

NO. 24076

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

FRED C. DAGDAG, Claimant-Appellant

vs.

STATE OF HAWAI'I, DEPARTMENT OF
TRANSPORTATION, Employer-Appellee, Self-Insured

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 98-549(M))

ORDER DISMISSING APPEAL
(By: Moon, C.J., Levinson,
Nakayama, Ramil, and Acoba, JJ.)

Upon review of Appellee's statement contesting jurisdiction and the record, it appears that the January 8, 2001 decision and order of the Labor and Industrial Relations Appeals Board was appealable by notice of appeal filed by February 7, 2001, but notice of appeal was not filed until February 9, 2001. The February 9, 2001 notice of appeal is untimely and we lack jurisdiction to review the January 8, 2001 decision and order. See HRS § 386-88; Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (the failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion).

It further appears that the February 9, 2001 notice of appeal did not effectively appeal the order denying the motion for extension of time to appeal subsequently entered on February 26, 2001. Cf. Grattafiori v. State, 79 Hawai'i 10, 897

P.2d 937 (1995). A second notice of appeal was not filed within thirty days after entry of the February 26, 2001 order and we lack jurisdiction to review the February 26, 2001 order. See HRS § 641-1(a); HRAP 4(a)(1). Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 9, 2001.