

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR R. GARCIA,
Appellant,

vs.

STATE OF NEVADA, EX REL. NEVADA
SYSTEM OF HIGHER EDUCATION ON
BEHALF OF THE UNIVERSITY OF
NEVADA, RENO,
Respondent.

No. 57475

FILED

JUN 15 2012

FRANCIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Frangie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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


Appellant was employed by respondent as a university campus police officer. After reports of alleged misconduct, respondent suspended appellant from work for five days without pay. Appellant administratively appealed the suspension, and the administrative hearing officer affirmed respondent's determination. Appellant filed his petition for judicial review of the hearing officer's determination on July 19, 2010. He attached to his petition a certificate of service that stated that respondent would be served through the court's electronic filing system, but because respondent had not yet appeared in the case, service could not be accomplished electronically, and respondent was not properly served with the petition. On September 29, 2010, respondent filed a motion to dismiss the petition for failure to serve it within the 45-day statutory time limit. Appellant filed an opposition, but the district court granted the motion to dismiss, finding that appellant failed to show good cause for his failure to timely serve the petition. Appellant then filed the instant appeal.

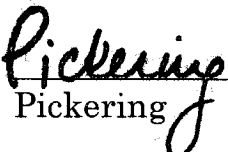
Upon filing a petition for judicial review with the district court, the petitioner must serve the petition "upon the agency and every

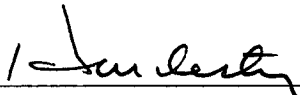
party within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service.” NRS 233B.130(5); see Civil Serv. Comm’n v. Dist. Ct., 118 Nev. 186, 189, 42 P.3d 268, 271 (2002). “[T]he time period for filing a petition for judicial review of an administrative decision is mandatory and jurisdictional.” Kame v. Employment Security Dep’t, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). When a party fails to comply with the service requirement of NRS 233B.130, however, dismissal is not mandatory and the district court has discretion whether to dismiss the petition. Civil Serv. Comm’n, 118 Nev. at 190, 42 P.3d at 271.

Here, appellant failed to timely serve the petition for judicial review upon respondent or move for an extension of time to complete service. Moreover, appellant failed to set forth good cause for the delay. Thus, we conclude that it was within the district court’s discretion to dismiss the petition for failure to comply with the service requirement of NRS 233B.130(5).¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

¹Having considered appellant’s remaining arguments, we conclude they lack merit.

cc: Hon. Brent T. Adams, District Judge
Leonard I. Gang, Settlement Judge
Jeffrey A Dickerson
Frank H. Roberts
Washoe District Court Clerk