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Kassebaum v. State, Dep't of Corr. [State of Nevada], 139 Nev. Adv. Op. 34 (Sept. 21, 2023)¹

WHEN AN EMPLOYEE REQUESTS A HEARING TO CHALLENGE A STATE EMPLOYER'S DISCIPLINARY DECISION AND FAILS TO COMPLY WITH THE REQUIREMENT UNDER NAC 284.6562(2)(B), THE APPEAL IS DEFECTIVE.

Summary

The issue is whether an employee's appeal to challenge a state employer's disciplinary action is defective under NRS 284.390 and therefore subject to dismissal when that employee fails to attach a written notice as required by NAC 284.6562(2)(b). The court first analyzed the difference between jurisdictional rules and nonjurisdictional claim-processing rules. Then, the court considered the statutory scheme and regulations governing Kassebaum's administrative challenge to her suspension.

Background

Shari Kassebaum (appellant) appealed by requesting a hearing on the reasonableness of her two-day suspension from her position as a correctional officer. Pursuant to NAC 284.6562, appeals "must be accompanied by the written notification of the appointing authority's decision regarding the proposed action."² Kassebaum did not attach a copy of the written notification as required.

Respondent, State of Nevada Department of Corrections (NDOC), moved to dismiss the appeal on the grounds that the written notification requirement was jurisdictional and therefore Kassebaum's failure to comply with the requirement divested the hearing officer of jurisdiction to consider her appeal. In response, Kassebaum disagreed with certain factual allegations in NDOC's motion. However, Kassebaum did not file a subsequent leave to amend or otherwise attempt to fix her failure to comply with the requirement.

The hearing officer granted NDOC's motion finding that the requirement was jurisdictional and could not be cured because the time for Kassebaum to file an appeal had expired. The district court agreed with the hearing officer. The case was appealed to the Nevada Supreme Court.

Discussion

Jurisdictional rules concern a tribunal's power to act.

Jurisdictional rules encompass the "very power of [the] court to act."³ It governs the court's adjudicatory authority. If a party does not comply with the jurisdictional rule, the court/officer will not have jurisdiction to hear the issue.

Claim-processing rules concern the procedural steps a party must take.

Claim-processing rules "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times."⁴ Unlike jurisdictional rules, claim-processing rules do not govern a court's adjudicatory authority.

¹ By Sydney Jung.

² NEV. AD. CODE § 284.6562 (2020).

³ *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688 (1987).

⁴ *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011).

NAC 284.6562's attachment requirement is a nonjurisdictional mandatory claim-processing rule.

The court considered the plain meaning of NAC 284.6562. NAC 284.6562(1) allows eligible employees to request a reasonableness hearing by submitting a written request within 10 working days of receiving the notice.⁵ NAC 284.6562(2)(b) requires the written notification to be attached to the appeal.⁶ The statute does not pertain to the restrictions of the hearing officer's power, but rather sets out an orderly process of procedural steps. Since the statute does not concern the hearing officer's authority, the attachment requirement is a nonjurisdictional mandatory claim-processing rule.

Kassebaum failed to comply with NAC 284.6562(2)(b), and therefore, the district court did not err in dismissing her appeal.

The statute renders that the hearing request “*must be*” accompanied by the written notification.⁷ The term “*must*” imposes a mandatory requirement.⁸ Thus, NAC 284.6562(2)(b) is a mandatory rule.

Under this standard, the hearing officer did not err in dismissing Kassebaum's request for a hearing for failing to comply with the rule. Not only did Kassebaum concede that the appeal form stated that she must attach a copy of the written notice, but she also expressed that NDOC would likely prevail on its motion to dismiss for failing to comply.

For the foregoing reasons the Court rejected all “ambiguity” arguments that could have excused Kassebaum's compliance with the mandatory written notice requirement.

Conclusion

Under NRS 284.390, when an employee requests a hearing to challenge a state employer's disciplinary decision and fails to comply with the requirements under NAC 284.6562(2)(b), the appeal is defective. NAC 284.6562(2)(b) is a nonjurisdictional mandatory claim-processing rule because it does not concern the hearing officer's authority. Subsequently, the trial court did not err in dismissing Kassebaum's appeal for failing to attach the mandatory written form required under the statute. Affirmed.

⁵ NEV. AD. CODE § 284.6562 (2020).

⁶ *Id.*

⁷ *Id.*

⁸ Washoe Cnty. v. Otto, 128 Nev. 424, 433 (2012).