

IN THE UTAH COURT OF APPEALS

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Emmanuel Ghulam,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20090141-CA	
v.)		
)		
Labor Commission and C.R.)	F I L E D	
England,)	(March 19, 2009)	
)		
Respondents.)	<table border="1"><tr><td>2009 UT App 75</td></tr></table>	2009 UT App 75
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Original Proceeding in this Court

Attorneys: Emmanuel Ghulam, Salt Lake City, Petitioner Pro Se
Ford G. Scalley and Jonathan H. Rupp, Salt Lake City,
for Respondent C.R. England

Before Judges Greenwood, Orme, and Davis.

PER CURIAM:

Petitioner Emmanuel Ghulam seeks judicial review of a decision of the Utah Labor Commission (the Commission). This case is before the court on a sua sponte motion for summary dismissal for lack of jurisdiction.

The Commission issued its Order Denying Request for Reconsideration on December 31, 2008. The decision contained a notice of appeal rights, which stated: "Any party may appeal this Order to the Utah Court of Appeals by filing a Petition for Review with that Court within 30 days of the date of this Order." On January 28, 2009, Ghulam filed a document captioned Appeal for a Review with the Commission. On January 29, 2009, Ghulam filed a notice of appeal in the Third District Court, seeking district court review of the Commission's decision. We received the Appeal for a Review on February 12, 2009 after it was forwarded from the Commission.

Rule 14 of the Utah Rules of Appellate Procedure requires that "a petition for review shall be filed with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the decision or order." Utah R. App. P. 14. Utah Code

section 63G-4-401(3)(a) requires a petition for judicial review of final agency action to be filed within thirty days after the date that the order constituting the final agency action is issued. See Utah Code Ann. § 63G-4-401(3)(a) (2008); Viktron/Lika Utah v. Labor Comm'n, 2001 UT App 8, 18 P.3d 519 (per curiam).

Although Ghulam made improper filings in the Commission and in the Third District Court, he did not file a petition for review in this court. The Commission forwarded the Appeal for a Review to this court. Nevertheless, that document was not received within the thirty-day period following entry of the final agency action. Neither the Utah Administrative Procedures Act nor the appellate rules allow an extension of the time to seek judicial review analogous to that allowed in judicial appeals. Compare Utah Code Ann. § 63G-4-102(9) (2008) (stating that a presiding officer may not extend the time to seek judicial review of agency action), with Utah R. App. P. 4(e) (allowing trial court to extend the time for appeal). Accordingly, the incorrect filing of an appeal with the Commission and its later transmission to this court cannot be deemed to be the timely filing of a petition for review. Furthermore, the notice of appeal rights contained in the Commission's final decision clearly advised Ghulam that any appeal of that decision must be initiated by filing a petition for review with the Utah Court of Appeals within thirty days of the Commission's decision. Ghulam failed to file a petition for review in this court within thirty days.

Ghulam asserts that he timely "filed a notice of appeal with the Utah Court of Appeals" and was assigned case number "090901513." This apparently reflects an incorrect filing in the district court. The district court lacks jurisdiction to judicially review final agency action of the Labor Commission. See Utah Code Ann. § 34A-2-801(8)(a) (Supp. 2008) (stating that within thirty days after the issuance of the Commission's final decision, an aggrieved party may secure judicial review by commencing an action in the court of appeals); see also id. § 78A-4-103(2)(a) (2008) (providing that the court of appeals has jurisdiction over final orders resulting from formal adjudicative proceedings of state agencies with exceptions that do not apply to this case).

A court's first inquiry is always to determine whether the court has jurisdiction over the matter before it. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). "When a matter is outside the court's jurisdiction, it retains

only the authority to dismiss the action." Id. Accordingly, we dismiss the case for lack of jurisdiction.

Pamela T. Greenwood,
Presiding Judge

Gregory K. Orme, Judge

James Z. Davis, Judge