

2. Respondent sought to contest or appeal the Citation and Notification of Penalty by depositing a written Notice of Contest in a U.S. post office box on June 10, 1996.

3. The written Notice of Contest was filed with Complainant on June 14, 1996.

4. Respondent's written Notice of Contest was filed more than twenty days after its receipt of the Citation and Notification of Penalty.

CONCLUSIONS OF LAW

Hawaii Revised Statutes ("HRS") §396-11(a) states in pertinent part, 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.)

Respondent contends that its late filing should be excused because of the confusing and inconsistent instructions it received from Complainant on how to contest a citation. Respondent did not refer us to any statutory authority that would allow the Board to extend the time for filing a Notice of Contest.

According to the Hawaii Supreme Court, statutes of limitations are creatures of legislative grace, and only the legislature has the power to repeal or extend such limitations

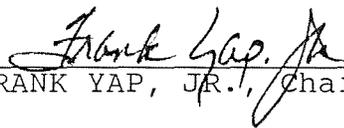
period. Hun v. Center Properties, 63 Haw. 273 (1981). Unless there is statutory authority that tolls or extends the limitations period, see In the Matter of the Director, Department of Labor and Ind. Rel. v. C&S Construction, Inc., OSAB 96-009(H) (Oct. 16, 1996), the time for filing an appeal is mandatory. Kissell v. Labor and Indus. Rel. App. Bd., 57 Haw. 37 (1976).

Accordingly, since Respondent's Notice of Contest was filed more than 20 days after its receipt of the Citation and Notification of Penalty and there is no applicable statute that tolls or extends the time for filing in this case, we have no choice but to dismiss Respondent's Notice of Contest for untimeliness.

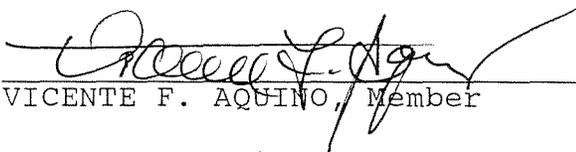
ORDER

Respondent's written Notice of Contest of Complainant's Citation and Notification of Penalty is dismissed.

Dated: Honolulu, Hawaii, OCT 29 1996.


FRANK YAP, JR., Chairman

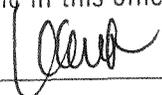
EXCUSED
CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

Alan K. Lau, Esq.,
for Respondent

Leo B. Young, Esq.,
for Complainant

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.