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LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of )  
 DIRECTOR, DEPARTMENT OF LABOR )  
 AND INDUSTRIAL RELATIONS, )  
 Complainant, )  
 )  
 vs. )  
 )  
 A-1 ROOFING, INC., )  
 Respondent. )

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CASE NO. OSAB 92-011  
 (OSHCO No. C4756)  
 (Report No. 103446545)

FILED  
 LIR APPEALS BOARD  
 STATE OF HAWAII

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DECISION AND ORDER

This occupational safety and health case is before the Board on written notice of contest dated May 11, 1992 by Respondent A-1 ROOFING, 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") dated April 14, 1992 issued by the Department of Labor and Industrial Relations, Division of Occupational Safety and Health ("DOSH") was received by Respondent on April 15, 1992.
2. Respondent's written notice of contest of the Citation was filed with DOSH on May 15, 1992.
3. May 5, 1992 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 and Inds. Rel. App. Bd., 57 Haw. 37, 38, 549 P2d 470, 470-470 (1976).

In the instant case, Respondent's written notice of contest of the citation was filed late. The Citation was received by Respondent on April 15, 1992, and Respondent's written notice of contest of the citation was filed on May 15, 1992, ten (10) 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 April 14, 1992, is hereby denied.

Dated: Honolulu, Hawaii, OCT 16 1992.

Frank Yap, Jr  
FRANK YAP, JR., Chairman

Excused  
CAROL K. YAMAMOTO, Member

Charles T. Akama  
CHARLES T. AKAMA, Member

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