

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT S. BENNETT,
Appellant,

vs.

NEVADA EMPLOYMENT SECURITY
DIVISION, STATE OF NEVADA;
CYNTHIA JONES, IN HER CAPACITY
AS ADMINISTRATOR OF THE
NEVADA EMPLOYMENT SECURITY
DIVISION; KATIE JOHNSON, IN HER
CAPACITY AS CHAIRWOMAN OF THE
NEVADA EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW; AND
PAMELA JUNE, IN HER CAPACITY AS
CHIEF, OFFICE OF DISABILITY
EMPLOYMENT POLICY, NEVADA
STATE REHABILITATION COUNCIL,
DEPARTMENT OF EMPLOYMENT,
TRAINING AND REHABILITATION,
REHABILITATION DIVISION,
Respondents.

No. 57144

FILED

SEP 15 2011

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in an unemployment benefits action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Proper person appellant Robert S. Bennett was terminated from his employment and filed for unemployment benefits.¹ Respondent

¹Bennett's former employer is not listed as a party to this appeal.

Nevada Employment Security Division, State of Nevada, (Security Division) denied Bennett's request for benefits, dismissing his administrative appeal of a referee's decision because Bennett had failed to appeal within 11 days, as set forth in NRS 612.510; see also Hardin v. Jones, 102 Nev. 469, 727 P.2d 551 (1986) (applying the NRC 6(e) 3-day extension of time for mailing to the time limits set forth in NRS 612.495), and did not demonstrate the statutory "good cause" requirement for an extension of that 11-day period. Bennett then petitioned for judicial review, which was denied by the district court, and he now appeals to this court.

On appeal, Bennett challenges the dismissal of his administrative appeal, arguing that he had demonstrated good cause for an extension of the 11-day period since, on August 22, 2009, he had written a letter to the Nevada Department of Employment, Rehabilitation Division, in which he at one point stated that he would be out of town from August 27, 2009, to September 13, 2009. Thus, Bennett asserts that the Security Division was effectively on notice that he might not be able to respond to or appeal the referee's decision, which was mailed to him on August 28, 2009, and that he promptly filed his administrative appeal when he returned from his trip. Bennett further contends that he was informed that the referee's decision would be sent out within 30 days of an administrative hearing that took place, and that this 30-day deadline was missed by either 3 or 13 days, depending on whether weekends and holidays are counted. Finally, Bennett asserts that his claim for unemployment benefits was improperly denied on the merits by the referee, since this court's controlling decision, Whitney v. State, Employment Security Department, 105 Nev. 810, 783 P.2d 459 (1989), was

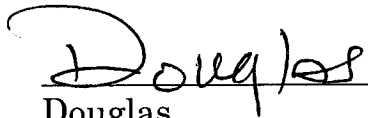
overlooked. Respondent Security Division filed a response, as directed, in which it argues that the district court's denial of the petition for judicial review should be affirmed.

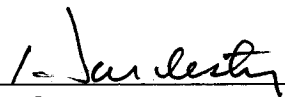
In reviewing an administrative decision, this court, like the district court, may not substitute its judgment for that of the administrative tribunal on the weight of evidence on any question of fact. NRS 233B.135(3); Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (noting that this court's level of review of administrative decisions mirrors that of the district court). Nonetheless, an administrative decision may be set aside if it is "affected by error of law," Dredge v. State ex rel. Dep't Prisons, 105 Nev. 39, 43, 769 P.2d 56, 58-59 (1989), or if the decision is arbitrary or capricious or constitutes an abuse of discretion. NRS 233B.135(3)(f).

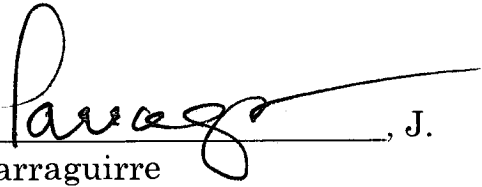
Having reviewed Bennett's proper person appeal statement, the Security Division's response, and the record on appeal—in particular the August 22 letter—we affirm. Bennett's focus in the letter was that the document constitutes "a formal complaint against the Department of Employment and a request for a fair hearing," and it was addressed to the Rehabilitation Division rather than the Security Division. The 3-page letter only briefly mentions the dates during which Bennett planned to be out of town, and does not clearly connect the time period that he planned to be away with any concern over NRS 612.510(2)'s 11-day appeal period. As we therefore conclude that, under these circumstances, the Security Division's determination that Bennett had not established NRS 612.150 "good cause" for an extension of time to administratively appeal was not "affected by error of law," Dredge, 105 Nev. at 43, 769 P.2d at 58-59, was

not arbitrary or capricious, and did not constitute an abuse of discretion,
NRS 233B.135(3)(f), we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Robert S. Bennett
State of Nevada/DETR
Washoe District Court Clerk

²Having reviewed Bennett's remaining appellate arguments, we
conclude that they lack merit.