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LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 99-009 (WH)
DIRECTOR, DEPARTMENT OF)	(OSHCO No. C4756)
LABOR AND INDUSTRIAL RELATIONS,)	(Rep. No. 120653852)
Complainant,)	
vs.)	
)	
METCALF CONSTRUCTION COMPANY,)	
Respondent.)	

FILED
 LAB AND I.R. DIVISION
 99 JAN 26 P 3:24

DECISION AND ORDER

This occupational safety and health case is before the Board on a written Notice of Contest, filed on March 23, 1999 by METCALF CONSTRUCTION COMPANY ("Respondent") to contest a Citation and Notification of Penalty issued to it by the Director of Labor and Industrial Relations, via the Division of Occupational Safety and Health ("Complainant").

On August 23, 1999, Complainant filed a motion to dismiss Respondent's Notice of Contest for untimeliness.

For the reasons stated below, we grant Complainant's motion to dismiss Respondent's Notice of Contest for untimeliness.

FINDINGS OF FACT

1. Complainant issued a Citation and Notification of Penalty against Respondent on January 14, 1999.
2. Respondent received the Citation and Notification of Penalty on January 15, 1999.

3. Respondent filed a Notice of Contest on March 23, 1999, to contest the Citation and Notification of Penalty. The Notice of Contest was filed more than twenty days after Respondent's receipt of the Citation and Notification of Penalty.

4. At the hearing on the motion to dismiss, Respondent conceded that the Notice of Contest was filed more than twenty days from the date of its receipt, but contended there existed cause for the untimely appeal. According to Respondent, an irresponsible employee, who was charged with the responsibility to handle these matters, misfiled the Citation and Notification of Penalty and failed to act on it.

CONCLUSIONS OF LAW

Hawaii Revised Statutes ("HRS") §396-11(a) states in pertinent part, as follows:

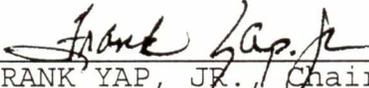
Any citation, proposed penalty, or order of the director shall be final and conclusive against the employer unless the employer files with the director a written notice of contest of the citation, the abatement periods stated in the citation, the proposed penalty, or order within twenty days after receipt of the citation, proposed penalty, or order.

We conclude that the reasons given by Respondent for the untimely appeal do not excuse Respondent from the requirements of HRS §396-11(a). Accordingly, Respondent's Notice of Contest shall be dismissed.

ORDER

Respondent's Notice of Contest of Complainant's Citation and Notification of Penalty is hereby dismissed for untimeliness.

Dated: Honolulu, Hawaii, OCT 26 1999.


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

Leo B. Young, Esq.
for Complainant

Brian G.S. Choy, Esq.
for Respondent

NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

