

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN M. BURCHFIELD, JR.,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA, A MUTUAL COMPANY,
Respondent.

No. 53030

FILED

JAN 20 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Yancey
DEPUTY CLERK

ORDER OF AFFIRMANCE

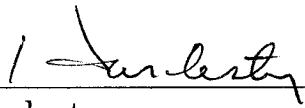
This is an appeal from a district court order dismissing a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

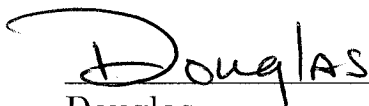
NRS 233B.133(1) requires a petitioner seeking judicial review to file and serve a memorandum of points and authorities within 40 days after the agency gives written notice that the record of the proceedings has been filed with the district court. NRS 233B.133(6) allows the district court to grant an extension of this 40-day period for good cause.


On appeal, appellant challenges the district court's sua sponte decision to reconsider a previous oral ruling that good cause existed to extend the 40-day period and instead dismiss the petition based on appellant's failure to file his memorandum of points and authorities within the required time period. As an initial matter, because the district court remains free to reconsider any decision and issue a different decision until the decision is reduced to writing, signed, and filed, we reject as meritless appellant's argument that the district court abused its discretion in sua sponte reconsidering its initial oral ruling. State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004). We further find no abuse of discretion by the district court in refusing to

extend the 40-day period for filing the memorandum of points and authorities and instead dismissing appellant's petition, given that appellant's memorandum was filed over 19 months beyond the expiration of the 40-day period and appellant failed to request an extension of time or respond to the arguments regarding the untimely memorandum of points and authorities contained in respondent's answering brief prior to the hearing on the petition for judicial review.¹ NRAP 233B.133(6) (providing that the district court may extend the time for filing the memorandum of points and authorities for good cause). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

¹To the extent that the issue of extending the time for filing the memorandum was raised at the March 20, 2008, hearing on appellant's petition for judicial review, we note that appellant has failed to provide this court with a transcript of that hearing. Thus, it is not clear what, if any, arguments were made regarding this issue. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (stating that "appellants are responsible for making an adequate appellate record," and presuming that any missing documents supported the district court's summary judgment).

cc: Hon. Kenneth C. Cory, District Judge
E. Paul Richitt Jr., Settlement Judge
Tingey & Tingey
Beckett, Yott & McCarty/Reno
Floyd, Skeren & Kelly
Eighth District Court Clerk