

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATASHA EARLY,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
AND KIMBERLY GAA [NOW, LYND
PARVEN] IN HER CAPACITY AS
ADMINISTRATOR OF THE
EMPLOYMENT SECURITY DIVISION,
Respondents.

No. 82721-COA

FILED

APR 21 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY S. Youney
DEPUTY CLERK

ORDER OF AFFIRMANCE

Natasha Early appeals from a district court order dismissing her petition for a writ of mandamus concerning a claim for unemployment benefits on the basis that writ relief was precluded by the availability of an adequate legal remedy. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

We review the district court's order dismissing Early's writ petition for an abuse of discretion. *State, Dep't of Pub. Safety v. Coley*, 132 Nev. 149, 153, 368 P.3d 758, 760-61 (2016). A writ of mandamus is available to compel the performance of a legally required act or to control an arbitrary or capricious exercise of discretion. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see* NRS 34.160. A writ of mandamus may not issue, however, if the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558; *Pan u. Eighth Judicial Dist. Court*, 120 Nev.

222, 224, 88 P.3d 840, 841 (2004). “[T]he right to appeal is generally an adequate legal remedy that precludes writ relief.” *Pan*, 120 Nev. at 224, 88 P.3d at 841; *see also Malecon Tobacco, LLC v. State, Dep’t of Taxation*, 118 Nev. 837, 841, 59 P.3d 474, 477 (2002) (explaining that exhaustion of administrative remedies is required before seeking judicial review in recognition of the agency’s ability to “utilize its specialized skill and knowledge to inquire into the facts of the case”).

In her December 11, 2020, district court writ petition, Early asserted that respondents improperly processed her August 2020 application as a new claim, instead of under her previous 2019 claim, resulting in a new base period and corresponding reduction of available benefits. She asked the district court to direct respondents to comply with their ministerial duty to pay her weekly benefits for which she was deemed eligible, including Cares Act and Lost Wages Act funds. In response to respondents’ motion to dismiss Early’s petition for her failure to comply with the administrative process, Early indicated that she filed administrative appeals from relevant decisions, attaching copies of fax cover sheets and appeal letters dated December 2020, as well as one notification that a fax was sent successfully. Although Early asserted that her efforts to redress the matter directly with respondents went unanswered, resulted in retaliation, or were otherwise futile, the district court noted, in February 2021, that none of the communications before it either denied Early her right to administratively appeal or confirmed that she had already done so. Therefore, the district court ultimately dismissed the writ petition because Early had an adequate legal remedy that precluded the court from granting writ relief.

On appeal to this court, Early asserts that the district court abused its discretion because no administrative appeal process exists to address the issue she would like resolved (reopening her 2019 claim) and, although she nevertheless attempted to file an administrative appeal, her appeal letters were not acknowledged. In response, respondents point out that, under NRS Chapter 612, Early could have appealed both the August notice determining benefit amount and the November decision refusing to backdate her claim to address the reopening issue. See NRS 612.495 (appeal from determination or redetermination); NRS 612.500 (hearing on appeal). Early replies that, while she did file administrative appeals, respondents still have not contacted her regarding any of them.

After receiving the August notice regarding benefit amount, Early apparently contacted respondents seeking to reopen her 2019 claim, which expired on April 25, 2020. Although respondents ostensibly treated this request as one to backdate her claim to April 26, 2020, rather than to reopen her 2019 claim, this does not show that administrative appeal rights to reopen this claim were unavailable to Early. The November decision denying the request to backdate her claim expressly provided that Early has administrative appeal rights under NRS Chapter 612. And although Early complains that her administrative appeal from the November decision has not been processed, when the district court denied writ relief, the administrative appeal had been pending for only a few weeks, such that Early had not completed the administrative process. As a result, the district court did not abuse its discretion in determining that writ relief was precluded by the legal remedy provided by the administrative appeal process.

In their response, respondents assert that Early's administrative appeal remains pending due to a shortage of appeal referees and internal priority policies. Early's reply indicates that, to date—nearly one-and-a-half years after submitting it, she has yet to be contacted in any manner regarding the status of any of her administrative appeals. While this information was not before the district court at the time of that court's determination and thus does not factor into our review of that decision, see *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981), nothing in this order precludes Early from seeking relief in the district court based on respondents' apparent failure to process her administrative appeals, if deemed appropriate. Thus, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹In light of this order, Early's April 4, 2022, motion for reconsideration of our order expediting appeal is denied as moot.

cc: Hon. Joanna Kishner, District Judge
Natasha Early
State of Nevada/DETR
Eighth District Court Clerk