NO. 22687

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

LINDA J. CRIGHTON, Appellant-Appellee, v. STATE OF HAWAII, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, EMPLOYMENT SECURITY APPEALS OFFICE, Appellees-Appellees, and FIRST HEALTHCARE CORPORATION, Appellee-Appellant.

APPEAL FROM THE THIRD CIRCUIT COURT, KONA DIVISION
(CIVIL NO. 97-0075K)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Watanabe and Lim, JJ.)

First Healthcare Corporation (the Employer) appeals the June 25, 1999 final judgment of the circuit court of the third circuit and the underlying decision and order of the court of even date. The decision and order denied the Employer's appeal of, and affirmed, the November 30, 1998 decision of a referee (the second referee) of the State of Hawaiʻi Department of Labor and Industrial Relations (DLIR) that awarded unemployment insurance benefits to Employer's former employee, Linda J. Crighton (Crighton). Crighton had commenced the circuit court proceedings by filing an appeal of another referee's (the first referee) denial of her application for reopening of his decision affirming the initial determination by the DLIR's Unemployment Insurance Division (the UID) disqualifying her from unemployment insurance benefits. The circuit court vacated the first

referee's denial of Crighton's application for reopening and remanded for hearing by the second referee.

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, we resolve them as follows:

As argued by the Employer below and on this appeal, Crighton had, at most, thirty-two days to seek either judicial review or reopening of the first referee's decision affirming the UID's determination disqualifying her from unemployment insurance benefits. Hawai‘i Revised Statutes (HRS) § 383-38 (1993) ("the decisions shall be final and shall be binding upon each party unless a proceeding for judicial review is initiated by the party pursuant to [HRS] section 383-41; provided that within the time provided for taking an appeal and prior to the filing of a notice of appeal, the referee may reopen the matter, upon the application of . . . any . . . party"); HRS § 383-41 (1993) ("any party to the proceedings before the referee may obtain judicial review of the decision of the referee in the manner provided in [HRS] chapter 91"); HRS § 91-14(b) (1993) ("proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court"); Hawai‘i Rules of Civil Procedure (HRCP) Rule 5(b)(1) ("[s]ervice upon the attorney or

upon a party shall be made (a) by delivering a copy to the attorney or party; or (b) by mailing it to the attorney or party at the attorney's or party's last known address"); HRCP Rule 6(e) ("[w]henever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 2 days shall be added to the prescribed period").

The first referee's decision was served by mail on November 15, 1996. Attached to the decision was a notice of the aforementioned deadline. Crighton filed her application for reopening on January 6, 1997.

Hence, the first referee's decision remained "final and . . . binding upon each party[,]" HRS § 383-38, as it had become, at the latest, thirty-two days after service of the decision, and the first referee had no jurisdiction to reopen his decision. Cf. Kissel v. Labor & Indus. Rel. App. Bd., 57 Haw. 37, 38, 549 P.2d 470, 470-71 (1976) (in a workers' compensation administrative appeal case, "the time for filing a written notice of appeal [to the agency appeal board] is mandatory" (in a footnote, citing 9 Moore's Federal Practice p. 908, Note on Timely Filing as "Jurisdictional")). This being so, neither the second referee nor the circuit court had jurisdiction over the case. Cf. Association of Apt. Owners v. M.F.D., Inc., 60 Haw. 65, 70, 587 P.2d 301, 304 (1978) ("An appeal from a decision of

an administrative board which acts without jurisdiction confers no jurisdiction on the [circuit court in an agency appeal]. We have held that this type of jurisdictional defect can neither be waived by the parties nor disregarded by the [circuit] court in the exercise of judicial discretion." (Citations omitted.)). By the same token, we must dismiss this appeal. Id. In light of this disposition, we do not reach the Employer's other contentions on appeal.

Therefore,

IT IS HEREBY ORDERED that the June 25, 1999 final judgment of the circuit court and all underlying decisions and orders of the circuit court are vacated. We direct the circuit court to vacate the November 30, 1998 decision of the second referee. Finally, we dismiss this appeal.

DATED: Honolulu, Hawai'i, May 15, 2001.

On the briefs:

S. V. (Bud) Quitiquit and
Charles M. Heaukulani
(Brooks Tom Porter & Quitiquit)
for appellee-appellant.

Chief Judge

Frances E. H. Lum and
Robyn M. Kuwabe,
Deputy Attorneys General,
for appellee-appellee.

Associate Judge

Charles K. Y. Khim for
appellant-appellee.

Associate Judge