

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 26903

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIIKARLLTON K. GORAI, Claimant-Appellant,  
v.  
MTL, INC., and JOHN MULLEN AND COMPANY,  
Employer/Insurance Adjuster-AppelleeAPPEAL FROM THE LABOR AND INDUSTRIAL  
RELATIONS APPEALS BOARD  
(CASE NO. AB 2004-269 (2-89-26919))K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Foley and Fujise, JJ.)

Claimant-Appellant Karllton K. Gorai (Gorai) appeals *pro se* from the September 24, 2004 Decision and Order (Decision and Order) and the October 14, 2004 Order Denying Motion for Reconsideration entered by the Labor and Industrial Relations Appeals Board (the Board).

In the Decision and Order, the Board dismissed, as untimely, Gorai's appeal from an April 30, 2004 Decision Supplemental to Award Dated 10/11/1994 (April 30, 2004 Decision) by the Director of the Department of Labor and Industrial Relations (the Director). The April 30, 2004 Decision denied Gorai's application to reopen a 1994 workers' compensation claim and to obtain further medical benefits. On October 14, 2004, the Board issued an Order Denying Motion for Reconsideration, and Gorai filed a timely Notice of Appeal with this court on October 21, 2004.

On appeal, Gorai argues that the Board erred in dismissing his appeal from the April 30, 2004 Decision. He further argues that the Board should not have dismissed the appeal because he did not receive notice of the hearing on the motion to dismiss.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm.

The Board's Decision and Order provided as follows:

On August 26, 2004, Employer, MTL, INC., . . . sent Claimant, KARLLTON K. GORAI, copies of its Motion to Dismiss Appeal, supporting memorandum, and notice of hearing. The notice of hearing advised that a hearing on Employer's motion was scheduled for 9:15 a.m. on September 23, 2004, at the Labor Appeals Board. Employer mailed its motion, memorandum, and notice of hearing to Claimant at 47-472 Pulama Road, Kaneohe, Hawaii, 96744, which is the same address listed on the Director's April 30, 2004 decision, and identified in the Board's file. Employer was present for the September 23, 2004 hearing. Claimant was not present. The Board determined that service of Employer's motion was properly effected, and proceeded with the hearing as scheduled.

. . .

The sole issue before the Board is the timeliness of Claimant's appeal pursuant to §386-87(a), Hawaii Revised Statutes ("HRS").

#### FINDINGS OF FACT

1. The Director's decision was dated and sent to the parties on April 30, 2004.
2. Claimant's appeal of the decision was filed with the Disability Compensation Division on June 1, 2004.

#### CONCLUSIONS OF LAW

Claimant's appeal was filed beyond the mandatory limitation period and is, thereby, dismissed as untimely. "A decision of the director shall be final and conclusive between the parties . . . unless within twenty days after a copy has been sent to each party, either party appeals therefrom to the appellate board by filing a written notice of appeal with the appellate board or the department." Section 386-87(a), HRS.

The Hawai['i] Supreme Court has declared that the time for filing a written notice of appeal is mandatory. Kissel v. Labor and Industrial Relations Appeals Board, 57 Haw. 37, 38, 549 P.2d 470 (1976).

In the instant case, Claimant's appeal was filed twelve (12) days late. The decision was sent to the parties on April 30, 2004, and Claimant's appeal was filed on June 1, 2004, twelve days after the due date for filing. Accordingly, the mandatory nature of §386-87(a), HRS, requires dismissal of this appeal.

Gorai contests the Board's finding that he did not timely submit a notice of appeal from the Director's April 30, 2004 Decision. He contends that his appeal was timely because he mailed his original notice of appeal on May 14, 2004.

However, even if Gorai is correct that he mailed his notice of appeal on May 14, 2004, his appeal was nevertheless untimely. Gorai's notice of appeal was not received by the

Department of Labor and Industrial Relations Disability Compensation Division (the Division) until June 1, 2004. The Board implicitly found as a matter of law that even if the notice was mailed within the twenty-day period, it was not "filed" within the meaning of Hawaii Revised Statutes (HRS) § 386-87(a) (1993 repl.) until it was received by the Division.

We agree with that interpretation of the statute. Although there is no Hawai'i case directly on point, other courts that have interpreted similar statutory provisions have concluded that the notice of appeal is not filed until it is received by the agency. State Indus. Ins. Sys. v. Partlow-Hursh, 101 Nev. 122, 123-24, 696 P.2d 462, 463 (1985) (finding appellant's notice of administrative appeal from preliminary workers' compensation decision untimely where notice was mailed on last day for filing appeal but form was not received by agency until seventeen days later). Moreover, although the Hawai'i Supreme Court has recognized a "mailbox rule" when prisoners file notices of appeal in civil cases, the court observed that "the general rule [is] that receipt by the court clerk is required by the declared deadline." Setala v. J.C. Penny Co., 97 Hawai'i 484, 487, 40 P.3d 886, 889 (2002) (emphasis in original). We see no reason to deviate from that "general rule" here.

Since Gorai did not file his notice of appeal within the time limit required by HRS section 386-87(a), the Board correctly dismissed his appeal. Kissell v. Labor & Indus. Relations Appeal Board, 57 Haw. 37, 38, 549 P.2d 470, 470 (1976) ("[T]he time for filing a written notice of appeal as provided in [HRS section 386-87] is mandatory.").

With regard to Gorai's claim that he did not receive notice of the hearing that resulted in the Board's Decision and Order dismissing his appeal, we find that there is substantial evidence in the record to support the Board's determination in the Decision and Order that Gorai was provided proper notice of the hearing.

Therefore,

IT IS HEREBY ORDERED that the Board's September 24, 2004 Decision and Order and the October 14, 2004 Order Denying Motion for Reconsideration are affirmed.

DATED: Honolulu, Hawai'i, July 9, 2007.

On the briefs:

Karllton K. Gorai,  
for Pro Se Claimant-Appellant.

Robert C. Kessner and  
Muriel M. Taira  
(Kessner, Duca, Umebayashi,  
Bain & Matsunaga)  
for Employer, Self-Insured,  
MTL, Inc. and Insurance  
Adjuster, John Mullen & Co.,  
Inc.



Chief Judge



Associate Judge



Associate Judge