

NO. CAAP-12-0000709

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

JEFFREY P. BRANCO, Claimant-Appellee  
v.  
MARK'S ROOFING, INC., Employer-Appellant, Delinquent,  
and  
SPECIAL COMPENSATION FUND, Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(CASE NO. AB 2008-584(K) (4-08-00404))

ORDER GRANTING EMPLOYER-APPELLANT'S  
DECEMBER 06, 2012 MOTION FOR WITHDRAWAL  
OF THE NOTICE OF APPEAL FILED ON AUGUST 10, 2012  
(By: Nakamura, C.J., Foley and Fujise, JJ.)

Upon consideration of the "Motion for Order Granting Withdrawal of Employer-Appellant, Delinquent, Mark's Roofing, Inc's Notice of Appeal to the Intermediate Court of Appeals Filed on August 10, 2012, Without Prejudice" (Motion), the papers in support, the record and files herein, and noting no opposition, it appears as follows:

(1) Employer-Appellant Mark's Roofing, Inc. (Employer) frames the Motion as one to withdraw the notice of appeal;

however, Employer in essence seeks, and the court will review the Motion as, a dismissal of the appeal, in part based on this court's November 14, 2012 Order that included a determination that this court lacked jurisdiction over compensability issues where no decision as to the amount of compensation has yet been made by the Director of the Department of Labor and Industrial Relations, consistent with Mitchell v. State of Hawai'i, Department of Education, 77 Hawai'i 305, 308, 884 P.2d 368, 371 (1994).

(2) Although Employer seeks a dismissal "without prejudice," any future "right to appeal is purely statutory and exists only when given by some constitutional or statutory provision." Burke v. County of Maui, 95 Hawai'i 288, 289, 22 P.3d 84, 85 (2001). Therefore,

IT IS HEREBY ORDERED that the Motion is granted as follows. The appeal is dismissed. Any subsequent appeal in the underlying case may be taken as permitted by law.

DATED: Honolulu, Hawai'i, December 21, 2012.

Chief Judge

Associate Judge

Associate Judge