

NOT FOR PUBLICATION

NO. 25249

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOHN S. SILVA, JR., Claimant-Appellant, v. CITY AND
COUNTY OF HONOLULU, HONOLULU FIRE DEPARTMENT,
Employer-Appellee, Self-Insured

APPEAL FROM THE LABOR AND
INDUSTRIAL RELATIONS APPEALS BOARD
(Case No. AB 2002-032 (2-75-7925))

MEMORANDUM OPINION

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

John S. Silva, Jr. (Silva), *pro se* on appeal and below, appeals the July 26, 2002 decision and order of the Labor and Industrial Relations Appeals Board (the Appellate Board). The decision and order dismissed Silva's appeal to the Appellate Board of the December 6, 2001 decision of the Director of Labor and Industrial Relations (the Director) that denied Silva's request for certain items of workers' compensation. The Appellate Board's decision and order was made upon a motion to dismiss Silva's appeal as untimely filed, brought by Silva's self-insured employer, City and County of Honolulu, Honolulu Fire Department.

Hawaii Revised Statutes (HRS) § 386-87(a) (1993)

provides:

A decision of the director shall be final and conclusive between the parties, except as provided in section 386-89, unless within twenty days after a copy has been sent to each party,

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either party appeals therefrom to the appellate board by filing a written notice of appeal with the appellate board or the department [of labor and industrial relations]. In all cases of appeal filed with the department the appellate board shall be notified of the pendency thereof by the director. No compromise shall be effected in the appeal except in compliance with section 386-78.

In this case, a copy of the Director's December 6, 2001 decision was sent to both parties on the day of its issuance. Silva's notice of appeal was filed with the Appellate Board on December 28, 2001, two days after expiration of the period of timely filing. The temporal requirement of HRS § 386-87(a) is mandatory, Kissell v. Labor & Indus. Relations Appeal Bd., 57 Haw. 37, 38, 549 P.2d 470, 470 (1976); Nickells v. Wal-Mart Stores, Inc., 98 Hawai'i 508, 510, 51 P.3d 375, 377 (App. 2002), and jurisdictional. See Kissell, 57 Haw. at 38 n.1, 549 P.2d at 470 n.1.

Accordingly, the July 26, 2002 decision and order of the Appellate Board is affirmed.

DATED: Honolulu, Hawai'i, April 15, 2004.

On the briefs:

John S. Silva, Jr.,
pro se claimant appellant.

Paul K. W. Au, Deputy Corporation
Counsel, City and County of Honolulu,
for employer-appellee.

Chief Judge

Associate Judge

Associate Judge