

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICOLE COCHENER,

Appellant,

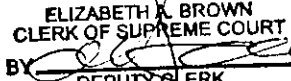
vs.

EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA; LYNDIA PARVEN,
NOW KRISTINE NELSON, IN HER
CAPACITY AS ADMINISTRATOR OF
THE EMPLOYMENT SECURITY
DIVISION; AND J. THOMAS SUSICH,
IN HIS CAPACITY AS CHAIRPERSON
OF THE EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW,
Respondents.

No. 88885-COA

FILED

JUN 05 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Nicole Cochener appeals from a district court order dismissing a petition for judicial review in a pandemic unemployment assistance matter.¹ Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In 2020, Cochener was initially found eligible for and received pandemic unemployment assistance (PUA) benefits, but after she was later determined to be ineligible, respondent Employment Security Division (ESD) sought to recoup over \$26,000 that it had paid to her. Cochener

¹Although respondents assert that Cochener's notice of appeal was untimely filed, this argument is without merit. Notice of entry of the challenged order was served on May 20, 2024, such that the 30-day time period to file the notice of appeal would ordinarily have run on June 19, 2024. But because June 19 was a legal holiday, the time to appeal did not expire until June 20, and thus Cochener's June 20, 2024, notice of appeal was timely filed. See NRAP 26(a)(1)(C) (addressing what happens when a time period expires on a Saturday, Sunday or legal holiday); NRS 236.015(1) (including June 19 amongst the legal holidays in the state of Nevada).

appealed ESD's determination and an appeals referee and the ESD Board of Review (Board) affirmed that decision. Cochener filed a timely petition for judicial review on January 9, 2024. However, Cochener failed to timely serve the petition on respondents, as required by NRS 612.530(2).

Respondents moved to dismiss the petition based on Cochener's failure to timely serve the ESD Administrator. Cochener subsequently filed an affidavit from a process server showing that service was effectuated on ESD, the ESD Administrator, and the Board chairperson on March 29, well after the February 23 service deadline. She also opposed the motion to dismiss, acknowledging service was untimely, but nevertheless arguing the service deadline was not "iron clad and absolute," that good cause and excusable neglect could be considered by the district court, that Nevada has a policy of deciding cases on the merits, and that ESD did not suffer prejudice due to her failure to timely serve the petition.

The district court thereafter granted respondents' motion to dismiss, finding that NRS 612.530 had been amended in 2020 and explicitly excluded any good cause language from the statute, rendering the 45-day service deadline mandatory. This appeal followed.

On appeal, Cochener challenges the district court's order dismissing her petition for judicial review based on her failure to timely serve respondents, arguing the dismissal was improper and that the district court could consider whether good cause exists to extend the service deadline.

We review an order granting a motion to dismiss for failure to effect timely service of process for an abuse of discretion. *Abreu v. Gilmer*, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999). Our consideration of whether the district court's dismissal of Cochener's petition for judicial

review was proper begins by examining NRS 612.530, which sets forth the procedure for seeking judicial review of a Board of Review decision in a PUA matter. This court reviews issues of statutory construction de novo but will review a district court's factual findings for an abuse of discretion. *See, e.g., Spar Bus. Servs., Inc. v. Olson*, 135 Nev. 296, 298, 448 P.3d 539, 541 (2019) (reviewing statutory construction de novo but reviewing a good cause determination for an abuse of discretion).

NRS 612.530 provides that a petitioner may secure judicial review of an adverse Board of Review decision by commencing an action in the district court, and that the petition for judicial review “must” be served on the Administrator within 45 days after the commencement of the action. NRS 612.530(1), (2). The supreme court has held that strict compliance with statutory provisions is a precondition to judicial review. *Kame v. Emp’t Sec. Dep’t*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989), *overruled in part on other grounds by Jorrin v. Employment Sec. Division*, 139 Nev., Adv. Op. 29, 534 P.3d 978 (2023).

In this case, it is undisputed that Cochener failed to serve the Administrator within the 45-day service period, as required by NRS 612.530(2). A review of the plain language of NRS 612.530(2)’s requirement that the petition “must, within 45 days after the commencement of the action, be served,” reflects that the Legislature did not provide any discretion to extend the service deadline. Our supreme court recently considered this issue in two unpublished orders and, after examining the statute, likewise concluded that the service deadline in NRS 612.530(2) is mandatory and cannot be extended. *See Nokley v. Emp’t Sec. Div.*, No. 85045, 2023 WL 3441031, *1 (Nev. May 12, 2023) (Order of Affirmance) (concluding NRS 612.530(2)’s 45-day service period is “mandatory and must

be strictly enforced”); *see also Chopra v. Emp’t Sec. Div.*, No. 82681, 2021 WL 5276338, *2 (Nev. Nov. 10, 2021) (Order of Affirmance) (affirming the dismissal of a petition for judicial review in an unemployment matter for failure to timely serve the petition and rejecting the argument that the district court failed to consider whether good cause existed to extend the service deadline).

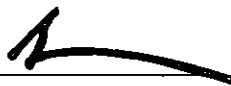
Notably, in *Nokley*, 2023 WL 3441031, *1, the supreme court explained that it had previously determined, in *Spar Business Services, Inc.*, 135 Nev. at 298, 448 P.3d at 541, that the district court could extend the time for service upon a showing of good cause under a prior version of NRS 612.530(2). However, shortly thereafter, the Legislature amended that statute to provide that the petition “must, within 45 days after the commencement of the action, be served.” *Nokley*, 2023 WL 3441031, *1 (quoting 2020 Nev. Stat. 32 Spec. Sess., ch. 7, § 11, at 87). The supreme court concluded that, since the new statutory language—amended following *Spar*—did not suggest any discretion to extend the service period, the 45-day service deadline was mandatory. *Id.* Based on the foregoing analysis, we conclude—in line with the supreme court—that dismissal of Cochener’s petition for judicial review was mandated. *See Kame*, 105 Nev. at 25, 769 P.2d at 68.

In reaching this conclusion, we reject Cochener’s conclusory argument that the “good cause provision is largely recognized in constitutional case law for critical rights.” Cochener does not explain which of her constitutional rights were impacted or adequately argue this point. Moreover, she points to no authority supporting the proposition that statutory provisions requiring that service of a petition for judicial review be completed within a certain time period with no allowance for extensions


of the period violates a person's constitutional rights. Thus, we need not consider this contention. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Based on the foregoing analysis, we conclude that the district court properly dismissed Cochener's petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Schwab Law Firm PLLC
State of Nevada/DETR - Carson City
Eighth District Court Clerk