

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28555

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

DAVID RODRIGUES, Claimant-Appellant,  
v. ATTCO, INC. and SEABRIGHT INSURANCE COMPANY  
Employer/Insurance Carrier-Appellee

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 AUG 15 AM 11:00

FILED

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(CASE NO. AB 2006-091 (WH) (9-04-01601))

ORDER GRANTING AUGUST 7, 2007 MOTION TO DISMISS APPEAL  
(By: Recktenwald, C.J., Nakamura and Fujise, JJ.)

Upon review of (1) Employer-Appellee ATTCO, Inc., and Insurance Carrier-Appellee Seabright Insurance Company's August 7, 2007 motion to dismiss appellate court case number 28555 for lack of jurisdiction and (2) the record, it appears that we do not have jurisdiction over Claimant-Appellant David L. Rodrigues's (Appellant Rodrigues) appeal from the State of Hawaii Labor and Industrial Relations Appeals Board's (the LIRAB) April 17, 2007 decision and order.

Pursuant to HRS § 386-88 (Supp. 2006) and HRS § 91-14(a) (1993 & Supp. 2006), 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 Hawaii 436, 439, 974 P.2d 1026, 1029 (1999) (citation and some internal quotation marks omitted). The LIRAB's April 17, 2007

decision and order ended the proceedings by affirming the Director of Labor and Industrial Relations' January 5, 2006 decision. The LIRAB's April 17, 2007 decision and order left nothing further to be accomplished. Therefore, the LIRAB's April 17, 2007 decision and order is "a final decision and order in a contested case" under HRS § 91-14(a) (1993 & Supp. 2006) that is appealable directly to the intermediate court of appeals pursuant to HRS § 386-88 (Supp. 2006).

However, Appellant Rodrigues did not file his May 21, 2007 notice of appeal within thirty days after the LIRAB's April 17, 2007 mailing of the April 17, 2007 decision and order, as HRS § 386-88 (Supp. 2006) required. Appellant Rodrigues's May 21, 2007 motion for reconsideration did not extend the thirty-day time period for filing a notice of appeal from the April 17, 2007 decision and order pursuant to Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP) and Hawai'i Administrative Rules (HAR) § 12-47-53(a) (2006), because Appellant Rodrigues did not file his May 21, 2007 motion for reconsideration within thirty days after the LIRAB's April 17, 2007 mailing of the LIRAB's April 17, 2007 decision and order, as HRAP Rule 4(a)(3) and HAR § 12-47-53(a) (2006) required. Therefore, in order to assert a timely appeal, Appellant Rodrigues had to file a notice of appeal within thirty days after the LIRAB's April 17, 2007 mailing of the April 17, 2007 decision and order. Because Appellant Rodrigues did not file his May 21, 2007 notice of appeal within thirty days after the LIRAB's April 17, 2007 mailing of the April 17, 2007 decision and order, Appellant Rodrigues'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 Employer-Appellee ATTCO, Inc., and Insurance Carrier-Appellee Seabright Insurance Company's August 7, 2007 motion to dismiss appellate court case

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number 28555 for lack of jurisdiction is granted, and the appeal in appellate court case number 28555 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 15, 2007.

*Mr. E. A. Adair*

Chief Judge

*Craig A. Nakamura*

Associate Judge

*Auna Olu Fijina*

Associate Judge