

NOTICE TO REQUESTER

TO: request+9v3msv8ga4@foi.uipa.org
(Requester's name)

FROM: Department of Labor & Industrial Relations - Disability Compensation Division
Royden T. Koito / (808) 586-9153 / Royden.T.Koito@Hawaii.gov
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: December 2, 2021

DATE OF THIS NOTICE: January 3, 2022

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. See attached Request to Access a Government Record
- 2.
- 3.
- 4.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

Will be granted in its entirety.

Cannot be granted. Agency is unable to disclose the requested records for the following reason:

- Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records: _____
- Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
- Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))

Will be granted in part and denied in part, OR Is denied in its entirety

Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.

(Describe the portions of records that the agency will not disclose.)

RECORDS OR
INFORMATION WITHHELD

APPLICABLE
STATUTES

AGENCY
JUSTIFICATION

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- Inspection at the following location: _____
- As requested, a copy of the record(s) will be provided in the following manner:
- Available for pick-up at the following location: _____
 - Will be mailed to you.
 - Will be transmitted to you by other means requested: Electronic – See attachment

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- On January 3 2022.
- After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: _____ hours	\$
	(\$2.50 for each 15-minute period)	
Review & segregation	Estimate of time to be spent: _____ hours	\$
	(\$5.00 for each 15-minute period)	
Fees waived	<input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60)	<\$ _____ >
	(Only one waiver per request)	
Other	_____	\$
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
Total Estimated Fees:		\$

For public or personal record requests:

Costs: Copying	Estimate of # of pages to be copied: _____	\$
	(@ \$ _____ per page, pursuant to HRS § 92-21)	
Delivery	Postage	\$
Other	_____	\$
Total Estimated Costs:		\$

TOTAL ESTIMATED FEES AND COSTS from above: \$ 0.00

- The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.
- PREPAYMENT IS REQUIRED (50% of fees + 100% of costs, as estimated above) \$
- UNPAID BALANCE FROM PRIOR REQUESTS (100% must be paid before work begins) \$

TOTAL AMOUNT DUE AT THIS TIME \$ 0.00

Payment may be made by: cash
 personal check payable to _____
 other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, ois@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

REQUEST TO ACCESS A GOVERNMENT RECORD

This is a model form that may be used by a Requester to provide sufficient information for an agency to process a record request. Although the Requester is not required to use this form or to provide any personal information, the agency needs enough information to contact the Requester with questions about this request or to provide its response. This request may not be processed if the agency has insufficient information or is unable to contact the Requester.

DATE: 12-02-2021

TO: **Department of Labor & Industrial Relations**
Agency that Maintains the Government Record

dlir.director@hawaii.gov
Agency's Contact Information

FROM: request+9v3msv8ga4@foi.uipa.org
Requester's Name or Alias

request+9v3msv8ga4@foi.uipa.org
Requester's Contact Information

AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the requested government record will prevent delays in locating the record. Attach additional pages if needed.

I would like to obtain all of the policies and procedures that are involved in the administration of **Hearings**; from how they are requested; how and why they are allowed or denied; how they are conducted; how are documents and testimony requested and submitted; and how the decision requested through a Hearing is reached.

I have NOT been able to find this information anywhere. After I receive the requested information, I will be sharing it with several local (Honolulu and Hawaii) organizations that provide help for local injured employees that have Temporary Disability Insurance and Workers' Compensation claims.

I WOULD LIKE: (Please check one or more of the options below, as applicable)

To inspect the government record

A copy of the government record: (Please check only one of the options below.) See the next page for information about fees and costs that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

- Pick up at agency (date and time): _____
- Mail (address): _____
- E-mail (address): request+9v3msv8ga4@foi.uipa.org
- Fax (toll free and only if available; provide fax number): _____
- Other, if available (please specify): _____

If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.

Electronic Audio Other (please specify): _____

Check this box if you are attaching a request for waiver of fees in the public interest (See waiver information on next page).

FEES FOR PROCESSING PUBLIC RECORD REQUESTS

You may be charged fees for the services that the agency must perform when processing your request for public records, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you.** Fees are as follows:

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

Generally, no search, review, and segregation fees may be charged if you are making a request for personal records that are about you.

WAIVER OF FEES IN THE PUBLIC INTEREST

As an alternative to the \$30 fee waiver (not in addition to), the agency may waive the first \$60 of fees for searching for, reviewing and segregating records when the waiver would serve the public interest. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

COSTS

The Agency may charge you any other lawful fees and the costs to copy and deliver your personal or public record request.

AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in *extenuating circumstances*, the agency must respond within 20 business days from the date of your request. If you have questions about the response time or the records being sought, you should first contact the agency and request to consult with the agency's UIPA contact person.

Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies and a requester must seek records directly from the agency. If the agency denies or fails to respond to your

written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at 808-586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

REQUESTER'S RESPONSIBILITIES

You have certain responsibilities under section 2-71-16, Hawaii Administrative Rules, which include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees and costs, if assessed. The rules and additional training materials are available online at oip.hawaii.gov or from OIP.

Attachment to Notice-to-Requestor
Policies and Procedures pertaining to Hearings

Note: This division does not maintain policies and procedures pertaining to the IME and IPE examinations you are asking about. Instead, the division follows and complies with the applicable Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR).

Here is our response to the information you requested.

- All of the policies and procedures that are involved in the administration of hearings (Workers' Compensation (WC) and Temporary Disability Insurance (TDI))
 - From how they are requested.
 - WC Hearings are requested pursuant to Sections 386-86, 386-71 and 386-73, Hawaii Revised Statutes (HRS) (attached).
 - TDI Hearings are requested pursuant to Section 392-71 through 392-76, HRS (attached). Reconsiderations of final decisions are found in Section 392-79, HRS (attached). Claim denials are referenced in Section 12-11-41, Hawaii Administrative Rules (HAR) (attached).
 - How and why they are allowed or denied.
 - Requests for WC hearings are not denied unless the case is fully washed or the request for hearing was to address an issue already decided upon by a higher court.
 - WC Hearings are not scheduled if the Department of Labor & Industrial Relations (DLIR) – Disability Compensation Division (DCD) does not have jurisdiction over the case. This, however, is not considered as a denial, rather a deferral as the case will be scheduled when the case is returned to the jurisdiction of the DLIR-DCD.
 - TDI proceedings to determine employment/coverage is found in Section 392-21.5, HRS (attached).
 - How they are conducted;
 - WC Hearings are conducted pursuant to 386-86 (attached).
 - TDI Hearings are conducted in accordance with Chapters 91 and 392, HRS.
 - How are documents and testimony requested and submitted; and
 - WC. Documents are requested by our office if they are required for the conduct of the hearing and are not in the case file. The request is made via email or written correspondence. The documents are submitted by USPS or by messenger to our office.

- TDI. Documents are requested by our office if they are required for the conduct of the hearing and are not in the case file. The request is made via email or written correspondence. The documents are submitted by USPS or by messenger to our office. HRS.
- How the decision requested through a hearing is reached.
 - WC and TDI Decisions are reached by collecting and analyzing all evidence gathered, including testimony, and applying the applicable laws (i.e. Chapters 386 and 392, HRS).

§386-86 Proceedings upon claim; hearings. (a) If a claim for compensation is made, the director shall make such further investigation as deemed necessary and render a decision within sixty days after the conclusion of the hearing awarding or denying compensation, stating the findings of fact and conclusions of law. The director may extend the due date for decisions for good cause provided all parties agree. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.

(b) The hearing shall be informal and shall afford the parties a full and fair opportunity to present the facts and evidence to be considered. Hearings under this section shall not be subject to chapter 91. No stenographic or tape recording shall be allowed.

(c) The order of presentation shall not alter the burden of proof, including the burden of producing evidence and the burden of persuasion. The party or parties who bear these burdens shall be determined by law consistent with the purposes of this section.

(d) Should the injured employee or injured employee's representative, or the employer or employer's representative fail to appear at the hearing, the director may issue a decision based on the information on file. The decision shall be final unless appealed pursuant to section 386-87. In all other circumstances, a decision shall not be rendered by the director without a hearing, which may not be waived by the parties.

(e) For the purpose of obtaining any matter, not privileged, which is relevant to the subject matter involved in the pending action, the director, upon application and for good cause shown, may order the taking of relevant testimony by deposition, upon oral examination, or written interrogatories, or by other means of discovery in the manner and effect prescribed by the Hawaii rules of civil procedure; provided that when the claimant's deposition is taken, the employer shall pay for the cost to the claimant of attending the deposition, any costs associated with having the deposition transcribed and copied, and any and all reasonable attorney's fees and costs incurred by the claimant with respect to the deposition.

(f) Subpoenas requiring the attendance of witnesses at a hearing before a hearings officer or for the taking of a deposition or the production of documentary evidence from any place within the State at any designated place of hearing may be issued by the director or a duly authorized representative. The employer shall serve a claimant with a copy of a medical record subpoena unless the employer has previously obtained the claimant's authorization to examine the claimant's medical records. Should the claimant subpoena medical records, the employer shall be served a copy. The party subpoenaing the records shall provide these records within fifteen calendar days of their receipt to the employer, claimant, and the special compensation fund if a joinder has been filed, or their representatives. These records shall be submitted by the party requesting the subpoena to the director within seven calendar days of the date of the notice of hearing or upon request by the director. A party who desires to enforce the director's subpoena shall seek enforcement from a court of competent jurisdiction. [L 1963, c 116, pt of §1; Supp, §97-95; HRS §386-86; am L 1985, c 296, §8; am L Sp 2005, c 11, §8]

Law Journals and Reviews

One-Sided Bargain? Assessing the Fairness of Hawai'i's Workers' Compensation Law. 31 UH L. Rev. 553 (2009).

Case Notes

Where no lawful claim was filed with the director, director lacked the statutory authority either to award or to deny benefits to injured employee. 89 H. 411, 974 P.2d 51 (1999).

[Previous](#)

[Vol107_Ch0346-0398](#)

[Next](#)

PART III. ADMINISTRATION

Law Journals and Reviews

One-Sided Bargain? Assessing the Fairness of Hawai'i's Workers' Compensation Law. 31 UH L. Rev. 553 (2009).

§386-71 Duties and powers of the director in general. The director of labor and industrial relations shall be in charge of all matters of administration pertaining to the operation and application of this chapter. The director shall have and exercise all powers necessary to facilitate or promote the efficient execution of this chapter and, in particular, shall supervise, and take all measures necessary for, the prompt and proper payment of compensation.

If an injury which may be compensable under this chapter is reported to, or comes to the notice of, the department of labor and industrial relations, the director and the director's staff shall investigate such injury to the extent as may appear necessary. The director shall cause to be printed and furnished free of charge to any employer or employee such blank forms as the director deems requisite to the performance of the director's functions. The blanks shall also be supplied by the director to the clerks of the respective circuit courts, who shall furnish the same to any employer or employee free of charge pursuant to any rules issued by the director. [L 1963, c 116, pt of §1; Supp, §97-70; HRS §386-71; gen ch 1985]

Case Notes

Cited: 43 H. 173, 180 (1959).

[Previous](#)

[Vol107_Ch0346-0398](#)

[Next](#)

§386-73 Original jurisdiction over controversies. Unless otherwise provided, the director of labor and industrial relations shall have original jurisdiction over all controversies and disputes arising under this chapter. The decisions of the director shall be enforceable by the circuit court as provided in section 386-91. There shall be a right of appeal from the decisions of the director to the appellate board and thence to the intermediate appellate court, subject to chapter 602, as provided in sections 386-87 and 386-88, but in no case shall an appeal operate as a supersedeas or stay unless the appellate board or the appellate court so orders. [L 1963, c 116, pt of §1; Supp, §97-72; HRS §386-73; am L 1969, c 244, §2b; am L 1979, c 111, §18; am L 2004, c 202, §42; am L 2006, c 94, §1; am L 2010, c 109, §1]

Cross References

Appeal, see chapter 91.

Rules of Court

Appeal to supreme court, stay, see Hawaii Rules of Appellate Procedure.

Case Notes

This section and §386-88 supersede §91-14 and remove the circuit court from the appellate process with regard to proceedings brought under chapter 386. 53 H. 640, 500 P.2d 746 (1972).

"Independent system of legal relations" in this chapter debars declaratory relief under chapter 632. 64 H. 380, 641 P.2d 1333 (1982).

Section does not deprive circuit court of subject matter jurisdiction over common law tort claims not based on the original work injury. 83 H. 457, 927 P.2d 858 (1996).

Where claimant's common law tort claims against employer's insurer did not arise under this chapter, director did not have original jurisdiction under this section. 83 H. 457, 927 P.2d 858 (1996).

Where claimant's complaint raised a "controversy or dispute under this chapter" over which the director had original jurisdiction, summary judgment properly granted by circuit court as court was without jurisdiction over claim. 83 H. 457, 927 P.2d 858 (1996).

A settlement or compromise of future workers' compensation benefits constitutes a controversy or dispute within the original jurisdiction of the director of labor and industrial relations under this section. 90 H. 152, 977 P.2d 160 (1999).

Under §386-8, this section, and Hawaii administrative rule §12-10-31, a settlement or compromise of future workers' compensation benefits cannot be valid or binding without the consent or approval of the director of labor and industrial relations. 90 H. 152, 977 P.2d 160 (1999).

Where plaintiff's claims did not arise under this chapter, the exclusive remedy and original jurisdiction provisions in the workers' compensation statute did not apply, and where plaintiff's claims for relief of tortious conduct on the part of workers' compensation insurer were not within the original jurisdiction of the labor director, trial court erred in granting summary judgment on that basis. 90 H. 407, 978 P.2d 845 (1999).

This section and §386-87 set forth the right to appeal from the decisions of the director in workers' compensation cases and it gives a party the

right to appeal the decision of the director in a medical fee dispute to the labor and industrial relations appeals board; thus, the no-appeal provision of Hawaii administrative rule §12-15-94(d) was invalid as inconsistent with this chapter, and the director exceeded the director's rulemaking authority in making the director's decisions in medical fee disputes final and non-appealable. 120 H. 101 (App.), 201 P.3d 614 (2009).

Where employee appealed the director of labor and industrial relations' (director) decision, which deferred determination of compensability on employee's workers' compensation claim until employee complied with the ordered independent medical examination, the labor and industrial relations appeals board (LIRAB) was required to exercise jurisdiction over the appeal because the LIRAB's failure to review the director's decision until entry of a final decision on employee's entitlement to benefits would deprive employee of adequate relief. 134 H. 99 (App.), 332 P.3d 701 (2014).

Cited: 24 H. 731, 736 (1919).

[Previous](#)

[Vol107_Ch0346-0398](#)

[Next](#)

PART V. DETERMINATIONS

A. Appeal Procedure

[S392-71] **Appeal tribunal.** Appeals shall be heard by an impartial referee for temporary disability benefits appeals who shall be appointed by the director and who shall serve as the appeal tribunal. [L 1969, c 148, pt of S1]

[Previous](#)

[Vol07_Ch0346-0398](#)

[Next](#)

§392-72 Appeals, filing, and hearing. (a) If a person disputes the amount of benefits, paid under part III or part IV, or the denial of benefits, the claimant may file an appeal, in the form and manner prescribed by rule of the director, at the office of the department, within twenty days after the date of payment of such disputed benefits or the denial thereof. Notice of the appeal shall be served upon the employer or insurer or the trust fund for disability benefits in the form and manner prescribed by rule of the director. Notice of a hearing of an appeal shall be sent by electronic service or by first-class mail to the claimant and insurer or employer or trust fund for disability benefits at least fifteen calendar days prior to the hearing. If notice sent by electronic service or by first-class mail is attempted but not made, and the department has been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by online posting on the department's webpage. The online posting shall appear at least fifteen calendar days prior to the date of the hearing. The online posting shall be removed from the webpage no less than five business days after the date of the hearing.

(b) The appeal may be heard in any county, and the parties may appear at the hearing in person, by telephone, or by other communication devices approved by the department, or by a combination of the preceding methods. The parties shall be provided with notice of the hearing and shall be provided with the opportunity to object to the hearing being held in a county other than the county in which the claimant resides or in which the claimant was employed prior to the claimant's disability. Upon such objection, the hearing shall be heard in the county in which the claimant resides or in which the claimant was employed prior to the claimant's disability. Failure of a party to object to the location of the hearing within the time specified in the notice shall be deemed consent by the party to the location of the hearing. The department may provide for the taking of depositions. Unless the appeal is withdrawn with the permission of the referee, the referee after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof affirm, modify, or deny the disputed benefits. In the event any party fails to appear at the hearing, the referee shall issue a decision based on the available information. All parties shall be promptly notified of the decision of the referee and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision. The decision shall be final and shall be binding unless a proceeding for judicial review is initiated pursuant to section 392-75; provided that within the time provided for taking an appeal and prior to the filing of a notice of appeal, the referee may reopen the matter, upon application of the director or any party, or upon the referee's own motion, and thereupon may take further evidence or may modify the referee's decision, findings, or conclusions. In the event the matter is reopened, the referee shall render a further decision in the matter, either reaffirming or modifying the referee's original decision, and notice shall be given thereof in the manner hereinbefore provided. The time to initiate judicial review shall run from the notice of such further decision if the matter has been reopened. [L 1969, c 148, pt of §1; am L 1973, c 62, §1; gen ch 1985; am L 2013, c 100, §8; am L 2018, c 162, §3]

[§392-73] Procedure. The referee shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before the same shall be conducted in such manner as to ascertain the substantial rights of the parties. No person shall participate on behalf of the director in any case in which that person has a direct or indirect interest. A record shall be kept of all testimony and proceedings in connection with an appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the department and such fees shall be deemed part of the expenses of administering this chapter. [L 1969, c 148, pt of §1]

[Previous](#)

[Vol107_Ch0346-0398](#)

[Next](#)

[\$392-74] Conclusiveness of determinations and decisions. Except insofar as reconsideration is had under section 392-79, any right, fact, or matter in issue, directly passed upon or necessarily involved in an appeal which has become final, shall be conclusive for all the purposes of this chapter. [L 1969, c 148, pt of §1]

[Previous](#)

[Vol107_Ch0346-0398](#)

[Next](#)

§392-75 Judicial review. Any party or the director may obtain judicial review of the decision of the referee in the manner provided in chapter 91, by instituting proceedings in the circuit court of the circuit in which the claimant resides or in which the claimant was last employed. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except proceedings arising under the Employment Security Law and the Workers' Compensation Law of the State. Proceedings for review by the intermediate appellate court, subject to chapter 602, may be taken and had in the same manner as is provided for a review of a judgment of a circuit court. No bond shall be required as a condition of initiating a proceeding for judicial review or initiating proceedings for review by the intermediate appellate court. Upon the final termination of any judicial proceeding, the referee shall enter an order in accordance with the mandate of the court. [L 1969, c 148, pt of §1; am L 1975, c 41, §1; am L 2004, c 202, §47; am L 2006, c 94, §1; am L 2010, c 109, §1]

[Previous](#)

[Vo107_Ch0346-0398](#)

[Next](#)

§392-76 Representation. In any proceeding for judicial review pursuant to section 392-75, the director may be represented by the attorney general or by any qualified attorney who is employed by the department for that purpose in conformity with section 28-8.3. [L 1969, c 148, pt of §1; am L Sp 1993, c 8, §53; am L 2015, c 35, §38]

[Previous](#)

[Vol107_Ch0346-0398](#)

[Next](#)

[§392-79] Reconsideration. (a) At any time within one year from the date of a final decision with respect to wages upon which benefits are computed, the director on the director's own motion may reopen the decision if the director finds that wages of the claimant pertinent to the decision but not considered in connection therewith have been newly discovered or that benefits have been allowed or denied or the amount of benefits have been fixed on the basis of a nondisclosure or misrepresentation of a material fact.

(b) At any time within two years from the end of any week with respect to which a final decision allowing or denying benefits has been made, the director on the director's own motion may reopen the decision if the director finds that the benefits were allowed or denied as a result of nondisclosure or misrepresentation of a material fact.

(c) At any time within one year from the end of any week with respect to which a final decision allowing or denying benefits has been made, the director on the director's own motion may reopen the decision if the director finds that an overpayment, due to reasons other than fraud, has occurred.

(d) In any case in which the director is authorized by this section to reopen any final decision rendered by a referee or court, the director may petition the referee or court to issue a revised decision. [L 1969, c 148, pt of §1; gen ch 1985]

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCF rule 81(b) (12).

[Previous](#)

[Vo107_Ch0346-0398](#)

[Next](#)

HRS §§392-3, 392-25)

§12-11-38 Concurrent employment. (a) An employee is in concurrent employment when the individual is regularly and customarily in the employ of more than one covered employer within the same calendar week and is concurrently eligible for disability benefits from each of the employments.

(b) Hours of employment with two or more employers, concurrently, full-time or part-time, and wages earned therefrom, shall be aggregated for purposes of determining eligibility for benefits. [Eff 5/11/81; comp] (Auth: HRS §392-91) (Imp: HRS §§392-25, 392-43.5)

§12-11-39 Two-week period following termination of employment. The period of two consecutive weeks after termination of employment shall end on the fourteenth consecutive calendar day following the last day worked. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-6)

§12-11-40 Claim for reimbursement out of workers' compensation benefits. (a) If an employee who is eligible for benefits under the statute is disabled and has claimed or subsequently claims benefits under the workers' compensation law, and if the claim is denied by the director on the ground that the employee's disability was not caused by an accident that arose out of and in the course of the individual's employment or by an occupational disease under the workers' compensation law, the individual's employer or the employer's disability benefits carrier or the director shall forthwith pay benefits under the statute to the employee for the disability.

(b) If an employee who is eligible for benefits under the statute has claimed or subsequently claims benefits for an alleged disability under the statutes and under the workers' compensation law, and if the claim is disputed on the ground that the employee was not in fact disabled, the individual's employer or the employer's disability benefits carrier or the director shall forthwith file a statement to this effect with the department. Whereupon the claims under the statute and the workers' compensation law shall be combined and considered jointly in all subsequent proceedings for the purpose of determining the fact of disability. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-41)

§12-11-41 Denial of claim. (a) If an employee's claim for benefits is denied in whole or in part by the employer or employer's disability benefits carrier, a copy of the notice of denial, in the form prescribed by the director, shall be sent to the department. The department shall review the denial within ten days of receipt and request the employer or insurer to reconsider the denial if it

considers it to be erroneous, without proper legal basis, or without sufficient evidence. If the employer or insurer still decides to deny disability benefits, the employee and the department shall be so notified.

(b) If an employee desires a review of any action of the claim for benefits, the employee shall file with the director two copies of the notice of denial, the employee's request for appeal, and a statement in duplicate giving specific reasons for the request. The request for appeal shall be filed within twenty days from the date denial was mailed to the claimant. The appeal shall be filed at the office of the department in the county in which the claimant resides or in the county in which the claimant was employed prior to the disability. The director shall forthwith notify the employer or the employer's disability benefits carrier or the special fund for disability benefits, as the case may be, of the claimant's request for appeal, enclosing a copy of the claimant's statement of reasons therefor. Determination of the appeal shall be made in accordance with the provisions of Part V of chapter 392, Hawaii Revised Statutes. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-44.5)

§12-11-42 Disqualification for benefits. An individual shall be disqualified for disability benefits under section 392-66, HRS, during any period that the individual is disqualified for unemployment insurance benefits under section 383-30, HRS. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §§392-28, 392-66)

§12-11-43 No waiting period required for benefits from special fund. An individual who is eligible for disability benefits under section 392-66, HRS, shall be paid the benefits without serving a waiting period. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-66)

§12-11-44 Disposition of accrued benefits upon death. If any benefits due an employee are unpaid at the time of the employee's death, the benefits shall be payable to the employee's estate or, at the option of the carrier, may be paid to the surviving spouse, parent, child, or children of the deceased employee. Benefits that are due but are not so paid shall, after the expiration of one year from the date of employee's death, be paid into the special fund for disability benefits established pursuant to section 392-61, HRS. Upon making the payment into the special fund, the carrier shall immediately and thereafter be held harmless from all liability to the extent of the payment, and any claim thereafter for the benefits shall be filed with the director who shall determine the validity thereof. [Eff 5/11/81] (Auth: HRS §392-91) (Imp: HRS §392-61)

§12-11-45 Authorized physician, surgeon, dentist, chiropractor, osteopath, naturopath, or equivalent. Pursuant to

§392-21.5 Proceedings to determine employment and coverage. The director of labor and industrial relations shall have original jurisdiction over all controversies and disputes over employment and coverage under this chapter. Except in cases where services are specifically and expressly excluded from "employment" under section 392-5, it shall be presumed that coverage applies unless the party seeking exclusion is able to establish under both the control test and the relative nature of the work test that coverage is not appropriate under this chapter. There shall be a right of appeal from decisions of the director to the circuit court and thence to the intermediate appellate court, subject to chapter 602. [L 1996, c 94, §2; am L 2004, c 202, §46; am L 2006, c 94, §1; am L 2010, c 109, §1]

[Previous](#)

[Vol107_Ch0346-0398](#)

[Next](#)