

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of )  
 DIRECTOR, DEPARTMENT OF LABOR )  
 AND INDUSTRIAL RELATIONS, )  
 Complainant, )  
 vs. )  
 AMERICAN TRUSS COMPANY, )  
 Respondent. )

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CASE NO. OSAB 95-033  
 (OSHCO No. C8955)  
 (Report No. 120645494)

FILED  
 JUN 15 10:04  
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DECISION AND ORDER

This occupational safety and health case is before the Board on written notice of contest filed May 1, 1995 by Respondent AMERICAN TRUSS COMPANY. 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 August 12, 1994 issued by the Department of Labor and Industrial Relations, Division of Occupational Safety and Health ("DOSHS") was received by Respondent on August 15, 1994.
2. Respondent's written notice of contest of the citation was filed with DOSHS on May 1, 1995.
3. September 6, 1994 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."

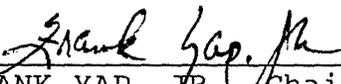
The Hawaii Supreme Court has declared that the time for filing an appeal is mandatory. Kissell v. Labor & Indus. Rel. App. Bd., 57 Haw. 37, 38, 549 P.2d 470, 470-471 (1976).

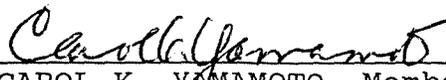
In the instant case, Respondent's written notice of contest of the citation was filed late. The Citation was received by Respondent on August 15, 1994, and Respondent's written notice of contest of the citation was filed on May 1, 1995, more than 6 months after the due date for filing. Accordingly, the mandatory nature of HRS §396-11, requires dismissal of this appeal.

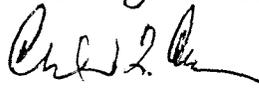
ORDER

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 August 12, 1994, is hereby dismissed.

Dated: Honolulu, Hawaii, JUN 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.