

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

ALAN IWASAKI,

Complainant-Appellant,

and

RESEARCH CORPORATION OF THE  
UNIVERSITY OF HAWAII,

Respondent-Appellee,

and

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS, State of  
Hawaii,

Appellee.

CASE NO. OSH 2016-34

ORDER NO. 911

MINUTE ORDER GRANTING APPELLEE  
DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS' MOTION  
TO DISMISS COMPLAINANT-  
APPELLANT ALAN IWASAKI'S  
CONTEST

**MINUTE ORDER GRANTING APPELLEE DIRECTOR, DEPARTMENT  
OF LABOR AND INDUSTRIAL RELATIONS' MOTION TO  
DISMISS COMPLAINANT-APPELLANT ALAN IWASAKI'S CONTEST**

On October 25, 2016, Appellee DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Appellee or DLIR) filed with the Hawaii Labor Relations Board (Board) a MOTION TO DISMISS COMPLAINANT-APPELLANT ALAN IWASAKI'S CONTEST (Motion to Dismiss) in this matter. The Motion to Dismiss asserted that Complainant-Appellant ALAN IWASAKI (Complainant-Appellant or Iwasaki) was supposed to file his original, written contest by August 22, 2016, but failed to do so and therefore the Board has no jurisdiction over this case and the case must be dismissed. Specifically, the Motion to Dismiss asserted, *inter alia*, that on September 28, 2015, Complainant-Appellant filed a discrimination complaint with the Hawaii Occupational Safety and Health Division (HIOSH) under Hawaii Revised Statutes (HRS) § 396-8(e); that on July 29, 2016, HIOSH mailed to Complainant-Appellant an order in which HIOSH found that Respondent-Appellee RESEARCH

CORPORATION OF THE UNIVERSITY OF HAWAII (Respondent-Appellee or RCUH) did not discriminate against him in violation of §396-8(e); that the order contained the statement, “If a written notice of contest of this Determination Notice and Order (Order) is not received within twenty (20) calendar days after receipt of this Order by you, it becomes a final order (not contestable)”; that Complainant-Appellant received the order on August 1, 2016; that on August 3, 2016, Complainant-Appellant sent an email to Tin Shing Chao stating in part, “. . . I find your determination invalid as a matter of law. You will receive my certified letter shortly”; and that on August 24, 2016, HIOSH sent a letter to Complainant-Appellant stating the order was now final because he did not file a written contest per instructions in the order.

On November 4, 2016, Respondent-Appellee RCUH filed its Joinder in the Motion to Dismiss.

On November 8, 2016, Complainant-Appellant filed his Memorandum in Opposition to the Motion to Dismiss. Complainant asserted that the Board has jurisdiction due to the fact that a timely and valid Notice of Appeal/Contest was filed on August 3, 2016, pursuant to HRS § 396-11; that HIOSH has validated email as an acceptable form of filing a Notice of Appeal/Contest in HRS § 396-8(e) determination cases; that the order of HIOSH rendered on July 29, 2016, is defective and errs as a matter of law, and therefore is invalid and unenforceable; that the DLIR is not entitled to deference in the interpretation of its rules because the rule is not in compliance with HRS [chapter] 91, as the DLIR did not adopt formal rules in compliance with chapter 91 to exclude emails from the § 396-8(e) Notice of Contest process; and that the DLIR rules governing inspections, citations, and proposed penalties are inapposite to this case.

On November 16, 2016, the DLIR filed its Reply to Complainant-Appellant’s Memorandum in Opposition to the Motion to Dismiss. The DLIR asserted that email is not a valid method of filing a notice of contest, and cited to Si-Nor, Inc. v. Director, Dep’t of Labor and Industrial Relations, 120 Hawaii 135, 145, 202 P.2d 596, 606 (App. 2009); that the DLIR’s interpretation of its own rules is reasonable; that Hawaii Administrative Rules (HAR) §§ 12-51-15 and 12-51-19 apply; and that Complainant-Appellant’s other arguments are unavailing.

On January 24, 2017, the Board heard oral arguments on the Motion to Dismiss. Representatives of the DLIR and the RCUH appeared in person, and Complainant-Appellant appeared via telephone.

After consideration of the pleadings and entire record in this matter, and the arguments presented by all parties, the Board hereby GRANTS the DLIR's Motion to Dismiss.

Pursuant to HAR § 12-42-8(g)(17)(C) of the Board's rules, "[B]oard may direct oral argument or the filing of briefs or **proposed findings of facts, conclusions of law, or both**, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein" (emphases added). In the present case, the Board directs the DLIR, as the prevailing party on the Motion to Dismiss, to submit to the Board proposed findings of fact, conclusions of law, and order granting the Motion to Dismiss, for the Board's consideration and signature. The DLIR shall submit the proposed findings of fact, conclusions of law, and order to the Board with copies to all other parties no later than **June 15, 2017**. Thereafter, the Board will issue a final order in this matter.

DATED: Honolulu, Hawaii, May 26, 2017.

HAWAII LABOR RELATIONS BOARD



*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Member

*J. N. Musto*

J N. MUSTO, Member

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