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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.))
))
 METAL WELD SPECIALTIES, INC.,)
 Respondent.)

CASE NO. OSAB 95-009
 (OSHCO No. C8955)
 (Report No. 120640867)

FILED
 DEPARTMENT OF LABOR
 AND INDUSTRIAL RELATIONS
 HONOLULU, HAWAII

95 OCT 16 18:37

DECISION AND ORDER

This occupational safety and health case is before the Board on written notice of contest dated October 31, 1994 by Respondent METAL WELD SPECIALTIES, 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 September 28, 1994 issued by the Department of Labor and Industrial Relations, Division of Occupational Safety and Health ("DOSH") was received by Respondent on October 4, 1994.

2. Respondent's written notice of contest of the citation was filed with DOSH on October 31, 1994.



3. October 24, 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 October 4, 1994, and Respondent's written notice of contest of the citation was filed on October 31, 1994, seven (7) days after the due date for filing. Accordingly, the mandatory nature of HRS §396-11, requires dismissal of this appeal.

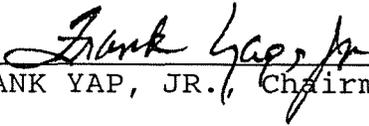
ORDER

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

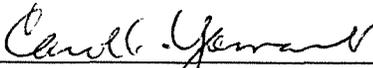
and Health, Department of Labor and Industrial Relations dated September 28, 1994, is hereby dismissed.

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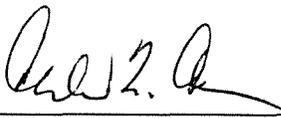
Dated: Honolulu, Hawaii, _____.



FRANK YAP, JR., Chairman



CAROL K. YAMAMOTO, Member



CHARLES T. AKAMA, 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.

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

