

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

STATE OF HAWAII ORGANIZATION
OF POLICE OFFICERS,

Complainant,

and

SUSAN BALLARD, Chief of Police,
Honolulu Police Department, City and
County of Honolulu and CITY AND
COUNTY OF HONOLULU,

Respondents.

CASE NO. 18-CE-12-910

ORDER NO. 3473

ORDER DENYING COMPLAINANT
STATE OF HAWAII ORGANIZATION
OF POLICE OFFICERS' MOTION FOR
RECONSIDERATION OF BOARD
ORDER NO. 3442

ORDER DENYING COMPLAINANT STATE OF HAWAII ORGANIZATION OF
POLICE OFFICERS' MOTION FOR RECONSIDERATION OF BOARD ORDER NO. 3442

On January 17, 2019, the Hawai'i Labor Relations Board (Board) issued Board Order No. 3442, Order Granting Respondents' Motion for Judgment on Partial Findings Against Complainant (Order No. 3442). Among other things, Order No. 3442 granted Respondents' Motion for Judgment on Partial Findings (Respondents' Motion) filed by Respondents SUSAN BALLARD, Chief of Police, Honolulu Police Department, City and County of Honolulu and CITY AND COUNTY OF HONOLULU (collectively, Respondents) and closed the case.

On February 15, 2019 at approximately 12:45 p.m., Complainant STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO) filed Complainant State of Hawaii Organization of Police Officers' (SHOPO) Motion for Reconsideration of Board Order No. 3442 (Motion for Reconsideration), arguing, among other things, that Order No. 3442 did not follow precedent of the Hawai'i Supreme Court and the precedent of the Board, that Order No. 3442 violated SHOPO's due process and equal protection rights, that the Board lacked jurisdiction to dismiss the complaint, and that the Board ignored facts that would support a finding in SHOPO's

favor. The same day, at approximately 2:13 p.m., SHOPO filed Notice of Appeal to the Circuit Court (Notice of Appeal) with the First Circuit Court, State of Hawai‘i.

On February 25, 2019, Respondents filed Respondents’ Memorandum in Opposition to Complainant State of Hawaii Organization of Police Officers’ Motion for Reconsideration of Board Order No. 3442 (Opposition to Reconsideration). Respondents argues, among other things, that the Board lost jurisdiction over the case when SHOPO filed its Notice of Appeal, that the Motion for Reconsideration is untimely, and that the Motion for Reconsideration does not meet the standard for a motion for reconsideration.

As a preliminary matter, the Board must determine whether it still has jurisdiction over the instant case prior to ruling on the Motion for Reconsideration. It is well established that “the general rule is that the filing of a notice of appeal divests the trial court of jurisdiction over the appealed case,” Richardson v. Sport Shinko, 76 Hawai‘i 494, 500, 880 P.2d 169, 175 (1994) (internal citations omitted), in order “to avoid the confusion and inefficiency that might flow from placing the same issue before two courts at the same time.” TSA Int’l Ltd. v. Shimizu Corp., 92 Hawai‘i 243, 265, 990 P.2d 713, 735 (1999) (internal citations omitted) (TSA Int’l).

There was a period of approximately one and one-half hours between the filing of the Motion for Reconsideration and the Notice of Appeal during which the Board maintained jurisdiction over the instant case and could consider the Motion for Reconsideration. However, when SHOPO filed the Notice of Appeal, “[j]urisdiction over the appealed case...transferred from the [Board] to the [appellate] court at the time the notice of appeal [wa]s filed.” TSA Int’l, 92 Hawai‘i at 265, 990 P.2d at 735. Therefore, the Board must deny the Motion for Reconsideration due to lack of jurisdiction.

Assuming for the sake of argument that the Board retains jurisdiction over the case despite the Notice of Appeal being filed, the Board finds that the Motion for Reconsideration was untimely filed. SHOPO relies upon Hawai‘i Administrative Rules (HAR) § 12-42-8, Proceedings before the board, for its Motion for Reconsideration. The most relevant part of HAR § 12-42-8, namely HAR § 12-42-8(g)(3), Motions, states:

(3) Motions:

- (A) All motions made during a hearing shall be made part of the record of the proceedings.
- (B) Motions to dismiss a case shall be filed at least forty-eight hours before the time of hearing of the case, and shall conform to the requirements in section 12-42-8(g)(3)(c).
- (C) All motions other than those made during a hearing shall be subject to the following:

- (i) Such motions shall be made in writing to the board, shall briefly state the relief sought, and shall be accompanied by affidavits or memoranda setting forth the grounds upon which they are based.
- (ii) The moving party shall serve a copy of all motion papers on all other parties and shall, within three days thereafter, file with the board the original and five copies with certificate of service on all parties.
- (iii) Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.
- (iv) The board may decide to hear oral argument or testimony thereon, in which case the board shall notify the parties of such fact and of the time and place of such argument or the taking of such testimony.

HAR § 12-42-8(g)(3) do not provide for motions for reconsideration. When the Board rules are silent or ambiguous on procedural matters, the Board then may look for guidance to similar provisions of court rules. Ballera v. Del Monte Fresh Produce Hawaii, Inc., Board Case No. 00-1 (CE), Order No. 1978 at *5 (January 11, 2001).

While the Hawai'i Rules of Civil Procedure (HRCP) do not expressly provide for motions for reconsideration, the Hawai'i appellate courts have ruled that they are permissible under Rule 59(e) as a motion to alter or amend judgment, *see* K.M. Young & Assocs. v. Cieslik, 4 Haw. App. 657, 666 (1983) (internal citations omitted), or Rule 60, *see* Bank of Hawaii v. Kunimoto, 91 Hawai'i 372, 374 n.1, 984 P.2d 1198, 1200 (1999).

HRCP Rule 59(e) states:

- (e) Motion to alter or amend judgment. Any motion to alter or amend judgment shall be filed no later than 10 days after entry of judgment.

HRCP Rule 60, Relief from Judgment or Order states:

- (a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

SHOPO does not argue that Order No. 3442 contains a clerical error and has not claimed any of the reasons laid out in Rule 60(b). Therefore, the Board is left with HRCF Rule 59(e), which specifies that the motion "shall be filed no later than 10 days after entry of judgment."

Order No. 3442 was filed on January 17, 2019. The tenth day after entry of judgment was January 27, 2019, which was a Sunday, meaning that the last day to file a motion under HRCF Rule 59(e) was the following Monday, January 28, 2019. The Motion for Reconsideration was filed on February 15, 2019, eighteen days after the last day to timely file the motion. Therefore, even if the Board retained jurisdiction over the instant case after the Notice of Appeal was filed, the Board must deny the Motion for Reconsideration due to the untimeliness of the motion.

ORDER

For all of the reasons set forth above, the Board denies Complainant's Motion for Reconsideration.

DATED: Honolulu, Hawai'i, _____ March 20, 2019 _____.

SHOPO v. Ballard, et al.
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Order Denying Complainant State of Hawaii Organization of Police Officers' Motion for
Reconsideration of Board Order No. 3442
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HAWAI'I LABOR RELATIONS BOARD

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