

OSH 2/6/12

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)
 DIRECTOR, DEPARTMENT OF LABOR)
 AND INDUSTRIAL RELATIONS,)
 Complainant,)
 vs.)
 SPECTRA-PACIFIC-J, INC.,)
 Respondent.)

CASE NO. OSAB 93-003
 (OSHCO No. J0661)
 (Report No. 103897450)

FILED
 LIR APPEALS BOARD
 STATE OF HAWAII
 93 MAY -6 19:09

DECISION AND ORDER

This occupational safety and health case is before the Board on written notice of contest dated January 19, 1993 by Respondent SPECTRA-PACIFIC-J, 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 December 9, 1992 issued by the Department of Labor and Industrial Relations, Division of Occupational Safety and Health ("DOSH") was received by Respondent on December 18, 1992.
2. Respondent's written notice of contest of the citation was filed with DOSH on January 19, 1993.
3. January 7, 1993 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 December 18, 1992, and Respondent's written notice of contest of the citation was filed on January 19, 1993, 12 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 19, 1993, is hereby dismissed.

Dated: Honolulu, Hawaii, MAY - 6 1993.

Frank Yap, Jr.
FRANK YAP, JR., Chairman

Carol K. Yamamoto
CAROL K. YAMAMOTO, Member

Charles T. Akama
CHARLES T. AKAMA, Member

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

[Signature]