



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 25, 2008

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: Tuesday, February 26, 2008
Time: 4:30 p.m.
Place: Conference Room 308, State Capitol

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

**Testimony in Strong Support
of
House Bill 3166, HD1 – Relating to the Labor and Industrial Relations
Appeals Board**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 3166, HD1, 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. HOUSE 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.

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.

TESTIMONY OF THE
LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

BEFORE THE

House Committee on Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice-Chair

Tuesday, February 26, 2008 at 4:30 pm
House conference room 308
State Capitol

IN SUPPORT OF

House Bill 3166 - Relating to the Labor and Industrial Relations Appeals Board

Chair Oshiro, Vice-Chair Lee, and Members of the Honorable 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 in its original form.

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, 709 appeals of Director's decisions were brought to the Board from July 1, 2005 through June 30, 2006. And 614 appeals were filed with the Board between July 1, 2006 and June 30, 2007. 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

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.

With respect to the amendment made by the prior House Committee, the Labor Appeals Board prefers the original effective date. This measure's companion bill in the Senate (SB 3088) was passed by the Senate WAM committee unamended and in its original form on February 22, 2008.

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.

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Date: Tuesday, February 26, 2008

Time: 4:30 p.m.

Place: Conference Room 308, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

**RE: HB 3166, HD 1, RELATING TO THE LABOR AND
INDUSTRIAL RELATIONS APPEALS BOARD**

Thank you for the opportunity to present testimony regarding HB 3166, HD 1. We support this bill, but believe it should be implemented promptly and not on July 1, 2059 as stated.

HB 3166, HD 1 proposes that the Labor and Industrial Relations Appeals Board be allowed to retain a hearing officer to expedite the resolution of time-sensitive appeals concerning vocational rehabilitation, medical care, and termination of temporary total disability benefits. Time is of the essence in addressing matters of this nature. At present, because of the vast number of cases the board must handle, trials are set approximately a year after appeals are taken. Delay of this magnitude in providing medical treatment or surgery, or in restoring temporary total disability that has been improperly terminated, is obviously unacceptable. Less obviously, legitimate vocational training or education, or the provision of any vocational rehabilitation assistance at all, can be frustrated and effectively be denied by the length of time necessary to adjudicate these issues.

If HB 3166, HD 1 is enacted swiftly, it will therefore address the maxim that “[J]ustice delayed is justice denied.” As long as a disinterested, knowledgeable hearings officer is appointed to this position, we support this proposal as a means to enhance the efficiency of the LIRAB and its important work.