

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 93-040
DIRECTOR, DEPARTMENT OF LABOR)	(OSHCO No. C6595)
AND INDUSTRIAL RELATIONS,)	(Report No. 103830717)
Complainant,)	
)	
vs.)	
)	
JACKSON CONTRACTORS,)	
Respondent.)	
)	

DECISION AND ORDER

This occupational safety and health case is before the Board on appeal by Respondent, JACKSON CONTRACTORS, from the Citations and Notifications of Penalty issued by Complainant, DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, on October 29, 1992 and amended on March 12, 1993. Respondent had filed its written notice of contest on November 12, 1992 and by letter filed March 22, 1993, continued to contest the Citations and Notifications of Penalty, as amended on March 12, 1993.

Respondent failed to appear for trial at the Board. Complainant then moved to dismiss Respondent's appeal.

The sole issue before the Board is whether Respondent's appeal should be dismissed for lack of prosecution.

For the reasons stated below, we grant Complainant's motion and dismiss Respondent's appeal for lack of prosecution.

FINDINGS OF FACT

1. A pretrial conference was held on December 9, 1993, at which Respondent's representative participated. Before the

RECEIVED
 96 OCT 18 A9:48



pretrial conference, the parties had been notified that the settlement conference was set for 2:00 p.m. on July 28, 1994 and trial was set for 10:30 a.m. on August 23, 1994.

2. Before the trial date, the parties agreed to settle the case. Settlement documents prepared by Complainant's counsel were forwarded to Respondent on September 1, 1994. Respondent, however, filed for bankruptcy on October 7, 1994.

3. By letter dated July 6, 1995, Complainant's counsel advised the Board that the settlement documents were never returned to its office.

4. A Notice of Hearing was sent to the parties on September 13, 1996, advising the parties that trial was scheduled for 10:30 a.m. on October 14, 1996, at the Board.

5. The Notice of Hearing was sent to Respondent's last known mailing address. The Board has not received any return of that notice.

6. The Board has not received any communication from Respondent as to whether or not it planned to be present for trial. Respondent did not attend the trial set for 10:30 a.m. on October 14, 1996. The Board waited until 10:34 a.m. for Respondent to appear.

7. Respondent has failed to prosecute its appeal.

CONCLUSIONS OF LAW

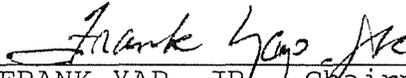
Based on the foregoing findings of fact, we conclude that Respondent's appeal shall be dismissed for lack of prosecution, pursuant to §12-47-33 of the LAB Rules.

ORDER

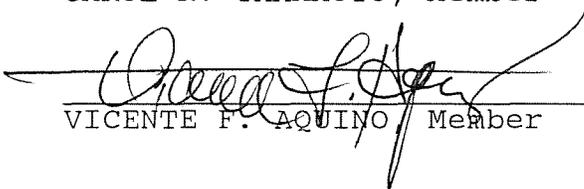
Respondent's appeal of the Citations and Notifications of Penalty which were issued on October 29, 1992 and then amended on March 12, 1993, is hereby dismissed, in accordance with the foregoing and the LAB Rules.

OCT 18 1996

Dated: Honolulu, Hawaii, _____.


FRANK YAP, JR., Chairman

EXCUSED
CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

J. Gerard Lam, Deputy Attorney General
for Complainant

William Williams, Safety Director
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 true and correct copy of
the record on file in this office.

