

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PROPERTY CARE MANAGEMENT,
Appellant,
vs.
DIVISION OF INDUSTRIAL
RELATIONS; AND JESSE SILIS-
TERAN,
Respondents.

No. 81832-COA

FILED

AUG 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Property Care Management appeals from a district court order dismissing a petition for judicial review in a workers' compensation matter. First Judicial District Court, Carson City; James E. Wilson, Judge.

Jesse Silis-Teran alleges that he was employed by and performing maintenance duties for Property Care Management when he fell off a ladder and was injured.¹ Property Care alleges that it terminated Silis-Teran one day prior to this incident and that therefore he was no longer an employee at the time he was injured. After an investigation, the Division of Industrial Relations (DIR) found that an employee/employer relationship existed at the time of the incident and that Property Care was improperly uninsured. DIR served its determination letter on Property Care, by mail, on December 13, 2019. On January 15, 2020, Property Care attempted to administratively appeal the DIR determination; however, it neglected to attach DIR's determination letter as required. Subsequently, the Hearings Division contacted Property Care, notifying it that its appeal was invalid

¹We do not recount the facts except as necessary to our disposition.

for failure to attach the DIR determination letter and providing instructions on how to refile its appeal. Although Property Care refiled its appeal with the DIR determination letter attached, it did so approximately 47 days after being served with the letter, well after the 30-day deadline under NRS 616C.220. DIR then filed a motion to dismiss, asserting that Property Care's attempt to appeal the DIR determination was untimely.

Ultimately, the appeals officer dismissed the appeal, concluding that Property Care's initial appeal was invalid for failure to attach the determination letter as required by NRS 616C.345, and its second appeal was untimely as it was not filed within 30 days as required by NRS 616C.220. The appeals officer's order dismissing Property Care's appeal was served by mail on April 6, 2020. On April 20, 2020, Property Care filed a motion for reconsideration, which the appeals officer denied by order filed and served on May 19, 2020.

Thereafter, Property Care filed a petition for judicial review with the district court on June 5, 2020. DIR moved to dismiss, alleging that the petition was untimely, divesting the court of jurisdiction. In opposition to DIR's motion, Property Care argued that the denial of the motion for reconsideration on May 19 was the "final" order for purposes of the petition for judicial review deadline and therefore its appeal was timely. Without reaching the merits of Property Care's petition, the district court dismissed the petition for judicial review, concluding that Property Care failed to file its petition within 30 days of service of the appeals officer's final order and thus the court lacked jurisdiction to hear the matter. This appeal followed.

On appeal, Property Care argues that the district court erred in dismissing its petition for judicial review. Specifically, it argues that the appeals officer's May 19 denial of the motion for reconsideration, not the

initial April 6 dismissal, was the final order from which the time to appeal commenced, rendering its petition for judicial review timely. Further, Property Care argues that the appeals officer erred in finding that the administrative appeal was untimely. We disagree and therefore affirm the district court.

This court reviews jurisdictional issues de novo. *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000). NRS 233B.130(2)(d) provides that a “[p]etition for judicial review must . . . [b]e filed within 30 days after service of the final decision of the agency.” Unless a motion for reconsideration is *granted*, the final decision of the agency is the order preceding the reconsideration motion. NRS 233B.130(4) (providing that only when a “petition [for reconsideration] is *granted*, the subsequent order shall be deemed the final order for the purpose of judicial review” (emphasis added)). Further, when a party fails to timely file a petition for judicial review, the district court is divested of jurisdiction. *See Mikohn Gaming v. Espinosa*, 122 Nev. 593, 598, 137 P.3d 1150, 1154 (2006).

Here, the appeals officer dismissed the administrative appeal on April 6. On May 19, the appeals officer denied Property Care’s motion for reconsideration, thus, the appeals officer’s previous April 6 order, dismissing the administrative appeal, was the final order for purposes of judicial review.² Consequently, Property Care was required to file its

²To the extent Property Care asserts that the order denying reconsideration is the final order because the appeals officer actually “considered” the motion, this argument is inapposite. *See* NRS 233B.130(4) (providing that only *granting* reconsideration makes the order the final order for judicial review); *cf. Rico v. Rodriguez*, 121 Nev. 695, 700 n.1, 120

petition for judicial review within 30 days after service of the appeals officer's April 6 order (on or before May 11 when adding 3 days for service by mail).³ It failed to do so, instead filing its petition for judicial review on

P.3d 812, 815 n.1 (2005) (“[A]n order denying a motion for reconsideration is not substantively appealable.”).


Further, while Property Care argues that it was required to wait for the order resolving its reconsideration motion before filing a petition for judicial review under the exhaustion of remedies doctrine, or that it was required to choose between filing a petition for judicial review or a motion for reconsideration, this is not an accurate reflection of the statute. See *Antinoro v. Nev. Comm’n on Ethics*, Docket No. 74206-COA (Order of Reversal and Remand, May 24, 2019) (“The plain and unambiguous language of [NRS 233B.130] demonstrates that a party’s right to judicial review of a final decision in a contested case vests immediately and is not contingent upon seeking rehearing or reconsideration. Nothing in NRS 233B.130(4) says that a party must petition for rehearing or reconsideration to maintain his or her entitlement to judicial review.”); see also NRS 233B.130.

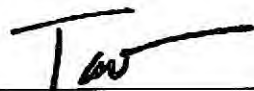
³While Property Care requests this court to equitably toll the period in which to file the petition for judicial review, in light of the appeals officer’s delay in denying its reconsideration motion, we decline to do so. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Moreover, the doctrine of equitable tolling is not generally applicable to jurisdictional requirements, such as the filing deadline for a petition for judicial review. See *Washoe County v. Otto*, 128 Nev. 424, 434-35, 282 P.3d 719, 727 (2012) (concluding that “the time period for filing a petition for judicial review is mandatory and jurisdictional”); see also *Kwai Fun Wong v. Beebe*, 732 F.3d 1030, 1048 (9th Cir. 2013) (providing that mandatory jurisdictional requirements are not subject to equitable tolling).

Even if NRS 233B.130(4) could be read to provide an equitable extension of the time to petition for judicial review when a timely motion for reconsideration has not been resolved and served “at least 5 days” before the 30 day deadline, as required, such a reading would only allow for an additional five days after service, and Property Care’s petition for judicial

June 5. Therefore, Property Care's petition for judicial review was untimely, and the district court did not err in dismissing the petition for lack of jurisdiction. *See Mikohn Gaming*, 122 Nev. at 598, 137 P.3d at 1154; *see also* NRS 233B.130. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James E. Wilson, District Judge
Hutchison & Steffen, LLC/Reno
State of Nevada Department of Business and Industry/Div. of
Industrial Relations/Las Vegas
Nevada Attorney for Injured Workers/Carson City
Carson City Clerk

review was filed well over five days after the order denying reconsideration was served.

⁴Insofar as the parties raise additional arguments that are not specifically addressed in this order, we have considered the same and conclude that either they do not present a basis for relief or need not be reached in light of this court's disposition.