

NO. 22565

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JAMES A. SATTERFIELD, Claimant-Appellant

v.

ROGER D. KINNAMAN and INDUSTRIAL INDEMNITY,
Employer/Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND
INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 99-217(K) (4-94-00697))

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Lim, JJ.)

In this appeal from the April 14, 1999 decision of the Labor and Industrial Relations Appeals Board (the Board), the sole issue is whether the Board properly dismissed as untimely the appeal of Claimant-Appellant James A. Satterfield (Claimant) from the March 23, 1999 decision of the Director of Labor and Industrial Relations (the Director) determining Claimant's entitlement to further workers' compensation medical benefits.

The applicable statute is Hawai'i Revised Statutes (HRS) § 386-87 (1993), which provides, in relevant part, as follows:

Appeals to appellate board. (a) A decision of the [D]irector shall be final and conclusive between the parties, except as

provided in section 386-89,^{1/} unless within twenty days after a copy has been sent to each party, either party appeals therefrom to the [Board] by filing a written notice of appeal with the [Board] or the department [of labor and industrial relations]. In all cases of appeal filed with the department the [Board] shall be notified of the pendency thereof by the [D]irector. . . .

(Emphasis added.)

The Director's decision contained in the record on appeal is time-stamped March 23, 1999, at 8:03 a.m. Included in the record is a Department of Labor and Industrial Relations (DLIR) Disability Compensation Division form (WC-9a), entitled "Record of Decision Distribution," that includes a line for recording the date that the Director's decision was mailed to Claimant. However, although the form is time-stamped March 23, 1999, at 8:03 a.m., the date the Director's decision was mailed or "sent to" Claimant is not typed or written in the space provided. Additionally, the record includes no postmarked envelope or certificate by a DLIR or postal service employee, indicating the date of mailing. See Waikiki Marketplace Inv. Co. v. Chair of the Zoning Board of Appeals of the City and County of Honolulu, 86 Hawai'i 343, 349-50, 949 P.2d 183, 189-90 (App. 1997).

In light of the absence of evidence in the record as to

^{1/} Hawai'i Revised Statutes § 389-89 (1993) relates to the reopening of a workers' compensation case, a situation not presented by this appeal.

exactly when the Director's decision was mailed or sent to Claimant, we are unable to evaluate whether Claimant's appeal of the Director's decision to the Board was untimely. Accordingly, we vacate the Board's April 14, 1999 decision and remand for further proceedings.

DATED: Honolulu, Hawai'i, August 29, 2000.

On the briefs:

James Satterfield,
claimant-appellant *pro se*.

Lawrence H. Nakano
for employer/insurance
carrier-appellee.