

*** NOT FOR PUBLICATION ***

NO. 25507

IN THE SUPREME COURT OF THE STATE OF HAWAII

GERALD M. VILLANUEVA, Claimant-Appellant

vs.

PATTERSON CONSTRUCTION AND TRUCKING, INC., and TIG INSURANCE
COMPANY, Employer/Insurance Carrier-Appellee

and

SPECIAL COMPENSATION FUND, Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 97-451(M))

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Nakamura, assigned by reason of vacancy)

Upon review of the record, it appears that we do not have appellate jurisdiction over Claimant-Appellant Gerald M. Villanueva's (Appellant Villanueva) appeal from the Labor and Industrial Relations Appeals Board's (LIRAB) July 31, 2002 decision and order and the October 25, 2002 order that, among other things, denied Appellant Villanueva's motion to alter or amend the July 31, 2002 decision and order.

HRS § 386-88 (1993) and Hawai'i Administrative Rules (HAR) § 12-47-53(a) (2002) required Appellant Villanueva to file his notice of appeal within thirty days after October 25, 2002, the date when the LIRAB mailed¹ the October 25, 2002 order to Appellant Villanueva. Because the thirtieth day after October 25, 2002 was Sunday, November 24, 2002, HAR § 12-47-19 (2002)

¹ Although court procedural rules, such as Rule 6(e) of the Hawai'i Rules of Civil Procedure and Rule 26(c) of the Hawai'i Rules of Appellate Procedure, add two days to a prescribed time period whenever the time period is measured from service by mail, the governing procedural rules for Labor and Industrial Relations Appeals Board matters, Hawai'i Administrative Rules (HAR) § 12-47-51 (2002) and HAR § 12-47-18 (2002), do not add two days to the prescribed time period for service by mail.

***** NOT FOR PUBLICATION *****

extended the thirty-day period for filing the notice of appeal until Monday, November 25, 2002. HAR § 12-17-12 (2002) requires that “[t]he file stamped date on the document shall be regarded as the date of filing.” The file-stamped date on Appellant Villanueva’s notice of appeal is December 2, 2002.

Pursuant to our holding in Setala v. J.C. Penney Company, 97 Hawai’i 484, 485, 40 P.3d 886, 897 (2002), we temporarily remanded this case to the LIRAB to give Appellant Villanueva, a pro se prisoner, an opportunity to move the LIRAB for a determination whether he tendered his notice of appeal to prison officials for mailing on or before November 25, 2002. Appellant Villanueva did not move for such a determination, nor did Appellant Villanueva submit any evidence to the LIRAB to show when he tendered his notice of appeal to the prison officials for mailing. Without such evidence, HAR § 12-17-12 (2002) requires us to regard the December 2, 2002 file-stamped date of Appellant Villanueva’s notice of appeal as the date of filing, and, thus, Appellant Villanueva’s notice of appeal is not timely. The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and we cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai’i, July 3, 2003.