

NO. 29612

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

KENNETH K. YASSO, Claimant-Appellant,
v.
STATE OF HAWAI'I,
DEPARTMENT OF EDUCATION,
Employer-Appellee, Self-Insured

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2006-507(M) (7-06-10055))

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION
(By: Nakamura, Chief Judge, and Fujise and Leonard, JJ.)

In this workers' compensation case, Claimant-Appellant Kenneth K. Yasso (Yasso), appearing pro se, appeals from the "Decision and Order" filed by the Labor and Industrial Relations Appeals Board (LIRAB) on November 17, 2008. In its answering brief, Employer-Appellee, Self-Insured, State of Hawai'i, Department of Education (State) argues that this court lacks jurisdiction over Yasso's appeal because Yasso did not file his notice of appeal on time. As explained below, we agree with the State and dismiss Yasso's appeal for lack of jurisdiction.

Hawaii Revised Statutes (HRS) 386-88 (Supp. 2011) sets forth the requirements for obtaining judicial review of a decision by the LIRAB. HRS § 386-88 provides in relevant part:

§ 386-88 Judicial review. The decision or order of the appellate board shall be final and conclusive, except as provided in section 386-89, unless within thirty days after mailing of a certified copy of the decision or order, the director or any other party appeals to the intermediate appellate court, subject to chapter 602, by filing a written notice of appeal with the appellate board.

(Emphases added.) The term "[a]ppellate board" as used in HRS § 386-88 is defined to mean the "labor and industrial relations appeals board." HRS § 386-1 (1993). Therefore, in order to obtain judicial review by this court of the LIRAB's Decision and Order, Yasso was required by HRS § 386-88 to file his notice of appeal *with the LIRAB* within thirty days after the Decision and Order was mailed.

On November 17, 2008, the LIRAB filed its Decision and Order, which affirmed the decision of the Director of the Department of Labor and Industrial Relations in favor of the State. The LIRAB mailed a certified copy of its Decision and Order to the parties on November 17, 2008. Thus, under HRS § 386-88, Yasso was required to file his notice appeal with the LIRAB on or before December 17, 2008, in order to pursue an appeal to this court. Yasso did not file a notice of appeal with the LIRAB on or before December 17, 2008. Instead, he filed a notice of appeal with the clerk of the Circuit Court of the Second Circuit on December 17, 2008, and the LIRAB subsequently received a copy of the notice of appeal on December 22, 2008.

Although the clerks of the circuit courts are "ex officio clerks of all the courts of records," HRS § 606-1 (1993), they are not ex officio clerks of the LIRAB. HRS § 386-88 specifically requires that a notice of appeal from the decision or order of the LIRAB be filed with the LIRAB within thirty days after a certified copy of the decision or order is mailed. Yasso did not file his notice of appeal with the LIRAB within thirty days after a certified copy of the November 17, 2008, Decision and Order was mailed. Accordingly, this court lacks jurisdiction over his appeal. See Kissell v. Labor and Indus. Relations Appeal Bd., 57 Haw. 37, 38, 549 P.2d 470, 470 (1976) (concluding

that the time provided by statute for the analogous filing of a written notice of appeal in order to appeal the director's decision to the LIRAB "is mandatory"); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986) (concluding in a civil case that the "failure to file a timely notice of appeal 'is a jurisdictional defect that can neither be waived by the parties nor disregarded by the court in the exercise of judicial discretion'" (brackets in original omitted)). We dismiss Yasso's appeal for lack of jurisdiction.

DATED: Honolulu, Hawai'i, April 25, 2012.

Chief Judge

Associate Judge

Associate Judge