage loss during these investigations. This creates great hardship to the injured worker. These investigations which deny or defer compensation can take a long time. HAR 12-10-73(a) allows the director to grant extensions of time to investigate claims. Employers and insurance carriers can abuse this process by conducting lengthy investigations and then are granted more extensions of time to investigate. All the while, the hardship to the injured worker continues. The attitude appears to be: if we stall, maybe this claim will go away.

At the HIWA meeting last night, I was authorized to propose the following amending language to the bills:

First though, after listening to the testimony of Walter Kawamura, DCD Hearings Supervisor, we agree that at times flexibility is needed and if the parties mutually agree to extend the due date for decisions for good cause, then they should be allowed to do so. Therefore, we do not object to leaving that language in the bills (i.e., "The director may extend the due date for decisions for good cause provided all parties agree.")

**As for our proposed amendments to Section 386-86:**

(a) If a claim for compensation is made, the director shall [make such] further [investigation as deemed necessary] investigate the facts surrounding the claim and render a decision in writing within sixty days after the conclusion of the hearing awarding or denying compensation, stating the findings of fact and conclusions of law. Except as provided in subsection (b), [T]he director may extend the due date for decisions for good cause provided all parties agree. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.

(b) When the employer denies compensability or indicates compensability is not accepted, the employer shall submit a written report under penalty of perjury to the director and to the injured employee within thirty calendar days supporting the denial. The due date for the report shall not be extended.

(i) If the employer fails to submit a written report to support the denial, or if the employer timely submits a written report to support the denial and upon review the director finds that the claim is compensable, the director shall issue a determination finding the claim to be compensable. The employer shall be given ten calendar days to request a hearing contesting the determination. Should the employer fail to request a hearing, such action shall be considered a waiver of hearing and the director shall issue a decision without hearing holding the injury compensable. The decision shall be final unless appealed pursuant to section 386-87, HRS.

(ii) If the employer timely submits a written report to support the denial, and if upon review the director finds the denial of compensability is proper, the director shall notify the injured employee and give the injured employee an option to file a claim for industrial injury in accordance with chapter 386, HRS.

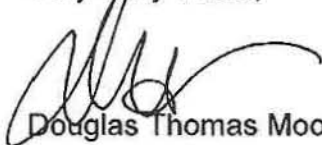
(iii) If the director finds that the employer contested compensability without reasonable ground, the whole costs of the proceedings, including reasonable attorney's fees, may be assessed against the employer, together with an amount equal to twenty per cent of the unpaid compensation, in addition to the compensation which has accrued, or is found to have accrued from the date of the injury until the date of the decision finding the case to be compensable.

Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

Please consider amending these bills as requested herein. Thank you.

Should you have any questions or need further information from me, please do not hesitate to contact me.

Very Truly Yours,



Douglas Thomas Moore

cc: HIWA

**Testimony Supporting SB 2339**  
**Hearing 2/9/10 at 3:00 pm in Room 224**  
**SB 2339**

February 5, 2010

Senator Dwight Y. Takamine  
Chair, Senate Labor Committee

Senator Brian T. Taniguchi  
Vice Chair, Senate Labor Committee

Honorable Committee Members,

I have practiced as a rehabilitation counselor in Hawaii for the past 30 years.

The longer medical treatment and TTD payments are withheld from the injured worker, the longer it will take for the individual to recover and will have a devastating effect on their economic well being. I have found that early intervention is the key to having an injured worker get back to productivity and return to work.

We want to avoid cost shifting and do not want injured workers to rely on public assistance and increase the burden on the Taxpayers of Hawaii.

Therefore I am supporting the passage of SB 2339.

Thank you for allowing me to provide testimony to your committee.

Sincerely

**Alan Ogawa**, M. Ed. CRC, LMHC  
Vocational Rehabilitation Counselor  
Hawaii Injured Workers Alliance Member  
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