

NO. CAAP-20-0000071

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RAYMOND V. RAMES, Claimant-Appellant-Appellant, v.
STARWOOD HOTELS AND RESORTS WORLDWIDE, INC.,
Employer-Appellee-Appellee, and SEDGWICK CMS-HAWAII,
Insurance Carrier-Appellee-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2019-011(K); DCD NO. 4-10-00380)

ORDER GRANTING JUNE 16, 2020 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Leonard and Wadsworth, JJ.)

Upon review of (1) Employer/Appellee/Appellee Starwood Hotels and Resorts Worldwide, Inc. (**Starwood Hotels**), and Insurance Carrier/Appellee/Appellee Sedgwick CMS-Hawaii's (**Sedgwick**) June 16, 2020 motion to dismiss appeal for lack of appellate jurisdiction (**Motion to Dismiss**), (2) the lack of any memorandum by Claimant/Appellant/Appellant Raymond V. Rames (**Rames**), self-represented, in response to the Motion to Dismiss, (3) Rames's Jurisdictional Statement filed on June 26, 2020, and (4) the record, it appears that we lack appellate jurisdiction over Rames's appeal from the Labor and Industrial Relations Appeals Board's (**LIRAB**)¹ January 7, 2020 decision and order

¹ The Labor and Industrial Relations Appeals Board (the LIRAB) was composed of Chair Danny J. Vasconcellos, who recused himself, and Member Melanie S. Matsui and Member Marie C.L. Laderta.

regarding Rames's claim for workers' compensation benefits, because Rames's appeal is untimely.

The LIRAB's January 7, 2020 decision and order finally determined Rames's claims for certain workers' compensation benefits, and thus, ended the proceedings in LIRAB Case No. AB 2019-011(K) leaving nothing further for the LIRAB to accomplish in that particular proceeding. Consequently, the LIRAB's January 7, 2020 decision and order is an appealable final order pursuant to Hawaii Revised Statutes (**HRS**) § 386-88 (2015), HRS § 91-14(a) (2012 & Supp. 2019), and the holdings in Bocalbos v. Kapiolani Medical Center for Women and Children, 89 Hawai'i 436, 443, 974 P.2d 1026, 1033 (1999) and Lindinha v. Hilo Coast Processing Co., 104 Hawai'i 164, 168, 86 P.3d 973, 977 (2004).

However, Rames did not file his notice of appeal, which was received by the LIRAB on February 10, 2020, within thirty days after the LIRAB mailed its January 7, 2020 decision and order on the day it was issued. HRS § 386-88 provides in pertinent part:

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, or by electronically filing a notice of appeal in accordance with the Hawaii rules of appellate procedure.

(Emphasis added). Here, Rames mailed his notice of appeal to the LIRAB and did not electronically file his notice of appeal. We note that Rames's notice of appeal contains a file-stamp dated February 5, 2020, which is difficult to read but which Starwood Hotels and Sedgwick assert is a file-stamp from the Kauai Disability Compensation Division office. Even if Rames filed his notice of appeal at the Kauai Disability Compensation Division office on February 5, 2020, this would not meet the requirements under HRS § 386-88 for "filing a written notice of appeal with the appellate board[.]" Pursuant to HRS § 386-1 (2015), "[a]ppellate board" is defined as "the labor and industrial

relations appeals board." Further, we find no authority allowing for ex officio filing at the Kauai Disability Compensation Division office for purposes of HRS § 386-88.

Given the above, Rames's notice of appeal is untimely under HRS § 386-88. 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).

Therefore, IT IS HEREBY ORDERED that Starwood Hotels and Sedgwick's June 16, 2020 motion to dismiss appeal for lack of appellate jurisdiction is granted, and case number CAAP-20-0000071 is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, June 30, 2020.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge