

NO. 25795

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DONNA F. THOMAS, Claimant-Appellant,
v.
THE LAW OFFICE OF J.T. THOMAS and
FIRST INSURANCE COMPANY OF HAWAII, LTD.,
Employer/Insurance Carrier-Appellee.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2001-219(M) (7-88-4491) (HILO))

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Nakamura, and Fujise, JJ.)

In this workers' compensation case, Claimant-Appellant Donna F. Thomas (Claimant) appeals from the April 3, 2003, Decision and Order of the Labor and Industrial Relations Appeals Board (the Board) that granted summary judgment in favor of Insurance Carrier-Appellee First Insurance Company of Hawaii, Ltd. (First Insurance) and denied Claimant's request to reopen her claim for a June 28, 1988, work injury. The Board affirmed the decision of the Director of the Department of Labor and Industrial Relations (the Director) that Claimant's request for reopening, filed on May 28, 1998, was barred as untimely because it was not filed within eight years of the last payment of

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compensation on account of the June 1988 injury, as required by Hawaii Revised Statutes (HRS) § 386-89 (1993).¹

I.

Claimant was married to and employed by J.T. Thomas, a practicing attorney, and Claimant worked at the Law Offices of J.T. Thomas as a secretary, officer manager, and paralegal. On June 28, 1988, Claimant sought medical treatment from Dr. D. Mathias, complaining that she had aggravated a preexisting back condition from sitting and typing at work. Dr. Mathias diagnosed Claimant as having a lumbrosacral strain. Dr. Mathias did not document any symptoms or difficulties associated with Claimant's upper extremities. Dr. Mathias released Claimant for light duty effective July 5, 1988, and for regular work on July 20, 1988. On December 29, 1988, First Insurance, the workers' compensation insurance carrier for J.T. Thomas at the time of Claimant's June 1988 injury, paid \$103.43 in medical benefits. This was the only

¹ Hawaii Revised Statutes (HRS) § 386-89 (1993) provides, in relevant part, as follows:

~~§ 386-89 Reopening of cases; continuing jurisdiction of director.~~

. . . .

(c) On the application of any party in interest, supported by a showing of substantial evidence, on the ground of a change in or of a mistake in a determination of fact related to the physical condition of the injured employee, the director may, at any time prior to eight years after date of the last payment of compensation, whether or not a decision awarding compensation has been issued, or at any time prior to eight years after the rejection of a claim, review a compensation case and issue a decision which may award, terminate, continue, reinstate, increase, or decrease compensation. . . .

(Emphasis added.)

workers' compensation payment made by First Insurance on account of Claimant's June 1988 work injury.

On August 5, 1988, J.T. Thomas canceled his workers' compensation insurance policy with First Insurance. In the early to mid-1990's, Claimant obtained treatment for repetitive stress injuries to her upper extremities, was diagnosed with carpal tunnel syndrome, and underwent surgery on both arms. On May 28, 1998, Claimant filed a claim to reopen the case on her June 1988 work injury seeking further benefits.

II.

According to Claimant, J.T. Thomas (her employer-husband) made voluntary payments of workers' compensation benefits to her at various times between 1988 and 1994, when she was unable to work or was seeking medical treatment due to her repetitive stress injuries. The dispositive issue on appeal is whether the Board erred in granting summary judgment on the basis that any payments made by J.T. Thomas to Claimant after 1988 did not constitute payment for compensation on account of the June 1988 injury and thus Claimant's request for reopening was barred by HRS § 386-89(c)'s eight-year statute of limitations.

After careful review and consideration of the record and the briefs submitted by the parties, we hold as follows:

1. The Board properly granted summary judgment in favor of First Insurance. In support of its motion for summary judgment, First Insurance submitted the affidavit of adjuster Carrie Richardson. The affidavit stated that the only workers' compensation payment made for Claimant's June 1988 work injury

was a \$103.43 payment made on December 29, 1988, to Claimant's doctor. Claimant did not respond with specific facts showing that any payments made by her employer-husband after 1988 were compensation on account of her June 1988 injury. See Hawai'i Rules of Civil Procedure (HRCP) Rule 56(e). It was undisputed that J.T. Thomas did not submit any WC-3 reports to the Director to document or verify that any payments J.T. Thomas made after 1988 were compensation for the June 1988 work injury. See HRS § 386-95 (1993) (requiring an employer to submit an annual report to the Director "with respect to each injury on which the employer is continuing to pay compensation, showing all amounts paid by the employer on account of the injury"). In addition, Claimant did not proffer competent evidence showing that any post-1988 payments made by her employer-husband were on account of the June 1988 work injury.

We conclude that there was no genuine issue of material fact that Claimant failed to file her request for reopening within eight years after the last payment of compensation on account of her June 1988 injury, as required by HRS § 386-89(c). Accordingly, First Insurance was entitled to judgment as a matter of law because Claimant's request for reopening was barred by HRS § 386-89(c). See HRCP Rule 56(c); First Hawaiian Bank v. Weeks, 70 Haw. 392, 396-97, 772 P.2d 1187, 1190 (1989).

2. Claimant argues that the Board erred when it "failed to find" that her employer-husband canceled his workers' compensation insurance policy based on erroneous advice from a First Insurance employee. The reasons for J.T. Thomas's decision

to cancel his insurance policy have no bearing on whether Claimant's request to reopen her claim for the 1988 injury was timely. We therefore conclude that Claimant's allegations regarding the reasons behind her employer-husband's cancellation of his insurance policy do not provide any basis for attacking the Board's decision.

IT IS HEREBY ORDERED that the April 3, 2003, Decision and Order of the Labor and Industrial Relations Appeals Board is affirmed.

DATED: Honolulu, Hawai'i, August 11, 2006.

On the briefs:

Charles J. Ferrera,
(Steven Booth Songstad
on the briefs)
for Claimant-Appellant.

Scott R. Devenney
Ann K. Kuwaye
(Devenney & Kuwaye)
for Employer and Insurance
Carrier-Appellee



Presiding Judge



Associate Judge



Associate Judge