IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIE BRITTON,
Appellant,
vs.
DOTTY'S; AND NEVADA STATE DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION, OFFICE OF APPEALS,
Respondents.

No. 57323

FILED

SEP 05 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order denying a petition for judicial review of an unemployment benefits action. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Marie Britton was terminated from her employment with respondent Dotty's and filed for unemployment benefits.[1] Respondent Nevada State Department of Employment Training and Rehabilitation, Office of Appeals (the Department), denied Britton's request for benefits, affirming a referee's decision to dismiss the claim because of Britton's failure to appear at a scheduled telephonic hearing.

[1]This court also concludes that Dotty's is a proper respondent in this appeal, even though appellant failed to strictly adhere to the rules of service. See NRS 612.530(2) (noting that service is deemed complete on all parties when the petition is served on the administrator, but requiring that petitioner provide one copy of the petition for each defendant); cf. Civil Serv. Comm'n v. Dist. Ct., 118 Nev. 186, 190, 42 P.3d 268, 271 (2002) (noting that when a party fails to comply with the service requirement of NRS 233B.130, dismissal is not mandatory), overruled on other grounds by Washoe County v. Otto, 128 Nev. ___, ___ P.3d ___ (Adv. Op. No. 40, August 9, 2012) (holding that a district court lacks jurisdiction to consider a petition for judicial review that fails to name all parties of record).

12-28043

Britton petitioned for judicial review, which was denied by the district court, and now appeals to this court.

On appeal, Britton challenges the circumstances of Dotty's termination of her employment and points to telephone records indicating that she did, in fact, attempt to call the Department shortly after the hearing was scheduled to begin. Britton asserts that the Department improperly faulted her in district court for not producing these telephone records during the course of the administrative proceedings. As directed, the Department filed an answer, and Britton has filed a reply.

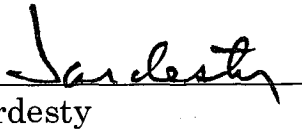
In reviewing an administrative decision, this court, like the district court, may not substitute its judgment for that of the administrative tribunal on the weight of evidence on any question of fact. NRS 233B.135(3); Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (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 (1989), or if the decision is arbitrary or capricious or constitutes an abuse of discretion. NRS 233B.135(3)(f).

Having reviewed Britton's proper person appeal statement and the record on appeal, we conclude that the Department arbitrarily affirmed the dismissal of Britton's claim because the evidence shows Britton's good-faith confusion as to the telephonic hearing procedures and her effort to call in to the hearing, even though she failed to call at the assigned time. See id. Britton's mistake as to the proper procedures and her tardy telephone call does not warrant the dismissal of her appeal. See NRS 612.500(1) ("A reasonable opportunity for a fair hearing on appeals

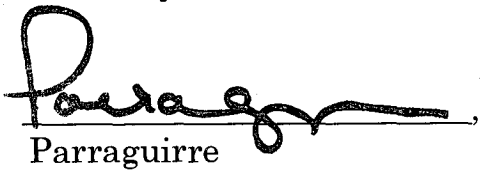
must be promptly afforded all parties."); cf. Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380 P.2d 293, 295 (1963) (recognizing, in setting aside a default judgment, that justice is best served by the court's basic underlying policy to have each case decided on its merits). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to remand to the administrative agency for proceedings consistent with this order.

_____, J.
Douglas



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Robert W. Lane, District Judge
Marie Britton
State of Nevada/DETR
Nye County Clerk