

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 95-001(K)
DIRECTOR, DEPARTMENT OF LABOR)	(OSHCO ID G7535)
AND INDUSTRIAL RELATIONS,)	(Inspection #120631445)
Complainant,)	
)	
vs.)	
)	
GARDEN ISLE INTERIORS, INC.,)	
Respondent.)	
_____)	

95 FEB 15 AM 10:01
 DEPT. OF LABOR

DECISION AND ORDER

This occupational safety and health case is before the Board on written notice of contest by Respondent, GARDEN ISLE INTERIORS, INC., from the Citation and Notification of Penalty (Citation) dated July 9, 1993. Complainant, DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, through its attorney, filed a motion to dismiss the notice of contest on January 9, 1995 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 issued by the Department of Labor and Industrial Relations, Hawaii Occupational Safety and Health Division (HIOSH) was dated and sent to the parties on July 9, 1993.
2. The Citation was received by Respondent on July 12, 1993.
3. Respondent's written notice of contest of the July 9, 1993 Citation was filed with HIOSH on August 12, 1993.
3. August 2, 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 twenty-day period established pursuant to §396-11, HRS. 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."

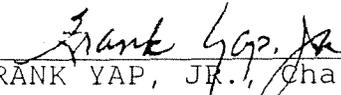
The Hawaii Supreme Court has declared that the time for filing a written notice of appeal is mandatory. Kissell v. Labor and Industrial Relations Appeals Board, 57 Haw. 37, 38, 549 P.2d 470 (1976).

In the instant case, Respondent's written notice of contest of the Citation was filed ten days late. The Citation was received by Respondent on July 12, 1993, and Respondent's written notice of contest was filed on August 12, 1993, ten days after the due date for filing. Accordingly, the mandatory nature of §396-11, HRS, requires dismissal of this appeal.

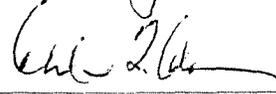
ORDER

Respondent's written notice of contest of the Hawaii Occupational Safety and Health Division's Citation and Notification of Penalty dated July 9, 1993 is hereby dismissed.

Dated: Honolulu, Hawaii, FEB 15 1995.


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


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.

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.