

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28016

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

FREDRENE K. BALANAY, Claimant-Appellant,  
v.  
SHIMA'S MARKET, INC., and  
ISLAND INSURANCE COMPANY, LTD.,  
Employer/Insurance Carrier-Appellees

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

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FILED

APPEAL FROM LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(CASE NO. AB-2005-004 (2-04-01912))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we do not have jurisdiction over Claimant-Appellant Fredrene K. Balanay's (Appellant Balanay) appeal from the State of Hawai'i Labor and Industrial Relations Appeals Board's (the LIRAB) April 27, 2006 decision and order and May 30, 2006 order denying Appellant Balanay's motion for reconsideration.

Pursuant to HRS § 386-88 (Supp. 2005) and HRS § 91-14(a) (Supp. 2005), an aggrieved party may appeal a decision or order by the LIRAB directly to the intermediate court of appeals.

The appeal of a decision or order of the LIRAB is governed by HRS § 91-14(a), the statute authorizing appeals in administrative agency cases. HRS § 91-14(a) authorizes judicial review of a final decision and order in a contested case or a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief. For purposes of HRS § 91-14(a), we have defined "final order" to mean an order ending the proceedings, leaving nothing further to be accomplished.

Bocalbos v. Kapiolani Medical Center for Women and Children, 89 Hawai'i 436, 439, 974 P.2d 1026, 1029 (1999) (citation and some internal quotation marks omitted). The LIRAB's April 27, 2006 decision and order ended the proceedings by affirming the Director of Labor and Industrial Relations' December 16, 2004 decision. The LIRAB's April 27, 2006 decision and order left nothing further to be accomplished. Therefore, the LIRAB's April 27, 2006 decision and order is "a final decision and order in a contested case" under HRS § 91-14(a) (Supp. 2005) that is appealable directly to the intermediate court of appeals pursuant to HRS § 386-88 (Supp. 2005).

Appellant Balanay extended the thirty-day time period under HAR § 12-47-53 (2005) and HRS § 386-88 (Supp. 2005) for filing a notice of appeal when Appellant Balanay filed a May 23, 2006 motion for reconsideration within thirty days after the LIRAB mailed the April 27, 2006 decision and order, as HAR § 12-47-53(a) (2005) required. "If the request for reconsideration or reopening is denied, the time to initial judicial review shall run from the date of mailing the denial decision." HAR § 12-47-53(a) (2005). The LIRAB mailed the May 30, 2006 order denying Appellant Balanay's May 23, 2006 motion for reconsideration on May 30, 2006. The thirtieth day after May 30, 2006 was Thursday, June 29, 2006. Appellant Balanay did not file her June 30, 2006 notice of appeal within

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thirty days after the May 30, 2006 mailing, of the LIRAB's May 30, 2006 order denying Appellant Balanay's May 23, 2006 motion for reconsideration, as HAR § 12-47-53(a) (2005) required.

Therefore, Appellant Balanay's 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 the appellate courts 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, September 26, 2006.

  
Chief Judge

  
Associate Judge

  
Associate Judge