NO. 24895

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

FRANCISCO ALVAREZ, Claimant-Appellee,

vs.

KYO YA COMPANY, LTD. AND FIRST INSURANCE LI ATE COURTS COMPANY OF HAWAII, LTD., Employer/Insurance Carrier-Appellee,

and

EMERSON M. F. JOU, M.D., Appellant.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS (CASE NO. AB 99-014) (2-94-05744)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Appellant Emerson M.F. Jou, M.D. appeals from the January 15, 2002 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB) determining that Jou's August 7, 1998 treatment plan was not reasonable or necessary. On appeal, Jou contends that the hearing before the Director of Labor and Industrial Relations violated his right to due process and equal protection, thereby resulting in an unconstitutional taking.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented we hold that: (1) Jou has waived the claims advanced on appeal because they

were not properly presented in an appropriate manner, <u>see Hawai'i</u>

<u>Revised Statutes</u> § 641-2 (1993); (2) assuming <u>arguendo</u> that Jou

properly presented the arguments raised on appeal before the

LIRAB, he fails to present a sufficient record to positively show
the alleged error, <u>see State v. Hoang</u>, 93 Hawai'i 333, 334, 3

P.3d 499, 500 (2000); <u>Bettencourt v. Bettencourt</u>, 80 Hawai'i 225,
230, 909 P.2d 553, 558 (1995); and (3) Jou's statement of points
of error fails to indicate where in the record the alleged error

(a) occurred and (b) was objected to or the manner in which the
alleged error was brought to the attention of the agency, in
violation of Hawai'i Rules of Appellate Procedure Rule 28(b)(4)

(2000). Accordingly,

IT IS HEREBY ORDERED that the January 15, 2002 decision and order of the LIRAB is affirmed.

James E. Dubby , Jr.

DATED: Honolulu, Hawai'i, March 30, 2005.

On the briefs:

Stephen M. Shaw, for appellant

Paul A. Brooke, for employer/insurance carrier-appellee

On the record:

Francisco Alvarez, claimant-appellee, appearing pro se