

December 30, 1994

Sandra Roberts
P.O. Box 11451
Hilo, HI 96721-1451

Dear Ms. Roberts:

Re: Workers' Compensation Decisions Issued by the
Department of Labor and Industrial Relations

This is in response to your letter dated July 29, 1994 concerning your right to inspect and obtain a copy of a written decision and order issued by the Director of the State of Hawaii's Department of Labor and Industrial Relations ("DLIR") after it conducted a hearing concerning the compensability of a particular workers' compensation claim ("decision").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the DLIR must make available for public inspection and copying a written decision setting forth the findings of fact, decision, and order of the DLIR Director concerning the compensability of a workers' compensation claim.

BRIEF ANSWER

Yes. For the reasons described below, we believe that the DLIR's decisions fall within the scope of section 92F-12(a)(2), Hawaii Revised Statutes, which requires that "[a]ny provision to the contrary notwithstanding," an agency must make available for public inspection and copying "[f]inal opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases." Haw. Rev. Stat. § 92F-12(a)(2) (Supp. 1992). The UIPA's legislative history makes clear that the UIPA's exceptions to disclosure do not apply to the records listed in section 92F-12, Hawaii Revised Statutes.

Section 386-5, Hawaii Revised Statutes, provides that the workers' compensation system administered by the DLIR is the exclusive mechanism by which an employee's claim against an employer for a work-related injury can be determined. In order to issue a decision, the DLIR conducted a hearing on the matter and follows the standards for workers' compensation awards set

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forth in chapter 846, Hawaii Revised Statutes, and related administrative rules. Applying the analysis set forth in OIP Opinion Letter No. 90-40 (Dec. 31, 1990), we conclude that the DLIR's decisions are "orders made in the adjudication of cases" because they are "agency actions of particular applicability in which the legal rights, duties, and privileges of specific persons are determined based upon statutorily or administratively defined standards." OIP Op. Ltr. No. 90-40 at 10 (Dec. 31, 1990).

We also believe that the DLIR's decisions are "orders" that fall within the scope of section 92F-12(a)(2), Hawaii Revised Statutes, regardless of the fact that the DLIR's hearings are not contested case hearings governed by chapter 91, Hawaii Revised Statutes. Furthermore, it is our opinion that the DLIR's decisions are "final" on the departmental level although the decisions can be reviewed by the Labor and Industrial Relations Appeals Board on appeal. Consequently, section 92F-12(a)(2), Hawaii Revised Statutes, requires that, upon request, the DLIR make a decision available for public inspection and copying in its entirety after twenty days from the time that the decision is mailed to the parties, which is when the workers' compensation case can no longer be reopened by the DLIR for further consideration.

FACTS

When an employee claims to have suffered a "work injury," as this term is defined in section 386-1, Hawaii Revised Statutes, the employee must inform the employer in writing. In turn, the employer, or the employer's insurance carrier, is required to report the injury to the DLIR on a WC-1 Form entitled "Employer's Report of Industrial Injury" ("WC-1 Form").

If the employer denies liability for the alleged work injury on the WC-1 Form, or fails to file a WC-1 Form with the DLIR, the employee, or the employee's family member if the employee is deceased, may file with the DLIR a WC-5 Form entitled "Employee's Claim for Workers' Compensation Benefits." The DLIR will conduct a hearing when the employer denies liability, or when there is any other issue in dispute regarding the compensability of the alleged work injury. Although the DLIR holds more than five thousand workers' compensation hearings each year, this number is only a small percentage of the actual number of more than fifty thousand workers' compensation cases annually reported to the

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DLIR, most of which are processed routinely and paid by the employers' insurance carriers or from the DLIR's workers' compensation fund for self-insured employers.

The DLIR's hearing is not a contested case hearing that must comply with the requirements for contested case hearings set forth in chapter 91, Hawaii Revised Statutes. Salzman v. Ameron, Case No. AB 93-708 (Labor and Industrial Relations Appeals Board, September 8, 1994) (finding that chapter 91, Hawaii Revised Statutes, does not apply to the DLIR's hearings). Within sixty days after the conclusion of a hearing, the DLIR issues a written decision setting forth the findings of fact, decision and order of the DLIR's Director and signed by the DLIR's Workers' Compensation Administrator on the Director's behalf ("decision").

Within twenty days after the DLIR mails the decision to the parties, either the employer or employee may appeal the DLIR's decision by filing a written notice with the Labor and Industrial Relations Appeals Board ("Appeals Board"). The hearing that the Appeals Board holds for an appeal of a DLIR decision is a contested case hearing under chapter 91, Hawaii Revised Statutes. The Appeals Board publishes its appeal decisions in workers' compensation cases and publicly disseminates them.

In a workers' compensation case, the DLIR may also render certain orders and decisions for which a hearing is not held, for example, an order requiring the injured employee to appear for a medical examination by a physician selected by the employer, or a preliminary decision about an employee's medical stabilization, which refers to the employee's physical state when further improvement is not reasonably expected from curative health care or the passage of time. See sections 12-10-75 and 12-10-100, Hawaii Administrative Rules. However, this OIP advisory opinion only concerns those decisions issued by the DLIR denying claims or ordering the payment of benefits as a result of hearings held.

In order to prepare for an upcoming hearing concerning your workers' compensation claim, you requested to inspect and copy a DLIR decision in another specific workers' compensation case that, you believe, has similar factual issues. Your request was denied by the DLIR. Consequently, you requested an advisory opinion from the OIP on this matter. This opinion is limited to addressing the issue of whether the DLIR's decisions must be made available for public inspection and copying under the UIPA. The OIP will be issuing a separate opinion regarding whether the UIPA

requires other information about a workers' compensation claim to be made publicly accessible.

DISCUSSION

The UIPA declares that "[a]ll government records are open to public inspection unless access is restricted or closed by law."

Haw. Rev. Stat. § 92F-11(a) (Supp. 1992). In addition to this general rule of agency disclosure, the UIPA, in section 92F-12, Hawaii Revised Statutes, also sets forth a list of records, or categories of records, which must be made available for inspection as a matter of law. Section 92F-12, Hawaii Revised Statutes, provides in pertinent part:

§92F-12 Disclosure required. (a) Any provision to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

. . . .

- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases;

Haw. Rev. Stat. § 92F-12(a)(2) (Supp. 1992).

As to the records listed in section 92F-12, Hawaii Revised Statutes, the UIPA's legislative history clarifies that the UIPA's exceptions to public access, "such as for personal privacy and for frustration of legitimate government function are inapplicable." See S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988). Thus, if the DLIR's decisions after hearings in workers' compensation cases constitute "final opinions" or "orders made in the adjudication of cases," such decisions must be made available for public inspection under section 92F-12(a)(2), Hawaii Revised Statutes, regardless of whether other government records pertaining to a workers'

compensation case may be confidential under one or more UIPA exceptions.

An advisory opinion by the OIP for the State Housing Finance Development Corporation ("HFDC"), OIP Opinion Letter No. 90-40 (Dec. 31, 1990), sets forth an extensive analysis of the meaning of the term "order" that the Legislature may have intended in section 92F-12(a)(2), Hawaii Revised Statutes. In that opinion letter, the OIP concluded that a lease rent arbitration award issued by the HFDC is an "order" for purposes of section 92F-12(a)(2), Hawaii Revised Statutes, because "an arbitration award is an agency action of particular applicability that determines the legal rights, duties, and privileges of specific persons." OIP Op. Ltr. No. 90-40 at 10. In reaching this conclusion, the OIP also relied upon the fact that the HFDC or its designee "is acting in a relatively formal proceeding 'in which its decision is rendered upon a consideration of statutorily or administratively defined standards.'" Id.

In OIP Opinion Letter No. 90-40, the OIP also opined that for purposes of section 92F-12(a)(2), Hawaii Revised Statutes, "orders made in the adjudication of cases" are not limited to decisions resulting from contested case hearings that comply with chapter 91, Hawaii Revised Statutes. This conclusion was based upon an examination of federal court decisions interpreting section 552(a)(2)(A) of the federal Freedom of Information Act ("FOIA"), which requires federal agencies to publish "final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases." 5 U.S.C. § 552(a)(2)(A) (1985). The language of this FOIA provision is identical to the UIPA's section 92F-12(a)(2), Hawaii Revised Statutes.¹ See OIP Op. Ltr. No. 90-40 (Dec. 31, 1990).²

¹It is a cardinal rule of statutory construction that statutes that are in pari materia, or upon the same subject matter, should be construed together, as an aid to arriving at the meaning of the statute under consideration. Haw. Rev. Stat. § 1-16 (1985); see OIP Op. Ltr. No. 90-40 at 6 (Dec. 31, 1990).

²Section 92F-12(a)(2), Hawaii Revised Statutes, was adopted in its entirety from section 2-101 of the Uniform Information Practices Code ("Model Code") drafted and approved in 1980 by the National Conference of Commissioners on Uniform State Laws. The UIPA's legislative history directs those construing its provisions to consult the Model Code's commentary, where

Under Hawaii's Workers' Compensation Law, chapter 386, Hawaii Revised Statutes, the workers' compensation system administered by the DLIR is the exclusive mechanism available under Hawaii law by which an employee's claim against an employer for a work-related injury can be determined. Haw. Rev. Stat. § 386-5 (1985) ("excludes all other liability of the employer to the employee"); see Coates v. Pacific Engineering, 71 Haw. 358 (1990) (Hawaii State Supreme Court upheld exclusivity of Hawaii's workers' compensation law as constitutional). When the DLIR renders a decision concerning the compensability of a workers' compensation claim, we believe that the DLIR is "adjudicating" the claim because it is acting in a quasi-judicial capacity by determining "the legal rights, duties, and privileges of specific persons," namely the employee and the employer. OIP Op. Ltr. No. 90-40 at 10. See Haw. Rev. Stat. § 1-14 (1985) ("[w]ords of a law are generally to be understood in their most known and usual signification"). Thus, in our opinion, the DLIR's decisions constitute "orders made in the adjudication of cases" under section 92F-12(a)(2), Hawaii Revised Statutes.

Furthermore, because the DLIR does conduct an informal hearing where there is a workers' compensation claim in dispute and because the DLIR must assess a workers' compensation claim in accordance with the standards set forth in chapter 386, Hawaii Revised Statutes, and related administrative rules, we believe that the DLIR is "acting in a relatively formal proceeding 'in which its decision is rendered upon a consideration of statutorily or administratively defined standards.'" OIP Op. Ltr. No. 90-40 at 10; see Haw. Rev. Stat. 386-85 (1985) (statutory presumptions in any DLIR proceeding for enforcement of a workers' compensation claim); Haw. Rev. Stat. § 386-21 et seq. (1985) (criteria for determining the compensation to be provided

(..continued)

appropriate, to guide the interpretation of similar UIPA provisions. See H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988). The commentary to section 2-101 of the Model Code explains that this section is "similar in general requirement" to sections (a)(1), (2) and (3) of FOIA. Model Code § 2-101 commentary at 10 (1980); see OIP Op. Ltr. No. 90-40 at 5-6 (Dec. 31, 1990).

to a claimant). This bolsters our belief that the DLIR's decisions are "orders made in the adjudication of cases" under the analysis we employed in OIP Opinion Letter No. 90-40 (Dec. 31, 1990).

We reach our conclusion about the DLIR's decisions regardless of the fact that the DLIR's workers' compensation hearings are not contested case hearings under chapter 91, Hawaii Revised Statutes. See OIP Op. Ltr. No. 90-40 at 9-10. Notably, the Appeals Board characterizes the DLIR's decision making as an "adjudication" when concluding that "proceedings before the [DLIR] Director in which Chapter 386 matters are to be adjudicated are not contested cases," due to the fact that the DLIR's decisions can be appealed only to the Appeals Board and not to court. Salzman v. Ameron, Case No. AB 93-708 at 5 (Labor and Industrial Relations Appeals Board, September 8, 1994) (emphasis added).

To further determine whether the DLIR's decisions fall within the scope of section 92F-12(a)(2), Hawaii Revised Statutes, following rules of statutory construction, we refer to authorities interpreting the identical statutory language found in section 552(a)(2)(A) of FOIA that was cited previously. See OIP Op. Ltr. No. 90-40 (Dec. 31, 1990) (discusses how the Uniform Information Practices Code section that was adopted as section 92F-12(a)(2), Hawaii Revised Statutes, is based on this similar FOIA provision). With regard to this particular FOIA provision, the Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act ("1974 FOI Amendments Memorandum") states:

Both the adjective "final" in this provision, and the qualifying phrase "made in the adjudication of cases" should be read to apply to both "opinions" and "orders."

. . . .

The (a)(2)(A) requirement of finality is met when the opinion or order is "final" as to the agency, that is, when the agency makes a conclusive determination of a matter. The fact that the agency's determination may be subject to review by another body does not destroy this characteristic.

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1974 FOI Amendments Memorandum at 19-20 (emphasis added). We believe that the 1974 FOI Amendments Memorandum's analysis concerning the finality of an order under this FOIA requirement is relevant for determining when an order is "final" under section 92F-12(a)(2), Hawaii Revised Statutes.

Regarding the finality of the DLIR's decision, section 386-86, Hawaii Revised Statutes, provides:

§386-87 Appeals to appellate board. (a) A decision of the director shall be final and conclusive between the parties, except as provided in section 386-89, unless within twenty days after a copy has been sent to each party, either party appeals therefrom to the appellate board by filing a written notice of appeal with the appellate board or the department.

Haw. Rev. Stat. § 386-87 (1985). Section 386-89, Hawaii Revised Statutes, provides that, in the absence of an appeal, the DLIR may reopen a case within twenty days after providing the parties with copies of the order. A case can be reopened in order to permit the introduction of newly discovered evidence, and the DLIR may thereafter render a revised decision.

Applying the analysis set forth in the 1974 FOI Amendments Memorandum, we conclude that once the time period for reopening a workers' compensation case has passed, the DLIR's decision is a "final" order within the scope of section 92F-12(a)(2), Hawaii Revised Statutes. At this time, the DLIR's decision is final on the departmental level although the decision may be reviewed by the Appeals Board. Therefore, the DLIR must make its decision available for public inspection and copying after twenty days from the decision's issuance date, when the case can no longer be reopened.

We note that the FOIA's requirement that an agency publish final opinions and orders provides that the "agency may delete identifying details when it makes available or publishes an opinion." 5 U.S.C. § 552(a)(2) (1988). In contrast, the Hawaii State Legislature provided that the categories of records listed in section 92F-12(a), Hawaii Revised Statutes, including final

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opinions and orders in the adjudication of cases, must be made open to the public "any provision to the contrary notwithstanding." Haw. Rev. Stat. § 92F-12(a) (Supp. 1992). Accordingly, under the express provisions of the UIPA, the DLIR cannot segregate any information identifying the claimant from a decision before public disclosure, and must make the decision available for public inspection and copying in its entirety. See OIP Op. Ltr. No. 89-8 (Nov. 20, 1989) (certified payroll records must be made available in their entirety under section 92F-12(a)(9), Hawaii Revised Statutes).

CONCLUSION

We find that the DLIR's decisions in workers' compensation cases are final "orders made in the adjudication of cases." Therefore, under section 92F-12(a)(2), Hawaii Revised Statutes, the DLIR must make these decisions available for public inspection and copying after the time period during which a case can be reopened, which is the twenty days after the decision is sent to the parties, has passed. Under section 92F-12(a)(2), Hawaii Revised Statutes, the DLIR cannot segregate any information from its decisions before public disclosure, and must disclose them upon request in their entirety.

If you should have any questions concerning this advisory opinion letter, please do not hesitate to contact me at 586-1403.

Very truly yours,

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