

NO. CAAP-11-0001034

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

FRANCISCO ALVAREZ,
Claimant-Appellee,
v.
KYO-YA, INC., dba SHERATON WAIKIKI HOTEL,
Employer-Appellee,
and
FIRST INSURANCE COMPANY OF HAWAII, LTD.,
Insurance Carrier-Appellee
and
ADJUSTING SERVICES OF HAWAII, INC.,
Third-Party Administrator-Appellee
v.
EMERSON M.F. JOU, M.D.,
Intervenor-Appellant

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(AB NO. 2009-305 (2-94-05744))

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Leonard and Reifurth, JJ.)

In this workers' compensation case, Intervenor-Appellant Emerson M.F. Jou, M.D. (Dr. Jou) appeals from a November 29, 2011 Decision and Order (D&O) by the Labor and Industrial Relations Appeals Board (LIRAB) dismissing Dr. Jou's appeal from a decision by the Department of Labor and Industrial Relations (DLIR) regarding Dr. Jou's request for his fees as a

medical service provider for Claimant-Appellee Francisco Alvarez (Alvarez).

Alvarez worked as an employee for Kyo-Ya, Inc. dba Sheraton Waikiki Hotel (Sheraton). Sheraton obtained workers' compensation insurance from Insurance Providers-Appellees First Insurance Company of Hawaii, Ltd. (First Insurance), and Adjusting Services of Hawaii, Inc. Alvarez suffered an injury in the course of employment. Dr. Jou provided medical services for Alvarez's injury. A dispute arose between Sheraton, First Insurance and Dr. Jou regarding Dr. Jou's requested fees for his medical services. The parties submitted this dispute to the DLIR for resolution.

On November 5, 1998, the DLIR issued a decision regarding which fees Dr. Jou could and could not recover.

On March 23, 2009, Dr. Jou appealed from the DLIR's November 5, 1998 decision to the LIRAB.

On November 29, 2011, the LIRAB issued the D&O that dismissed Dr. Jou's appeal as untimely. The LIRAB mailed this D&O to the parties on the same day the D&O was issued.

On December 9, 2011, Dr. Jou filed a notice of appeal from the LIRAB's D&O.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we conclude Jou's appeal is without merit.

Under Hawaii Revised Statutes (HRS) § 386-87(a), Dr. Jou had twenty days after a copy of the DLIR's November 5, 1998 decision was sent to him to appeal therefrom to LIRAB. Kissell v. Labor and Indus. Relations Appeals Bd., 57 Haw. 37, 549 P.2d 470 (1976). Dr. Jou did not appeal the DLIR decision until March 23, 2009.

This case is distinguishable from Jou v. Hamada, 120 Hawai'i 101, 201 P.3d 614 (Haw. App. 2009), in which Dr. Jou filed a timely appeal to the circuit court pursuant to

HRS § 91-14 seeking a judicial declaration that the no-appeal provision of Hawaii Administrative Rules § 12-15-94(d) was invalid. There was no such appeal in this case.

Therefore,

IT IS HEREBY ORDERED that the November 29, 2011 Decision and Order of the Labor and Industrial Appeals Board is affirmed.

DATED: Honolulu, Hawai'i, October 25, 2012.

On the briefs:

Stephen M. Shaw
for Intervenor-Appellant.

Presiding Judge

Laurie E. Keeno
(Law Offices of Leslie R. Kop)
for Employer-Appellee and
Insurance Carrier-Appellee.

Associate Judge

Associate Judge