

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY LEVINE,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION,
AND LYNDA PARVEN, IN HER
CAPACITY AS ADMINISTRATOR OF
THE EMPLOYMENT SECURITY
DIVISION; AND J. THOMAS SUSICH,
IN HIS CAPACITY AS CHAIR OF THE
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW,
Respondents.

No. 87013

FILED

OCT 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss a petition for judicial review in an unemployment benefit matter. Eighth Judicial District Court, Clark County; Jacob A. Reynolds, Judge.

Appellant Kimberly Levine applied for pandemic unemployment assistance (PUA) as a self-employed nail technician and political canvasser. Initially, respondents Employment Security Division, Lynda Parven, and J. Thomas Susish (collectively, ESD) approved her application and granted her benefits. Levine was later disqualified because she was unable to establish that her unemployment for periods during which she received benefits was caused by COVID-19. Consequently, Levine was found liable for overpayment of benefits.

Levine appealed ESD's determination, and the appeals referee affirmed the agency's decision. Levine appealed the referee's decision to the board of review, and the board denied the appeal. Levine, in pro se, timely petitioned for judicial review with the district court on September 20, 2022.

Levine, however, failed to timely serve the petition on Parven as Administrator of the ESD, as required by NRS 612.530(2). The district court ordered Levine to show cause for the service failure. On February 3, 2023, Levine served ESD. ESD subsequently filed a notice of intent to participate and defend, as well as an answer to the petition for judicial review. After retaining counsel, Levine filed briefs in support of the petition. ESD moved to dismiss, arguing Levine failed to initially serve by the statutorily mandated deadline, and the district court agreed, dismissing the petition with prejudice. Levine appeals.

The district court properly granted ESD's motion to dismiss for Levine's failure to timely serve her petition

Levine argues the district court's dismissal under NRS 612.530(2) was contrary to the statute's legislative intent. "On appeal from orders deciding petitions for judicial review, this court reviews the administrative decision in the same manner as the district court." *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 248, 327 P.3d 487, 489 (2014). We review the administrative decision for an abuse of discretion, giving deference to the administrative agency's factual findings that are supported by substantial evidence. *Taylor v. State, Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). We interpret a statutory requirement to determine whether the district court properly dismissed a petition de novo. *Washoe Cnty. v. Otto*, 128 Nev. 424, 430-31, 282 P.3d 719, 724 (2012). We begin with the text of the statute "to determine its plain meaning and apply clear and unambiguous language as written." *Kassebaum v. State, Dep't of Corr.*, 139 Nev., Adv. Op. 34, 535 P.3d 651, 655 (2023) (internal quotation marks omitted).

Under NRS 612.530(2), "must' generally imposes a mandatory requirement." *Otto*, 128 Nev. at 432, 282 P.3d at 725. "[A]

petition . . . must, within 45 days after the commencement of the action, be served upon the Administrator” NRS 612.530(2). The language of the statute suggests there is no discretion to extend the service period.¹ Therefore, a petition for review may be dismissed if a party fails to comply with such a rule. *See, e.g., Kassebaum*, 139 Nev., Adv. Op. 34, 535 P.3d at 656.

Here, Levine filed the petition for judicial review on September 20, 2022, and served the Administrator on February 3, 2023. NRS 612.530(2) provides that service is required within 45 days of filing one’s petition. Thus, Levine needed to serve the Administrator by November 4, 2022. Because Levine did not serve the Administrator until February 3, 2023, Levine failed to serve within the mandatory 45-day requirement and we conclude that the district court properly dismissed her petition.

The district court did not err by not applying the doctrine of equitable tolling

Levine argues that the doctrine of equitable tolling should have been applied by the district court to permit her additional time to enact service. We reject that argument because the plain language of the statute provides that a petition must be served within 45 days and does not grant the district court any discretion to toll, or extend, Levine’s deadline. *See Otto*, 128 Nev. at 432, 282 P.3d at 725 (explaining that when construing a statute, we must enforce its unambiguous requirements as written). Therefore, we conclude that the district court did not err by not applying the doctrine of equitable tolling.

Levine’s remaining claims are waived

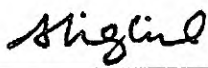
¹This is consistent with our unpublished dispositional order in *Nokley v. State, Emp. Sec. Div.*, where we concluded “the 45-day time period is mandatory and must be strictly enforced.” No. 85045, 2023 WL 3441031, at *1 (Nev. May 12, 2023) (Order of Affirmance).

Levine argues the district court's dismissal deprived her of access to the courts and that the district court should have applied the doctrine of unclean hands. First, she contends that she failed to meet the statutory deadline under NRS 612.530(2) because she was an indigent pro se individual with no other means for redress. Second, she argues that both parties, her and ESD, failed to meet statutory deadlines. She argues that if both parties committed the same error, it is unfair to hold her to a higher standard than ESD when she was proceeding pro se.

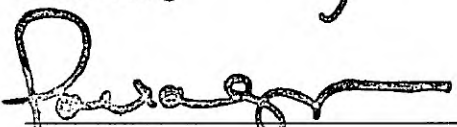
"A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); see also *State, Dep't of Emp., Training & Rehab., Emp. Sec. Div. v. Sierra Nat'l Corp.*, 136 Nev. 98, 101 n.5, 460 P.3d 18, 22 n.5 (2020) (applying *Old Aztec* to administrative proceedings). Levine did not raise either of these issues below. Thus, we conclude that the issues are waived and we need not consider them.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Jacob A. Reynolds, District Judge
State of Nevada/DETR - Las Vegas
Nevada Legal Services/Las Vegas
Eighth District Court Clerk