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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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

Date: Tuesday, March 3, 2009
Time: 12:00 p.m.
Place: Conference Room 308
State Capitol

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

Re: H.B. 442 - Relating to Labor and Industrial Relations Appeals Board

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 442 authorizes the Labor and Industrial Relations Appeal Board to utilize a hearings officer.

II. CURRENT LAW

The current law does not expressly authorize the utilization of a hearings officer.

III. HOUSE BILL

The Department supports the H.B. 442 for the following reasons:

1. The Department recognizes that we are in a difficult fiscal year and must strive to do more with the resources we currently possess. The Labor and Industrial Relations Appeals Board would be able to utilize current staff and resources more effectively if this legislation took effect.
2. The hearings officer would help cut down on response times and create greater productivity and efficiency in the Labor and Industrial Relations Appeals Board.

TESTIMONY OF THE
LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

BEFORE THE

HOUSE COMMITTEE ON FINANCE

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

Tuesday, March 3, 2009, 12:00 PM (noon)

State Capitol, Conference Room 308
415 South Beretania Street, Honolulu, Hawai'i

IN SUPPORT OF

House Bill 442 - Relating to the Labor and Industrial Relations Appeals Board

Chair Oshiro, Vice Chair Lee, and Members of this Honorable Committee:

My name is Roland Thom. As Chairman of the Labor and Industrial Relations Appeals Board, I thank you for scheduling this measure for hearing. I offer testimony in support of this measure and urge the Committee to pass it.

The purpose of this bill is to authorize the Labor and Industrial Relations Appeals Board to utilize a hearings officer. Utilizing a hearings officer would allow the Board to expedite hearings on certain workers' compensation matters, including treatment plan issues, vocational rehabilitation issues, and temporary total disability issues. The hearings officer could hear these types of issues and propose a decision and order for review and approval by the full appeals board. This would afford expedited resolution of time-sensitive matters on appeal from decisions of the Director of Labor and Industrial Relations.

The bill achieves this goal by expressly adding the words "hearings officer" to the statute, § 371-4, *HRS*. The hearings officer would conduct a hearing and prepare a proposed Decision and Order for review and approval by the Board. The bill also adds these words to § 371-6, *HRS*, a section concerning the powers respecting oaths, subpoenas, etc. This measure has also been introduced as Senate Bill 64 by Senator Dwight Takamine, Chair of the Senate Labor Committee, and it has crossed over to the House.

Utilizing one of the Board's existing staff attorneys as a hearings officer will not reduce the workload or shorten the workday of the Board. The Board will continue to schedule trials every day as usual, but the time needed to determine certain types of issues in specific cases would be shortened. The specific issues would be fast-tracked, as it were,

by the hearings officer. The hearing itself would not be rushed; it would just occur sooner in the appeal hearing process.

The Board is established by § 371-4, *HRS*. It is comprised of three members appointed by the Governor and confirmed by the State Senate. By statute, the Board decides appeals from Decisions and Orders of the Director of Labor and Industrial Relations issued under the workers' compensation law (Chapter 386, *HRS*).

Annually, parties appeal several hundred Decisions and Orders of the Director to the Labor Appeals Board. For example:

- July 1, 2005 through June 30, 2006: 709 appeals
- July 1, 2006 through June 30, 2007: 614 appeals
- July 1, 2007 through June 30, 2008: 597 appeals

While a decrease in the number of appeals is a welcome one, the number of appeals is still somewhat elevated compared to historic levels. Each appeal can require from four to eight hours of trial or hearing time, not to mention the hours of time spent conducting initial conferences, settlement conferences, and hearings on motions relating to each matter. The Board schedules these appeals for trial in the order in which they are received.

Passage of this bill will promote and support more timely decisions. For example, it is not reasonable for parties or physicians to wait for a determination to be made on the reasonableness and necessity of a particular treatment plan a year after the plan was recommended. A patient's condition might worsen, the physician's opinion can change, or medical advances may well affect the propriety of a treatment plan. A hearings officer could hold a hearing on treatment plans in a more efficiently-sized conference room, while the Board conducts trials in another case 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.

I thank this Committee for scheduling this hearing and ask this Committee to pass this measure.

THE HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON FINANCE
Sen. Marcus R. Oshiro, Chair
Sen. Marilyn B. Lee, Vice Chair

Date: Tuesday, March 3, 2009
Time: 12:00 p.m.
Place: Conference Room 308, State Capitol

TESTIMONY OF ILWU LOCAL 142

RE: HB 442, RELATING TO LABOR AND INDUSTRIAL
RELATIONS APPEALS BOARD

Thank you for the opportunity to present testimony regarding HB 442. We support this bill.

HB 442 proposes that the Labor and Industrial Relations Appeals Board ("LIRAB") be allowed to utilize a hearing officer to expedite the resolution appeals before the Board. In time-sensitive appeals concerning vocational rehabilitation, medical care, and termination of temporary total disability benefits, a hearing by a hearing officer can be of dramatic benefit to all parties. Time is of the essence in addressing matters of this nature, but 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 is effectively denied by the length of time necessary to adjudicate these issues.

If HB 442 is enacted, it will therefore hopefully address the maxim that "[J]ustice delayed is justice denied." Efficient adjudication will also reduce unnecessary costs that accrue solely because of delays in making determinations on disputed issues. Thus, adoption of HB 442 should actually serve to reduce expenses and contribute overall toward employer premium reduction, while giving injured workers more timely adjudication of their claims. We therefore support this proposal as a means to enhance the efficiency of the LIRAB and its important work.