IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SARA DUARTE,
Appellant,
vs.
UNIVERSITY OF NEVADA, LAS VEGAS,
Respondent.

No. 76990-COA

ORDER OF AFFIRMANCE

Sara Duarte appeals a district court order denying her petition for judicial review of her termination from the University of Nevada, Las Vegas. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Duarte is a Spanish-speaking former Custodial Worker at UNLV, with limited fluency in English. Duarte was hired by UNLV in 2006, and in 2016, an anonymous coworker alleged that Duarte was improperly leaving work for up to six hours during her scheduled shifts. In April 2017, after an investigation, UNLV determined that Duarte should be terminated for cause; Duarte apparently admitted during the investigation that she would watch television for up to two hours during her shift instead of working. UNLV held a meeting to notify Duarte of the allegations against her, and presented her with documents regarding "Specificity of Charges," "Notification of Pre-Disciplinary Hearing," and a "[Letter of] Intent to Impose Dismissal of Sara Duarte."

At the meeting, UNLV provided written and verbal notice to Duarte—in relevant part—that (1) UNLV recommended terminating her for

cause effective May 26, 2017, (2) her Pre-Disciplinary Hearing[1] would be held on May 5, and she had a right to be represented by counsel and to present a case on her behalf, and (3) pursuant to NRS 284.390(1), she would have ten working days following the disciplinary action to timely request a hearing with a hearing officer from the Personnel Commission to review the decision. At the meeting, UNLV provided Duarte with an interpreter to explain the allegations against her.

On May 5, 2017, UNLV held Duarte's Pre-Disciplinary Hearing. Duarte appeared in proper person, and presented a written statement prepared in English. UNLV again provided an interpreter for Duarte. After hearing both sides and receiving written statements, the Pre-Disciplinary hearing officer notified both parties that Duarte would be provided with an employment decision on May 26. As noted, Duarte was informed at the April meeting that UNLV had recommended terminating her for cause. Duarte told the hearing officer that she had pre-approved vacation time from May 15 to June 20 to travel to Nicaragua, and that she preferred not to find out the outcome until she returned. Maria Langley, a Senior Employee Relations Specialist with UNLV Human Resources, specifically told Duarte that the employment decision would be effective on May 26, and that Duarte would need someone to accept mail on her behalf if she wanted to try to meet the mandated timelines to file a request to review the employment decision.

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[1]We note that the parties and the hearing officer below referred to the April 20 meeting as a "meeting" and the May 5 hearing as a "Pre-Disciplinary Hearing." The Pre-Disciplinary Hearing was separate and distinct from the hearing before a hearing officer with the Nevada Personnel Commission pursuant to NRS 284.390(1), which is at issue in this appeal.

On May 25, 2017, UNLV sent—via certified mail—a copy of the employment decision to Duarte's residence; someone in her family accepted the letter.[2] The notice of termination informed Duarte that the effective date of her termination was May 26, and that she had ten working days to request a hearing with a hearing officer employed by the Personnel Commission (i.e., by June 12). Duarte returned from Nicaragua on June 16, and thereafter opened the termination letter from UNLV. She then filed a request for a hearing to review the employment decision on June 26.

UNLV moved to dismiss Duarte's administrative appeal to the hearing officer as untimely.[3] Duarte hired counsel, who filed an opposition to UNLV's motion to dismiss; Duarte alleged that she could not read the notice of termination because it was written in English, rather than Spanish. The hearing officer dismissed Duarte's administrative appeal, concluding that (1) NRS 284.390 provides that an employee must file an administrative appeal of the employment decision within 10 working days after the

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[2]The notice of termination informed Duarte that the hearing officer found that UNLV's recommendation to terminate Duarte was supported by information received at the Pre-Disciplinary Hearing. The letter noted that the hearing officer had prepared a report, which was included in the envelope sent by certified mail to Duarte. Appellant, however, did not include this report in her appendix.

[3]The parties informally refer to the hearing pursuant to NRS 284.390(1) as an appeal, although it is more properly characterized as a hearing before a hearing officer with the Nevada Personnel Commission to review the employment decision. *See O'Keefe v. State, Dep't of Motor Vehicles*, 134 Nev. 752, 756, 431 P.3d 350, 353 (2018) ("Classified employees . . . have the right to challenge their termination before a 'hearing officer of the [Personnel] Commission.'" (alteration in original) (quoting NRS 284.390(1))). Thus, we use the term "administrative appeal" consistent with the hearing officer and district court's usage of the term "appeal" as pertaining to a request for a hearing pursuant to NRS 284.390(1).

disciplinary action, and Duarte's failure to file within the prescribed time period jurisdictionally barred her appeal, (2) the doctrine of equitable tolling did not relieve Duarte of her duty to timely file her administrative appeal because equitable tolling does not apply to jurisdictional statutes, and (3) Duarte was not deprived of procedural due process when the notice was mailed on May 25, 2017, because she was notified of the allegations against her in April 2017, she was provided a hearing, she was provided with an interpreter at the April meeting and the May Pre-Disciplinary Hearing, she was informed of the date the employment decision would be rendered, and UNLV had no duty to delay notifying her of her termination because of her pre-approved vacation to Nicaragua.

Duarte then filed a petition for judicial review in the district court. The district court denied the petition and concluded that UNLV complied with all relevant statutes and NAC Chapter 284 in terminating Duarte. The district court further concluded that Duarte's administrative appeal was untimely, that the doctrine of equitable tolling did not apply because NRS 284.390 is jurisdictional, and that any argument Duarte had as to not being able to understand the documents was waived by Duarte because she never informed UNLV that she needed the notices translated from English to Spanish.

On appeal, Duarte contends that (1) UNLV violated her procedural due process rights by sending the notice of termination to Duarte's Nevada address when it knew she was in Nicaragua, (2) UNLV violated her procedural due process rights by failing to provide the written notice of her termination in Spanish, and (3) the doctrine of equitable tolling should apply to extend the time limit prescribed by NRS 284.390(1).

"When reviewing a district court's denial of a petition for judicial review of an agency decision, [appellate] court[s] engage[ ] in the same

analysis as the district court." *State, Dep't of Corr. v. Ludwick*, 135 Nev. 99, 101, 440 P.3d 43, 45 (2019) (quoting *Taylor v. State, Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013)). Under Nevada's Administrative Procedure Act, this court "review[s] the hearing officer's decision to determine whether it is clearly erroneous, arbitrary or capricious, or affected by an error of law." *Id.* We "review questions of law de novo but 'defer[ ] to [a hearing officer's] interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.'" *Id.* (alterations in original) (quoting *Taylor*, 129 Nev. at 930, 314 P.3d at 951).

Pursuant to NRS 284.390(1), a terminated employee may request a hearing before a hearing officer with the Personnel Commission, which "*shall be deemed timely if it is postmarked within 10 working days after the effective date of the employee's dismissal*, demotion or suspension." (Emphasis added.) "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Grupo Famsa v. Eighth Judicial Dist. Court*, 132 Nev. 334, 337, 371 P.3d 1048, 1050 (2016) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965))).

We conclude that all three of Duarte's appellate arguments are unpersuasive. First, the record is clear that UNLV informed Duarte at a meeting on April 20, 2017—with both written and verbal communication—

that it intended to terminate her on May 26, subject to a Pre-Disciplinary Hearing wherein Duarte would have the opportunity to present a case on her behalf, and that she would only have ten working days to request a hearing with a hearing officer employed by the Personnel Commission pursuant to NRS 284.390(1). During this meeting, UNLV provided Duarte with an interpreter. At the April meeting, Duarte was also informed that a Pre-Disciplinary Hearing would be held on May 5. The interpretation was apparently effective because Duarte attended the hearing on May 5 and presented a written statement in English, and thus, she was likely also on notice that she would be terminated effective May 26 and would only have ten working days to request a hearing to review the employment decision.

Moreover, an affidavit submitted to the hearing officer by UNLV shows that, at the May 5 Pre-Disciplinary Hearing, UNLV again told Duarte that the employment decision would be effective on May 26, and that regardless of whether she was in Nicaragua, all notices would be mailed to her address on file. Specifically, UNLV informed Duarte that she would need someone to accept the mail on her behalf. Thus, the record shows that UNLV provided Duarte with ample notice of when the final decision would be made in order for her to pursue an administrative appeal, and that the notice was reasonably calculated to inform Duarte and that she would have a meaningful opportunity to a hearing to review the employment decision pursuant to NRS 284.390(1). Therefore, we conclude that the hearing officer and the district court did not err in concluding that UNLV did not deprive Duarte of due process merely because Duarte told UNLV that she would be in Nicaragua at the time of the employment decision.

Second, Duarte's argument—that UNLV deprived her of procedural due process by failing to provide the notice of her termination and hearing rights in Spanish—is without merit because the record

unequivocally shows that Duarte did not open the notice from UNLV until after the time had expired to request a hearing pursuant to NRS 284.390(1) (i.e., the deadline to request a hearing was June 12, and Duarte did not open the notice until at least June 16). Thus, under these facts, the language of the notice is of little importance because it did not affect Duarte's ability to timely respond. Moreover, the record shows that prior to leaving for Nicaragua, Duarte received written and verbal notice of when the termination decision would be made, and of her right to pursue an administrative appeal after the decision was made.[4]

Duarte claims in her reply brief that, pursuant to 42 U.S.C. § 2000d, UNLV violated Title VI of the Civil Rights Act of 1964 by not providing Duarte notice of her termination in Spanish. We conclude, however, that we need not reach this argument. First, new arguments raised in reply need not be considered. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised in an opening brief are deemed waived). Second, Duarte's failure to open the letter with the notice of termination before the time to request a hearing had passed renders this argument moot. *See Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 334, 302 P.3d 1108, 1113 (2013) ("[A] moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights." (quoting *NCAA v. Univ. of Nev.*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981))).

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[4]Further, Duarte filed her request for a hearing with a hearing officer with the Personnel Commission on the State of Nevada's form NPD-54 on June 26, 2017, using the English language. In this form, Duarte noted that the effective date of her termination was May 26, 2017. She did not allege that she could not read the termination notice because it was written in English.

Finally, Duarte contends that the doctrine of equitable tolling should be applied to extend the ten-working-day deadline provided by NRS 284.390(1). Duarte concedes that equitable tolling is not applied to statutes with mandatory or jurisdictional deadlines. *See Seino v. Emp'rs Ins. Co. of Nev.*, 121 Nev. 146, 153, 111 P.3d 1107, 1112 (2005) ("This court . . . has never applied the doctrine of equitable tolling to statutory periods that are mandatory and jurisdictional."). Duarte contends that this rule does not apply because her procedural due process rights were violated. Because the preceding analysis shows that Duarte's due process rights were not violated, we conclude—consistent with Duarte's concession—that the hearing officer and the district court did not err in concluding that the deadline under NRS 284.290(1) is jurisdictional and mandatory, and therefore is not subject to equitable tolling. *See State Indus. Ins. Sys. v. Partlow-Hursh*, 101 Nev. 122, 124-24, 696 P.2d 462, 463-64 (1985) ("Where the statute is silent [as to whether a time limit can be excused], the time period for perfecting an appeal is generally considered to be mandatory, not procedural."). Thus, we conclude that equitable tolling does not apply to this case, and in sum, the district court did not err in denying Duarte's petition for judicial review.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Adriana Escobar, District Judge
Kemp & Kemp
University of Nevada, Las Vegas, Office of General Counsel
Eighth District Court Clerk