

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 2000-004
DIRECTOR, DEPARTMENT OF LABOR)	(OSHCO No. H2997)
AND INDUSTRIAL RELATIONS,)	(Report No. 302950530)
Complainant,)	
)	
vs.)	
)	
THE PRODUCE MARKET, INC.,)	
Respondent.)	
)	

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 LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

DECISION AND ORDER

This occupational safety and health case is before the Board on written notice of contest post-marked January 16, 2000 by Respondent THE PRODUCE MARKET, INC. Complainant, by its attorney, filed a motion to dismiss the notice of contest on the grounds the notice of contest was not timely filed.

The sole issue before the Board is whether Respondent's written notice of contest was filed within the period established by §396-11, Hawaii Revised Statutes (HRS).

FINDINGS OF FACT

1. A Citation and Notification of Penalty ("Citation") issued January 24, 2000, by the Department of Labor and Industrial Relations, Division of Occupational Safety and Health ("DOSHS") was received by Respondent on January 25, 2000.

2. Respondent's written notice of contest of the citation was post-marked February 16, 2000 and filed with DOSHS on February 18, 2000.



3. February 14, 2000 was the last day to perfect the appeal.

CONCLUSIONS OF LAW

Respondent's written notice of contest of the Citation was filed beyond the 20 day period established pursuant to §396-11, H.R.S. Said section states, in part; "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...within twenty days after receipt of such citation, proposed penalty or order."

The Hawaii Supreme Court has declared that the time for filing an appeal is mandatory. Kissell v. Labor & Indus. Rel. App. Bd., 57 Haw. 37, 38, 549 P.2d 470, 470-471 (1976).

In the instant case, Respondent's written notice of contest of the citation was filed late. The Citation was received by Respondent on January 25, 2000, and Respondent's written notice of contest of the citation was post-marked February 16, 2000, two (2) days after the due date for filing. Accordingly, the mandatory nature of HRS §396-11, requires dismissal of this appeal.

ORDER

Respondent's written notice of contest of the Citation and Notification of Penalty by the Division of Occupational Safety

and Health, Department of Labor and Industrial Relations dated January 24, 2000, is hereby dismissed.

Dated: Honolulu, Hawaii, APR 20 2000


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member

Excused
VICENTE F. AQUINO, Member

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.

Wai Chung Cheung
for Respondent

Herbert B.K. Lau, Esq.
for Complainant

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


