

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAELYNN MCCOURT,
Appellant,
vs.
AMERICAN ASPHALT & GRADING
AND AIG CLAIM SERVICES, INC.,
Respondents.

No. 45600

FILED

JUN 30 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Walsh*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing a petition for judicial review in a workers' compensation matter for failure to file an opening brief. Eighth Judicial District Court, Clark County; Jessie Walsh, Judge.

In November 2004, appellant Raelynn McCourt petitioned the district court for judicial review of an administrative decision in an underlying workers' compensation matter. On the petition and notice thereof, which was apparently sent to the Nevada Department of Administration, McCourt listed her address, twice, as 8555 W. Russell Rd. #1070, Las Vegas, Nevada 89103.

Respondents filed a notice of intent to participate, and the administrative record was subsequently transmitted to the court in accordance with NRS 233B.131, on December 10, 2004. The administrative record listed a prior address for McCourt: 4400 South Jones, Bldg. 20 #1099, Las Vegas, Nevada 89103. Written notice that the administrative record had been transmitted was issued the same day. The written notice's certificate of mailing confirms, however, that the notice was not sent to McCourt's Russell Road address; instead, the notice was sent to her prior address.

Thereafter, on May 10, 2005, respondents moved to dismiss the petition for judicial review because McCourt had not filed her memorandum of points and authorities within forty days after written notice of the administrative record's filing, as provided in NRS 233B.133(1). The dismissal motion's certificate of mailing indicates that the dismissal motion, too, was sent to McCourt's prior address.

Ten days later, on May 20, 2005, McCourt filed an opposition to the motion to dismiss, in which she noted the discrepancies in mailing addresses and indicated that she had first received notice of the above filings when she checked the online district court docket entries the day before. McCourt argued that the time in which to file her memorandum of points and authorities under NRS 233B.133(1) had not commenced, as that statute requires the agency to first "give[] written notice to the parties," and written notice was never given to her.

On July 28, 2005, the district court summarily dismissed McCourt's petition for failing to timely file her memorandum of points and authorities under NRS 233B.133(1), and McCourt appealed. Because it appeared that the district court may have improperly dismissed McCourt's petition, on May 3, 3006, we directed respondents American Asphalt & Grading and AIG Claim Services, Inc., to file a response addressing why the district court's order should not be reversed and the case remanded for further proceedings. Respondents did not file any response.

Under NRS 233B.130, the only jurisdictional and mandatory requirement for preserving the right to judicial review is timely and properly filing a petition in substantially correct form.¹ When a party fails


¹Civil Serv. Comm'n v. Dist. Ct., 118 Nev. 186, 190, 42 P.3d 268, 271 (2002).

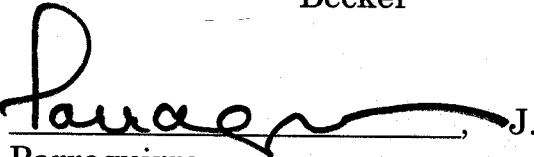
to meet other procedural requirements, dismissal is not required, but merely discretionary.²

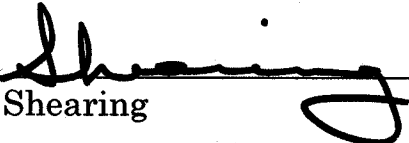
Here, McCourt's petition was timely filed; accordingly, the court was not required to dismiss the petition for McCourt's failure to timely file her memorandum of points and authorities. Moreover, since the notice was not sent to the address McCourt provided on her petition for judicial review, McCourt was never given written notice of the administrative record's filing; accordingly, the time in which she was to file her memorandum of points and authorities never commenced.³ In addition, we consider respondents' failure to file any response to our May 3 order a concession that the district court improperly dismissed McCourt's petition.

Accordingly, we reverse the district court's order and remand this matter for further proceedings. On remand, the district court should allow McCourt an appropriate amount of time in which to file her memorandum of points and authorities.

It is so ORDERED.⁴


_____, J.
Becker


_____, J.
Parraguirre


_____, Sr. J.
Shearing

²Id.

³See NRS 233B.133(1).

⁴The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered January 6, 2006.

cc: Hon. Jessie Walsh, District Judge
Raelynn McCourt
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Clark County Clerk