

NO. 24747

IN THE SUPREME COURT OF THE STATE OF HAWAII

ALFRED S. REZENTES, Claimant-Appellant

vs.

AL REZENTES ROOFING, INC., Employer-Appellee and TIG INSURANCE
COMPANY, Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

(CASE NO. AB 99-228 (H))

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramiel, and Acoba, JJ.)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that: (1) notice of appeal from the October 29, 2001 decision and order of the Labor and Industrial Relations Appeals Board (LIRAB) must have been filed "within thirty days after mailing of a certified copy of the decision or order;" HRS § 386-88; see also HAR § 12-47-53(a); (2) a certified copy of the October 29, 2001 decision and order was mailed to the parties on October 29, 2001; (3) appellant's notice of appeal was filed on November 29, 2001, thirty-one days after the October 29, 2001 decision and order was mailed; (4) the thirty-day period for appeal was not extended for two additional days by operation of HRAP 26(c) inasmuch as HRAP 26(c) does not apply to a notice of appeal filed with the LIRAB (see HRAP 1) and HRAP 26(c) is invoked when a prescribed time is measured from the date of service and the prescribed time under HRS § 386-88 is not measured from the date of service, but is measured from the date of mailing; and thus, (5) this appeal is untimely and we lack jurisdiction; see 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 case is a jurisdictional defect that can neither be

waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion). Therefore,

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

DATED: Honolulu, Hawai'i, March 28, 2002.