


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CAPRIATI CONSTRUCTION
CORPORATION,
Appellant,

vs.

CHIEF ADMINISTRATIVE OFFICER OF
THE OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION OF THE
DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY,
Respondent.

No. 86445-COA

FILED
JUL 30 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Capriati Construction Corporation (Capriati) appeals from a district court order dismissing a petition for judicial review in a labor matter. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

After receiving an unfavorable ruling from the Nevada Occupational Safety and Health Review Board (Review Board), Capriati sought judicial review of that decision. Respondent, the chief administrative officer of Nevada's Occupational Safety and Health Administration (Nevada OSHA), moved to dismiss the petition based, in relevant part, on Capriati's failure to name the Review Board as a respondent in the caption or the body of its petition as required by statute. The district court granted Nevada OSHA's motion and, thus, dismissed the petition. This appeal followed.

On appeal, Capriati asserts that it named the Review Board as a respondent in the body of its petition such that it sufficiently complied with the naming requirement in NRS 233B.130(2)(a). We review a motion to dismiss for lack of subject matter jurisdiction de novo. *Whitfield v. Nev. State Pers. Comm'n*, 137 Nev. 345, 349, 492 P.3d 571, 575 (2021). NRS 233B.130(2)(a) requires petitions for judicial review to “[n]ame as respondents the agency and all parties of record to the administrative proceeding.” (Emphasis added.) As set forth in *Whitfield*, “a petitioner must name as respondents, within the caption or petition itself, every party of record to the underlying administrative proceedings.” 137 Nev. at 349, 492 P.3d at 575. Where the petitioner fails to strictly comply with this requirement, the petition must be dismissed as jurisdictionally defective. *Id.*

Here, Capriati mentioned the Review Board in the body of its petition several times, noting that it was aggrieved by the Review Board’s decision, and attached the decision to its petition. Despite mentioning the Review Board, however, Capriati failed to identify the Review Board as a respondent either in the caption or in the body of the petition itself, as required by both NRS 233B.130(2)(a) and *Whitfield*, 137 Nev. at 349, 492 P.3d at 575. Contrary to Capriati’s assertion, merely mentioning the Review Board in the petition is not the same as identifying it as a respondent and does not constitute strict compliance with the statute. See *Whitfield*, 137 Nev. at 348-49, 492 P.3d at 575 (noting that the petitioner did not refer to any party as a respondent in the body of the petition and that the mention of the relevant agency’s decision and request to reverse

that decision was insufficient to satisfy the naming requirement of NRS 233B.130(2)(a) where the petitioner failed to identify the relevant parties as respondents); *see also Roberts v. Chandra*, No. 85066-COA, 2024 WL 1543619 (Nev. Ct. App. Apr. 8, 2024) (Order of Affirmance) (affirming the dismissal of a petition for judicial review for lack of jurisdiction and concluding the petition failed to strictly comply with NRS 233B.130(2)(a) where the petitioner mentioned the Nevada Real Estate Commission under the heading “parties” but failed to identify it as a respondent). Moreover, we are unpersuaded by Capriati’s argument that naming the chief administrative officer of Nevada OSHA as the respondent in the caption was adequate based on its assertion that Nevada OSHA and the Review Board are sufficiently connected. This argument has been raised and rejected previously and likewise fails in this matter. *See, e.g., Cooper Roofing & Solar, LLC v. Chief Admin. Officer of Occupational Safety & Health Admin.*, No. 67914, 2016 WL 2957129, *1-2 (Nev. May 19, 2016) (Order of Affirmance) (concluding that the Occupational Safety and Health Review Board is “an independent agency” separate from Nevada OSHA that “must be named separately from Nevada OSHA in a petition for judicial review”); *see also Silver State Wire Rope & Rigging v. Chief Admin. Officer of the Occupational Safety & Health Admin.*, No. 68895, 2016 WL 4497132, *2 (Nev. Ct. App. Aug. 22, 2016) (same).

Consequently, we conclude that Capriati failed to strictly comply with NRS 233B.130(2)(a), and the district court correctly dismissed

the petition for lack of jurisdiction. Accordingly, we affirm the district court's dismissal of Capriati's petition.¹

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Maria A. Gall, District Judge
Hooks Meng & Clement
State of Nevada Department of Business and Industry/Div of
Industrial Relations/Carson City
Eighth District Court Clerk

¹Given our resolution of this matter, we need not reach the remaining issues that Capriati presents on appeal.