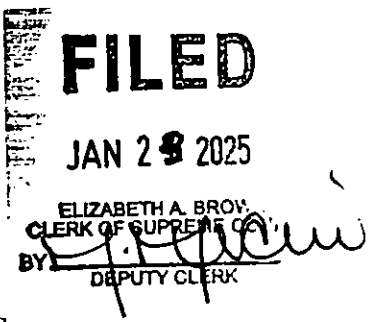
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY VAUGHN,
Appellant,
vs.
JCORD, LLC; HARTFORD OF THE SOUTHEAST; AND STATE OF NEVADA DEPARTMENT OF ADMINISTRATION,
Respondents.

No. 87502-COA



ORDER OF AFFIRMANCE

Gary Vaughn appeals from a district court order granting a motion to dismiss his petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Gary Vaughn was a journeyman laborer for a Las Vegas union.[1] On July 1, 2022, Vaughn began working for a construction company, respondent JCord, LLC (JCord). At that time, he received safety training and an employee handbook, and signed a form acknowledging that he must immediately report all injuries, no matter how seemingly minor, to JCord.

On July 28, JCord assigned Vaughn to perform work at the Fremont Hotel & Casino. To start the day, Vaughn again received training on how, where, and when to report injuries or near-misses to JCord. At the job site, Vaughn was paired to work with a non-supervisory union laborer named Chance Lucchesi. At some point, when Vaughn and Lucchesi attempted to secure a jackhammer attachment to an excavator, the jackhammer fell onto Vaughn's right foot. Vaughn cried out in pain and took off his sock and steel-toed work boot to investigate the injury. Vaughn

[1]We recount only the facts necessary for our disposition.

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observed that his pinky toe was swollen, but he put his sock and boot back on. Lucchesi asked Vaughn if he was okay, and Vaughn replied that he was fine; then, the two ate lunch and returned to work.

Vaughn did not initially report the injury to anyone else at JCord. Within a week after the incident, Vaughn noticed blisters on the top of his toes, so he applied peroxide and Lidocaine cream and kept it wrapped. By July 30, Vaughn was visibly limping. Although Vaughn's family urged him to seek medical treatment, Vaughn chose not to see a doctor until several weeks after the accident. On August 20, the doctor informed Vaughn that his pinky toe had been crushed and was now gangrenous, necessitating amputation.

On August 21, more than three weeks after the accident, Vaughn's daughter texted the superintendent of the job site, Victor Cruz, to inform him—for the first time—of her father's accident and injury. That same day, Vaughn filled out the required C-4 form to notify his employer of the accident. Although Vaughn timely filed his insurance claim, JCord's insurer, respondent Hartford Insurance Company of the Southeast (Hartford), denied the claim because Vaughn had failed to timely notify JCord of the injury within seven days of the accident, as required by NRS 616C.015(1).

A hearing was held with the Nevada Department of Administration in December 2022 and the hearing officer reversed Hartford's denial of Vaughn's claim, finding that JCord received timely notice of the accidental injury. Believing Lucchesi to be Vaughn's supervisor, the hearing officer determined that JCord had notice because "a Supervisor/Foreman was there with [Vaughn] at the time of accident, and witnessed [Vaughn] take off his boot and check his foot."

Hartford appealed the hearing officer's decision. At the conclusion of that hearing, the appeals officer found that Lucchesi was not

Vaughn's supervisor and that Vaughn had failed to timely report the accidental injury to his employer despite receiving extensive training on how to do so, and despite his awareness of the injury as evidenced by blisters and limping. On June 6, 2023, the appeals officer issued a decision and order reinstating Hartford's denial of the claim.

On June 14, Vaughn electronically filed in the Eighth Judicial District Court a single document that included both the district court civil cover sheet and his petition for judicial review of the appeals officer's decision. In the caption of his petition, Vaughn named JCord, "Hartford of the Southeast," and the Department of Administration as respondents. That same day, Vaughn served the petition on several parties but did not serve the Attorney General or the head of the Department of Administration. On June 22, the district court clerk issued a notice of a nonconforming document notifying Vaughn that he had incorrectly filed the cover sheet and the petition together as one document and had selected the wrong filing code in the court's electronic filing system. Vaughn did not initially correct these nonconformities.

On August 7, JCord and Hartford moved to dismiss Vaughn's petition for judicial review pursuant to NRCP 12(b)(1). They argued that the district court lacked subject matter jurisdiction to consider the petition because Vaughn failed to strictly comply with the requirements of NRS 233B.130(2). Specifically, they claimed that (1) Vaughn erroneously named Hartford as "Hartford of the Southeast" instead of "Hartford *Insurance Company* of the Southeast," and (2) Vaughn failed to timely serve the Attorney General and the head of the Department of Administration. They also claimed that the district court did not have jurisdiction to allow Vaughn to amend his defective petition because the 30-day deadline for filing a petition for judicial review had lapsed.

On August 23, JCord and Hartford filed a "notice of no opposition," stating that Vaughn had not filed an opposition to their motion to dismiss. The same day, Vaughn submitted an amended petition for judicial review that attempted to both cure the nonconformities in the original petition *and* remedy the defects identified by JCord and Hartford in their motion to dismiss. Vaughn did not seek leave of the court to file this amended petition. Although the amended petition was submitted 70 days after the initial petition was filed, the clerk filed a notice of curative action indicating that it was replacing the original petition with the amended petition and had thus backdated the amended petition to June 14, the date the original petition was filed. Vaughn served the amended petition on all named respondents, including the Attorney General and head of the Department of Administration, on August 23. Vaughn filed an opposition to the motion to dismiss the following day.

After holding a hearing, the district court entered an order granting the motion to dismiss. The court agreed with JCord's and Hartford's contentions that Vaughn had failed to comply with the requirements set forth in NRS 233B.130(2). In particular, the court determined that Vaughn's original petition did not correctly name Hartford as a respondent; Vaughn failed to timely serve the Attorney General and the head of the Department of Administration; and Vaughn never sought, and was not granted, an extension of time to serve any parties.

The district court also rejected the amended petition as a rogue document because Vaughn had never sought, and was not granted, leave to amend the petition and no good cause existed for the late filing. While the district court clerk's office had notified Vaughn that he could correct the nonconformities in his original petition by filing a "conforming document," that notice did not permit Vaughn to substantively amend his petition to cure defects not identified by the clerk's office. Therefore, the district court

determined that it lacked subject matter jurisdiction to consider the petition. Vaughn timely appealed.

On appeal, Vaughn argues the district court erred by dismissing his petition for lack of jurisdiction. Vaughn contends that the district court had jurisdiction to address his petition because his original petition was timely filed on June 14, his amended petition correctly named Hartford and was file-stamped by the clerk's office on the same date, and the amended petition was served on all necessary parties on August 23.

This court reviews a district court's order granting a motion to dismiss for lack of jurisdiction de novo. *See Whitfield v. Nev. State Pers. Comm'n*, 137 Nev. 345, 349, 492 P.3d 571, 575 (2021). A petition for judicial review must "[n]ame as respondents the agency and all parties of record to the administrative proceeding," NRS 233B.130(2)(a), and be served upon "(1) The Attorney General, or a person designated by the Attorney General . . . ; and (2) The person serving in the office of administrative head of the named agency," NRS 233B.130(2)(c). The Nevada Supreme Court has held that the naming and service requirements are mandatory and jurisdictional. *See Heat & Frost Insulators & Allied Workers Loc. 16 v. Lab. Comm'r*, 134 Nev. 1, 4, 408 P.3d 156, 159 (2018); *Whitfield*, 137 Nev. at 345, 492 P.3d at 573.

NRS 233B.130(5) requires that a petition for judicial review "be served upon the agency and every party within 45 days after the filing of the petition." The 45-day service deadline "is not a jurisdictional requirement because the statute grants the district court authority to extend the deadline for good cause." *Spar Bus. Servs., Inc. v. Olson*, 135 Nev. 296, 300-01, 448 P.3d 539, 543 (2019). However, dismissal is required if the district court does not extend the time for service. *See id.* at 299, 448 P.3d at 542; *see also Heat & Frost Insulators & Allied Workers Loc. 16*, 134

Nev. at 4-5, 408 P.3d at 159-60 (stating service must occur within 45 days unless the district court extends the time for service).

In this case, we need not decide whether the district court had jurisdiction over Vaughn's petition because, even if the district court erred in concluding that it lacked jurisdiction, it properly dismissed his petition for untimely service. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (noting this court will affirm a district court's order if the right result was reached, even if for the wrong reason).

Vaughn does not dispute that he failed to serve his original petition on the Attorney General and the head of the Department of Administration. Rather, Vaughn appears to contend that (1) he did not have to serve the Attorney General because the Attorney General does not appear in workers' compensation cases and was not a real party in interest; and (2) he served the amended petition on the Attorney General and the head of the Department of Administration.

Regarding the first contention, Vaughn fails to cogently argue why he was not required to serve the Attorney General when the supreme court has expressly held that "service of a petition for judicial review on the Attorney General under NRS 233B.130(2)(c)(1) is mandatory." *Heat & Frost Insulators & Allied Workers Loc. 16*, 134 Nev. at 2, 408 P.3d at 158. Vaughn merely asserts in his routing statement that NRS 233B.130's legislative history "poses the question why the Nevada Attorney General has to be served with workers' compensation petitions for judicial review when the Attorney General does not participate in such cases." He does not argue that petitions for judicial review in workers' compensation cases are exempt from NRS Chapter 233B's requirements nor distinguish the cases in which the Nevada Supreme Court has applied NRS Chapter 233B. Thus, because Vaughn fails to provide any cogent argument or authority in

support of this claim, this court need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Furthermore, Vaughn offers no explanation why he failed to serve the head of the Department of Administration with the original petition.

Regarding Vaughn's second contention, even assuming his amended petition was properly before the district court and timely filed,[2] this does not demonstrate that Vaughn timely served either the Attorney General or the head of the Department of Administration. Assuming, as Vaughn argues, that both the original and amended petitions were filed on June 14, 2023, Vaughn concedes that the Attorney General and the head of the Department of Administration were not served until August 23, 2023—70 days after both petitions were filed. Thus, Vaughn's claim that he served the amended petition on all parties does not demonstrate such service was timely as required.

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[2]The supreme court has indicated that a party may amend a petition for judicial review pursuant to NRCP 15(a) so long as the original petition properly invokes the jurisdiction of the district court. *See Whitfield*, 137 Nev. at 349-50, 492 P.3d at 575-76. NRCP 15(a)(1)-(2) allows a party to amend its pleading "within . . . 21 days after serving it" or "with the opposing party's written consent or the court's leave." Assuming, *arguendo*, that Vaughn's original petition properly invoked the district court's jurisdiction, Vaughn did not submit an amended petition until 70 days after he first served the original petition. Therefore, he could only amend that petition by first obtaining written consent from the other parties or by obtaining leave of the court. *See id.* Vaughn does not challenge the district court's determination that because he did not seek leave to amend his petition, the amended petition was a rogue document that the clerk's office should not have filed. Therefore, he has waived any challenge to this ruling. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellant does not raise on appeal are waived).

Moreover, Vaughn does not challenge the district court's determination that he never sought, nor was he granted, an extension of time to serve the petition. Indeed, Vaughn does not even argue that good cause existed to extend the service deadline; thus, he has waived any such argument on appeal. *See Hung v. Berhad*, 138 Nev. 547, 549, 513 P.3d 1285, 1287 (Nev. Ct. App. 2022) (recognizing that "an appellant's failure to timely raise an issue in its briefing on appeal, even if it raised the issue before the district court, generally results in a waiver of that issue"); *see also Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present."). Where Vaughn fails to demonstrate that he timely served his petition on the Attorney General and the head of the Department of Administration as required by statute, the district court did not err by dismissing his petition on this basis.[3]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[3]Insofar as the parties have raised other issues which are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Jacqueline M. Bluth, District Judge
Foley Law Center
Attorney General/Carson City
The Law Offices of Angela R. Nolan
Law Offices of Eric R. Larsen
Hutchison & Steffen, LLC/Reno
The State of Nevada Department of Administration, Hearings Division
Eighth District Court Clerk