

*** NOT FOR PUBLICATION ***

NO. 26029

IN THE SUPREME COURT OF THE STATE OF HAWAII

ALVIN MARTIN, Claimant-Appellant

vs.

ADVANCE PROCESSING SYSTEMS, INC., Employer-Appellee

and

ACE USA/ESIS, Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2003-118)

ORDER DISMISSING APPEAL

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

Upon review of the statement contesting jurisdiction, the motion to dismiss appeal and the record, it appears that notice of appeal from the May 28, 2003 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). A certified copy of the May 28, 2003 order was mailed to the parties by the LIRAB on May 28, 2003. Appellant's notice of appeal was filed on August 12, 2003, more than thirty days after the May 28, 2003 order was mailed. Thus, this appeal is untimely and we lack jurisdiction. See Kissell v. Labor and Industrial Relations Appeal Board, 57 Haw. 37, 38, 549 P.2d 470, 470 (1976) ("[T]he time for filing a written notice of appeal as provided by [HRS § 386-88] is mandatory."); Bacon v. Karlin, 68 Haw. 648,

***** NOT FOR PUBLICATION *****

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, December 19, 2003.