



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YASMEEN AL-FAROUK,
Appellant,
vs.
EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA AND KRISTINE
NELSON, ADMINISTRATOR,
Respondents.

No. 90722-COA

ORDER OF AFFIRMANCE

Yasmeen Al-Farouk appeals from a district court order dismissing a petition for a writ of mandamus in an administrative matter. Eighth Judicial District Court, Clark County; Hon. Timothy C. Williams, Judge.

Al-Farouk applied for Pandemic Unemployment Assistance (PUA) benefits in July 2020, and although she initially received notice confirming her eligibility, she did not receive any benefits. In March 2021, the Nevada Department of Employment Training and Rehabilitation (DETR) denied Al-Farouk's PUA claim after determining she was ineligible because it was not shown that her employment separation was due to the COVID-19 pandemic, and Al-Farouk appealed. Before DETR scheduled a hearing on her appeal, Al-Farouk filed a petition for a writ of mandamus in the district court, asking the court to direct DETR and respondents to comply with federal law and afford her due process by scheduling a hearing on the denial of PUA benefits, disbursing PUA benefits, or to show cause why a hearing had not been held.

While her writ petition was pending, DETR scheduled an appeal hearing on the denial of Al-Farouk's PUA claim. Al-Farouk informed the appeals referee that she would not participate in the proceeding due to the

delay in scheduling it. Al-Farouk later filed an amended petition for a writ of mandamus and informed the district court she did not wish to participate in the administrative process. Respondents thereafter filed a motion to dismiss the writ petition but scheduled a second appeals hearing for Al-Farouk to attend. Al-Farouk opposed the motion to dismiss, but she participated in the second appeals hearing. The appeals referee affirmed DETR's ineligibility determination, and Al-Farouk appealed to the Board of Review, which declined further review. Al-Farouk also filed a petition for judicial review as a new case (No. A-22-857898-J). After respondents filed a supplemental motion to dismiss, the district court dismissed Al-Farouk's petition for a writ of mandamus with prejudice. This appeal followed.

On appeal, Al-Farouk challenges the dismissal of her petition for a writ of mandamus. We review a district court's order denying a petition for a writ of mandamus for an abuse of discretion. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877, 266 P.3d 623, 626 (2011). A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion, *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of the law. NRS 34.170; *Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558. The petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

To have a justiciable claim to mandamus relief in district court, a petitioner must demonstrate that she has a "direct and substantial interest that falls within the zone of interests to be protected by the legal duty

asserted.” *Heller v. Legis. of Nev.*, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (quotation omitted). “Stated differently, the writ must be denied if the petitioner will gain no direct benefit from [the petition’s] issuance and suffer no direct detriment if it is denied.” *Id.* (quotation omitted).

Here, the plain language of Al-Farouk’s amended writ petition sought DETR’s compliance with the CARES Act and other federal statutes by disbursing PUA funds, holding a hearing, or to show cause why relief was unwarranted. While her writ proceedings were pending, Al-Farouk received a second appeals hearing on the denial of her PUA claim, despite her refusal to meaningfully participate in her initial hearing, and was able to both appeal the appeals referee’s decision to the Board of Review and file a petition for judicial review in a separate district court case. In other words, Al-Farouk was able to pursue administrative remedies as contemplated by NRS Chapter 612 and received the relief she sought in her petition—a hearing on her PUA claim and corresponding eligibility determination—so she would have gained no direct benefit from the writ’s issuance and suffered no detriment by having the petition denied. *See id.*; *see also Payne v. DETR*, No. 81763, 2021 WL 4167928, *2 (Nev. Sept. 13, 2021) (Order Affirming in Part, Vacating in Part, and Remanding) (affirming the denial of a petition for a writ of mandamus filed by petitioners requesting the district court mandate that DETR pay PUA benefits on a prima facie showing of a legitimate claim after DETR had delayed disbursement of benefits due to the “skyrocketing” claims numbers at the beginning of the COVID-19 pandemic and a system “glitch” where DETR had processed petitioners’ claims by the time the hearing on the petition occurred in district court). As a result, we conclude Al-Farouk fails to demonstrate that the district court abused its discretion by dismissing her petition for a writ of mandamus. *See Reno Newspapers, Inc.*, 127 Nev. at 877, 266 P.3d at 626.

In reaching this conclusion, we are unpersuaded by Al-Farouk's argument that the district court erroneously concluded she had not exhausted her administrative remedies and, therefore, she was entitled to writ relief. As previously described, pursuant to NRS 34.170, a writ of mandamus is proper only when there is no plain, adequate and speedy legal remedy. In this case, Al-Farouk had an adequate remedy in the administrative process. Under NRS 612.525, judicial review of Board of Review decisions in unemployment matters "is permitted only after any party claiming to be aggrieved thereby has exhausted administrative remedies as provided by [Chapter 612]." *See also Malecon Tobacco, LLC v. State ex rel. Dep't of Taxation*, 118 Nev. 837, 839, 59 P.3d 474, 475-76 (2002) ("Ordinarily, before availing oneself of district court relief from an agency decision, one must first exhaust available administrative remedies.").

Despite her contention to the contrary, the record demonstrates Al-Farouk had not exhausted her administrative remedies prior to seeking writ relief in the district court as she had not participated in her appeals hearing, sought review with the Board of Review, or filed a petition for judicial review. Moreover, Al-Farouk had an adequate legal remedy as she was later afforded the opportunity to participate in the administrative process even after initially refusing to participate at the first appeals hearing, and she subsequently petitioned for judicial review. *See Kay v. Nunez*, 122 Nev. 1100, 1104-05, 146 P.3d 801, 805 (2006) (explaining that writ relief is not available when the petitioner has a plain, speedy, and adequate legal remedy in the form of a statutorily authorized petition for judicial review). Even if the administrative proceedings did not occur as quickly as she believed they should, her only remedy would have been for the district court to direct

respondents to conduct a hearing, which she has already received, as described above.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Timothy C. Williams, District Judge
Attorney General/Carson City
State of Nevada/DETR - Carson City
Yasmeen Hassana Al-Farouk
Eighth District Court Clerk

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief or need not be addressed in light of our disposition of this appeal.