

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAKAYA KING,  
Appellant,

vs.

THE STATE OF NEVADA  
EMPLOYMENT SECURITY DIVISION;  
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. 88030-COA

**FILED**

FEB 28 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Takaya King appeals a district court order denying 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 (Board). The Board adopted the appeals referee's findings of fact and reasoning and affirmed the appeals referee's decision.

King thereafter filed an “opening brief in support of petition for judicial review” in the district court challenging the Board’s determination.<sup>1</sup> Respondents filed a motion to dismiss the petition, contending that it was untimely filed, which the district court granted. On appeal, this court reversed the district court’s order dismissing King’s case and remanded for further proceedings after concluding that the district court erred in calculating the deadline for filing. *See King v. Emp’t. Sec. Div.*, No. 84409-COA, 2023 WL 1437739 (Nev. Ct. App. Jan. 27, 2023) (Order of Reversal and Remand).

On remand, respondents filed an answering brief, contending that the Board’s determination was proper, and King filed a reply. The district court ultimately denied King’s petition for judicial review and upheld the Board’s decision in a written order. This appeal followed.

The appellate court’s role in reviewing an administrative agency’s decision is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). The appellate courts, therefore, give no deference to the district court’s decision. *Id.* (internal citation omitted). “When reviewing an administrative unemployment compensation decision, this court, like the district court, examines the evidence in the administrative record to ascertain whether the Board acted arbitrarily or capriciously, thereby abusing its discretion.”

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<sup>1</sup>We note that King never filed a petition for judicial review and instead directly proceeded to filing an opening brief, which the parties and the district court treated as her petition for judicial review. For purposes of clarity, we refer to her brief as a petition for judicial review.

*Clark Cnty. Sch. Dist. v. Bundley*, 122 Nev. 1440, 1444, 148 P.3d 750, 754 (2006).

On appeal, the parties argue the merits of the Board's unemployment determination. However, respondents acknowledge in their answering brief that they never transmitted the administrative record to the district court and assert that the court relied upon the pleadings and arguments of the parties in denying judicial review. Because we must consider the administrative record to determine whether the findings were supported by substantial evidence, the Board's failure to transmit the record necessitates reversal. *See id.*

It was the Board's responsibility to transmit that record to the district court, and respondents acknowledge that they failed to do so. *See* NRS 233B.131(1)(b) ("The agency that rendered the decision which is the subject of the petition *shall* transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review." (emphasis added)). In addition to our inability to review the unfiled administrative record, the district court similarly could not have "examine[d] the evidence in the administrative record to ascertain whether the Board acted arbitrarily or capriciously, thereby abusing its discretion" in the absence of the administrative record. *Bundley*, 122 Nev. at 1444, 148 P.3d at 754. We therefore reverse the district court's order and remand this matter to the district court for further proceedings. On remand, the district shall order respondents to transmit the administrative record and, upon the filing of the administrative record in the district court, the matter shall proceed in accordance with NRS 233B.133 (setting forth the process for


briefing a petition for judicial review once the administrative record is filed) and NRS 233B.135 (discussing the manner in which judicial review of an agency decision can be conducted).


In addition to challenging the denial of her petition for judicial review, King also argues that, on remand, her case should be reassigned to a different judge because the district court exhibited bias by previously dismissing her petition and disregarding her evidence. We conclude that relief is unwarranted on these points because King has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions or actions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); see also *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138

Nev. 1, 6, 501 P.3d 980, 984 (2022). Therefore, this case need not be reassigned to another judge on remand.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

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