

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of	)	CASE NO. OSAB 96-009(H)
DIRECTOR, DEPARTMENT OF LABOR	)	(OSHCO No. Y0816)
AND INDUSTRIAL RELATIONS,	)	(Report No. 120735271)
Complainant,	)	
vs.	)	
	)	
C&S CONSTRUCTION, INC.,	)	
Respondent,	)	
_____	)	

FILED  
 DEPARTMENT OF LABOR  
 STATE OF HAWAII

96 OCT 16 P2:49

DECISION AND ORDER

This occupational safety and health case is before the Board on appeal by C&S CONSTRUCTION, INC. ("Respondent") from a Citation and Notification of Penalty issued by the Director of Labor and Industrial Relations, through the Division of Occupational Safety and Health ("Complainant").

On September 9, 1996, Complainant filed a motion to dismiss the appeal for untimeliness.

For the reasons stated below, we grant Complainant's motion to dismiss appeal.

FINDINGS OF FACT

1. On November 1, 1995, Complainant conducted a planned inspection of Respondent's job site in Hilo, Hawaii. Respondent was at the time the general contractor for a construction project on that site.

2. As a result of the inspection, Complainant issued a Citation and Notification of Penalty against Respondent on December 1, 1995.



3. The Citation and Notification of Penalty stated in pertinent part as follows:

You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 20 calendar days from your receipt of the Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Issuance of this Citations does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law . . . .

The Citation and Notification of Penalty further stated:

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

4. Respondent received the Citation and Notification of Penalty on December 4, 1995.

5. On December 20, 1995, Complainant received a written request from Respondent for an informal conference to discuss the December 1, 1995 Citation and Notification of Penalty.

6. Complainant was unable to schedule an informal conference with Respondent within the 20-day contest or appeal period.

7. On January 10, 1996, a notice of contest from Respondent was filed with Complainant to appeal the December 1, 1995 Citation and Notification of Penalty.

8. Respondent's notice of contest was filed more than 20 days after its receipt of the Citation and Notification of Penalty.

#### CONCLUSIONS OF LAW

Hawaii Revised Statutes (HRS) §396-11(a) stated in pertinent, as follows:

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, the abatement periods stated in the citation, the proposed penalty, or order within twenty days after receipt of the citation, proposed penalty, or order. (emphasis added.)

Based on HRS §396-11(a), we conclude that Respondent's notice of contest, which was filed more than 20 days after the receipt of the Citation and Notification of Penalty, is untimely and should be dismissed.

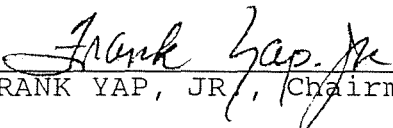
Although Respondent had requested an informal conference and the informal conference could not have been scheduled within the limitations period, there is no statutory authority that the request would toll the 20-day contest or

appeal period. Furthermore, Respondent was specifically advised in the Citation and Notification of Penalty that a request for an informal conference does not toll the time period for filing a notice of contest.

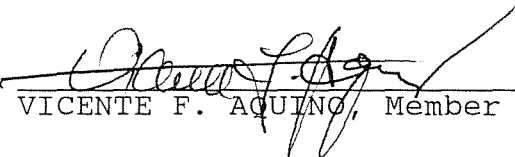
ORDER

Respondent's appeal is dismissed, and the December 1, 1995 Citation and Notification of Penalty is affirmed.

Dated: Honolulu, Hawaii, OCT 16 1996.

  
FRANK YAP, JR., Chairman

EXCUSED  
CAROL K. YAMAMOTO, Member

  
VICENTE F. AQUINO, Member

Herbert Lau, Esq.  
for Complainant

Wayne M. Kaneshiro  
for Respondent

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.

