

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

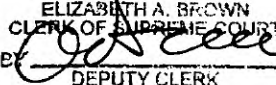
TAKAYA KING,
Appellant,
vs.

THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
RENEE OLSON (NOW, LYNDIA
PARVEN) IN HER CAPACITY AS
ADMINISTRATOR OF THE
EMPLOYMENT SECURITY DIVISION;
J. THOMAS SUSICH IN HIS CAPACITY
AS THE CHAIRPERSON OF THE
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW; AND PRECISION
OPINION, INC., AS EMPLOYER,
Respondents.

No. 84409-COA

FILED

JAN 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Takaya King appeals from a district court order dismissing a petition for judicial review in an unemployment matter. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

King filed an administrative appeal challenging various aspects of an unemployment-compensation determination made by respondent Employment Security Division (ESD) of the Nevada Department of Employment, Training, and Rehabilitation. After the appeals referee affirmed that determination, King appealed that decision to the ESD Board of Review. On August 13, 2021, the Board mailed King its written decision affirming the appeals referee's determination, which provided that the Board's decision would become final on August 24, 2021, and that the final date for an appeal to the district court would be September 7, 2021. King later e-filed a petition for judicial review, the file-stamped copy of which

indicates that King completed the filing at 12:01 a.m. on September 8, 2021, less than two minutes after the deadline listed in the Board's decision had passed.

ESD filed a motion to dismiss King's petition for judicial review, contending that the time limit for filing such a petition is mandatory and jurisdictional and that King's untimely petition therefore failed to invoke the district court's jurisdiction. King opposed, contending primarily that she had three additional days to file the petition under NRCP 6(d) and, alternatively, that she was experiencing technical difficulties with the e-filing platform that prevented her from timely filing the petition. In its reply, ESD did not address King's argument regarding the three-day extension under NRCP 6(d), and the district court ultimately entered an order dismissing King's petition that likewise failed to specifically address the issue. In the order, the court concluded that King failed to timely file the petition on September 7 or produce adequate proof that the e-filing platform was malfunctioning at the time in question. This appeal followed.

On appeal, King maintains that she experienced technical difficulties while trying to e-file her petition on September 7, that it is unfair to deprive her of judicial review because her petition was supposedly minutes late, and that she was not provided the requisite three-day extension. Because we agree with King that the three-day extension under NRCP 6(d) applied, we need not address any of her other arguments on appeal.

We review a district court's interpretation of statutes and court rules de novo. *Eby v. Johnston Law Office, P.C.*, 138 Nev., Adv. Op. 63, 528 P.3d 517, 522 (Ct. App. 2022). Under NRCP 6(d), "[w]hen a party may or must act within a specified time after being served and service is made [by

mail], 3 days are added after the period would otherwise expire under Rule 6(a).” And under NRS 612.530(1), a party must file a petition for judicial review within 11 days after the decision of the Board becomes final, which—as set forth in NRS 612.525(1)—is 11 days after the date the Board mails the party notification of its decision.


Here, the district court correctly determined that the time limit for filing a petition for judicial review in an unemployment matter is mandatory and jurisdictional. *See Bd. of Review, Nev. Dep’t of Emp’t v. Second Judicial Dist. Court*, 133 Nev. 253, 255, 396 P.3d 795, 797 (2017). However, the district court erred when it calculated the jurisdictional deadline for filing the petition for judicial review in this case. It is undisputed that the Board’s decision became final on August 24, 2021, and that September 7, 2021—when applying all appropriate computational rules—was 11 days after the final decision.¹ But because the Board mailed its written decision to King, she was entitled to an additional three days to file her petition under NRCP 6(d). Our supreme court has acknowledged in a published opinion that the three-day extension under NRCP 6(d) applies to the time period for filing a petition for judicial review under NRS 612.530(1). *See Kame v. Emp’t Sec. Dep’t*, 105 Nev. 22, 23-24, 23 n.1, 769 P.2d 66, 66-67, 67 n.1 (1989) (applying a materially similar prior version of NRS 612.530(1) and concluding that, although the Board identified a

¹Under NRCP 6, because the 11th day following August 24, 2021, was Saturday, September 4, and because Monday, September 6 was Labor Day, the 11-day period ran until the end of the day on Tuesday, September 7. *See* NRCP 6(a)(1) (providing that, when a period is stated in days, the day of the event triggering the period is excluded, and if the period ends on a Saturday, Sunday, or legal holiday, it continues to run through the next day that is not a Saturday, Sunday, or legal holiday); *see also* NRS 236.015(1) (declaring Labor Day as a legal holiday).

particular date in its decision as the final day to seek judicial review in accordance with the statute, because the Board's decision was mailed, appellant had an additional three days under NRCP 6(e)—now codified as NRCP 6(d)—to file her petition); *cf. Hardin v. Jones*, 102 Nev. 469, 471, 727 P.2d 551, 552 (1986) (holding that the three-day extension in then-NRCP 6(e) applies to the time period for filing an initial administrative appeal of an unemployment determination). Because King was entitled to an additional three days, until September 10, 2021, to file her petition for judicial review, the district court erred in determining that the petition was untimely filed on September 8. Accordingly, we reverse the district court's order dismissing King's petition for judicial review, and we remand this matter for proceedings consistent with this order.²

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.

cc: Hon. Eric Johnson, District Judge
Takaya King
Fox Rothschild, LLP/Las Vegas
State of Nevada/DETR
Eighth District Court Clerk