

NO. 29135

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

THOMAS R. MAGEE, Claimant-Appellant,
v.
ALOHA JETSKI LLC, Employer-Appellee, Delinquent
and
SPECIAL COMPENSATION FUND, Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 MAY -6 AM 9:04

FILED

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2007-544 (2-07-03113))

SUMMARY DISPOSITION ORDER

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

Claimant-Appellant Thomas R. Magee (Magee) appeals from the Decision and Order of the Labor and Industrial Relations Appeals Board (LIRAB) filed on April 18, 2008 in Case No. AB 2007-544 (2-07-03113).

On appeal, Magee contends that he sustained a compensable injury. Respondent-Appellee State of Hawai'i Special Compensation Fund (State) argues that the LIRAB properly denied Magee's appeal as untimely.

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, as well as the relevant statutory and case law, we resolve Magee's point of error as follows:

On October 9, 2007, the Director of the Department of Labor and Industrial Relations (Director) issued a Decision, denying Magee's workers' compensation claim. Pursuant to Hawai'i Administrative Rules § 12-10-77(f), Magee had twenty days to appeal the Director's Decision. Magee filed a Notice of Appeal on November 14, 2007, sixteen days after the time to appeal had

expired. On April 18, 2008, the LIRAB issued its Decision and Order, dismissing Magee's appeal as untimely.

"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, either party appeals therefrom to the appellate board by filing a written notice of appeal with the appellate board or the department." Hawaii Revised Statutes (HRS) § 386-87(a) (1993). The LIRAB was correct in dismissing Magee's appeal as untimely. HRS § 386-87(a); HAR § 12-10-77(f).

Therefore,

IT IS HEREBY ORDERED that the Decision and Order of the Labor and Industrial Relations Appeals Board filed on April 18, 2008 in Case No. AB 2007-544 (2-07-03113) is affirmed.

DATED: Honolulu, Hawai'i, May 6, 2009.

On the briefs:

Thomas R. Magee,
Claimant-Appellant pro se.

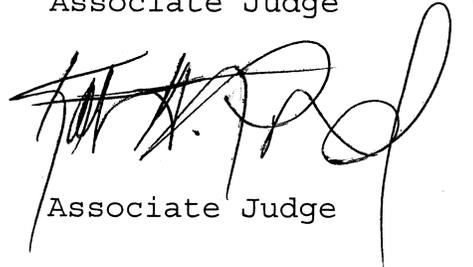


Chief Judge

Frances E. H. Lum and
Nelson T. Higa,
Deputy Attorneys General
for Appellee Special
Compensation Fund.



Associate Judge



Associate Judge