

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL KAPETAN,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES,
Respondent.

No. 68868

FILED

DEC 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a district court order dismissing a petition for judicial review in a driver's license revocation matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.


In January 2014, appellant Daniel Kapetan was convicted of driving under the influence of alcohol, his second such conviction in a period of seven years. In November 2014, Kapetan applied for a restricted driver's license, and respondent State of Nevada Department of Motor Vehicles (DMV) denied his application in December 2014. Kapetan filed a request for a hearing, which was granted, and a hearing was held on January 28, 2015.

Having not yet received a decision from the January 28 hearing, Kapetan again applied for a restricted driver's license, and this application was granted on February 13, 2015. Then, on February 17, 2015, the administrative law judge affirmed the denial of Kapetan's November 2014 application for a restricted license. That decision was served on Kapetan by mail that same day. And on March 23, 2015, Kapetan received notice that the restricted driver's license issued to him on February 13 was being revoked.

On April 15, 2015, Kapetan filed his petition for judicial review. Although Kapetan referred to the March 23 revocation in his petition for judicial review, that was not a final agency decision subject to judicial review. See NRS 233B.130(1) (providing that, “[w]here appeal is provided within an agency, only the decision at the highest level is reviewable [by a petition for judicial review] unless a decision made at a lower level in the agency is made final by statute”). Moreover, while the February 17 affirmance was a final agency decision subject to judicial review, Kapetan’s April 15 petition was untimely as to the February 17 decision. See NRS 233B.130(2)(c) (requiring a petition for judicial review to “[b]e filed within 30 days after service of the final decision of the agency”).¹ Thus, the district court properly dismissed the petition for judicial review for lack of jurisdiction. See *Washoe Cty. v. Otto*, 128 Nev. ___, ___, 282 P.3d 719, 725 (2012) (explaining that the requirements of NRS 233B.130(2) are mandatory and jurisdictional and that failure to comply with them is grounds for dismissal). Accordingly, we affirm the district court’s dismissal of the petition for judicial review.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹When Kapetan filed his petition for judicial review, this provision was found at NRS 233B.130(2)(c). After Kapetan’s petition was filed, NRS 233B.130(2)(c) was renumbered as NRS 233B.130(2)(d), effective July 1, 2015, but the subsection was not substantively amended. 2015 Nev. Stat., ch. 160, § 9, at ___.

cc: Hon. Patrick Flanagan, District Judge
Daniel Kapetan
Attorney General/Dep't of Public Safety/Carson City
Washoe District Court Clerk