

IN THE UTAH COURT OF APPEALS

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Delphi Alvarado,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20100141-CA
v.)	
)	F I L E D
Department of Corrections,)	(May 6, 2010)
)	
Respondent.)	2010 UT App 119

Original Proceeding in this Court

Attorneys: Delphi Alvarado, Midvale, Petitioner Pro Se
Mark L. Shurtleff and Peggy E. Stone, Salt Lake City,
for Respondent

Before Judges Orme, Thorne, and Roth.

PER CURIAM:

Petitioner Delphi Alvarado seeks judicial review of (1) the decision of the hearing officer for the Career Services Review Board (CSRB) following the step 5 evidentiary hearing and (2) the order dismissing her step 6 appeal. Respondent Department of Corrections moves to summarily dismiss the petition for review on the basis that (1) this court lacks jurisdiction to consider the step 5 decision and (2) the CSRB correctly dismissed the step 6 appeal for failure to prosecute.

The CSRB serves as the final administrative body to review appeals of career service employees regarding dismissals. See Utah Code Ann. § 67-19a-202(1)(a) (2008). After exhausting steps within the employing agency, an aggrieved employee may submit a written grievance to the administrator of the CSRB. See id. § 67-19a-402(5). If the administrator determines that the grievance can proceed to a step 5 evidentiary hearing, the administrator appoints a hearing officer to adjudicate the complaint, see id. § 67-19a-404. The CSRB administrator "shall employ a certified court reporter to record the hearing and prepare an official transcript of the hearing." Id. § 67-19a-406(2)(a). An aggrieved employee or agency may appeal the hearing officer's step 5 decision to the entire CSRB. See id. § 67-19a-407(1)(a). During the step 6 appeal, "[t]he

appealing party shall submit a copy of the official transcript of the hearing to the administrator." Id. § 67-19a-407(1)(b). Review by the CSRB is based upon consideration of the official record of proceedings before the hearing officer, including an official transcript, and of the parties' briefs. See id. § 67-19a-408(1)(b). The administrative rule describing step 6 procedures states:

(1) Transcript Production. The party appealing the CSRB hearing officer's evidentiary/step 5 decision to the board at the appellate/step 6 level shall order transcription of the evidentiary/step 5 hearing from the court reporting firm within ten working days upon receipt of acknowledgment of the appeal from the administrator.

(a) Appellants shall be responsible for all transcription production costs. The CSRB office receives the transcript original; the appellant receives a transcript copy. . . .

(2)(a) The appellant in an appellate/step 6 proceeding must obtain the transcript of the evidentiary/step 5 hearing

Utah Admin. Code R137-1-22(1)-(2).

The CSRB administrator provided frequent, detailed, and consistent notice to Alvarado of (1) the requirement to order a transcript and pay for it; (2) the inability of the CSRB to waive the payment requirements; and (3) the consequences of failure to comply with the transcript requirement. Most significantly, in the letter of October 26, 2009, the administrator reiterated the requirement to order and pay for a transcript, giving Alvarado an extension of the time to make arrangements sufficient to allow commencement of the transcript preparation to November 26, 2009. The CSRB administrator later granted an extension to December 28, 2009, but clearly reiterated the requirement to make sufficient arrangements to allow transcript preparation to proceed and advised Alvarado that the appeal would be dismissed if Alvarado did not comply. Nevertheless, Alvarado persisted in requesting a waiver of the transcript costs despite frequent and clear directions that the CSRB could not waive the requirement. The dismissal of the step 6 appeal is amply supported by the record.

Alvarado's remaining issues challenge the hearing officer's step 5 decision, despite her failure to complete the step 6 appeal. We have jurisdiction to review only "the final orders and decrees resulting from formal adjudicative proceedings of state agencies." See Utah Code Ann. § 78A-4-103(2)(a) (2008). Furthermore, we have jurisdiction to review final agency action only after the party has exhausted administrative remedies. See

Utah Code Ann. § 63-4-401(2) (2008). Accordingly, if an employee "has failed to exhaust . . . administrative remedies, then we lack subject matter jurisdiction, and we must dismiss the case." Hom v. Utah Dep't of Pub. Safety, 962 P.2d 95, 99 (Utah Ct. App. 1998). Thus, where a career service employee has allowed a "Career Service Review Board appeal to be dismissed for failure to prosecute, [the employee has] 'waived his right to . . . obtain judicial review' of his dismissal." Id. at 101 (quoting Utah Code Ann. § 67-19a-401(4)(a)).

We grant the Department of Corrections's motion for summary disposition. We conclude that we lack jurisdiction to review the step 5 decision because it was not the final agency action, and we affirm the dismissal of the step 6 appeal for failure to prosecute, which resulted in a waiver of the right to obtain judicial review of Alvarado's dismissal.

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

Stephen L. Roth, Judge