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NO. 1034938

**SUPREME COURT
OF THE STATE OF WASHINGTON**

ANGELA HELVEY,

Petitioner,

V.

EMPLOYMENT SECURITY DEPARTMENT, ET AL.

Respondents.

**DEPARTMENT'S ANSWER TO PETITION FOR
REVIEW**

ROBERT W. FERGUSON
Attorney General

BENJAMIN WEDEKING
WSBA #55809
Assistant Attorney General
Attorneys for Respondent
OID #91029
1125 Washington St. SE
Olympia, WA 98504-0110
Phone: (360) 570-7413
Fax: (360) 664-0228
E-mail:
benjamin.wedeking@atg.wa.gov
LalOlyEf@atg.wa.gov

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I. INTRODUCTION

To invoke the superior court's appellate jurisdiction, Washington's Administrative Procedure Act (APA) requires an appellant to serve a petition for judicial review on the agency within 30 days of the agency's final order, and dismissal is required when service is late by only one day. RCW 34.05.542(2); *Stewart v. Dep't Emp. Sec.*, 191 Wn.2d 42, 47, 54, 419 P.3d 838 (2018).

Applying this Court's precedent, the Court of Appeals properly affirmed the superior court's order dismissing Angela Helvey's petition for judicial review because she served her petition on the Employment Security Department 10 days late. *Helvey v. Employment Security Department, et al.*, No. 86626-5-I, 2024 WL 4025835 (Wash. Ct. App., Sept. 3, 2024) (unpublished). That decision does not conflict with a decision of this Court or the Court of Appeals, and it does not involve a significant constitutional question or issue of substantial public

interest that should be determined by this Court. RAP 13.4(b).

Further review by this Court is unwarranted.

II. STATEMENT OF THE ISSUES

Did the superior court properly dismiss Ms. Helvey's petition for judicial review when she failed to timely serve her petition, as required by RCW 34.05.542(2)?

III. STATEMENT OF THE CASE

Angela Helvey separated from employment with Tacoma Public Schools and applied for unemployment insurance benefits. *Helvey*, No. 86626-5-I, 2024 WL 4025835 at *1. The Department issued a determination letter denying benefits, and Ms. Helvey appealed the denial. Clerk's Papers (CP) at 73.

A hearing was scheduled at the Office of Administrative Hearings (OAH), but Ms. Helvey failed to appear. *Id.* Accordingly, the OAH issued a default order dismissing the appeal. *Id.*

Ms. Helvey then filed an untimely petition for review by the Department's Commissioner. CP at 78. The Commissioner dismissed the untimely petition. *Id.*

Ms. Helvey petitioned the Commissioner for reconsideration of the dismissal order, and on January 20, 2023, the Commissioner issued an order denying reconsideration. CP at 81. The order denying reconsideration notified Ms. Helvey of her right to seek judicial review of the dismissal order within 30 days of January 20, 2023. CP at 82. The order explained when, where, and how to serve the Department with a copy of the petition for judicial review:

If you are a party aggrieved by the Order of Dismissal issued on January 06, 2023, your attention is directed to RCW 34.05.510 through RCW 34.05.598, which provide that **further appeal may be taken to the Superior Court within thirty (30) days from January 20, 2023.** If no such appeal is filed, the Order of Dismissal issued on January 06, 2023, will become final.

If you choose to file a judicial appeal, you must . . .

Serve a copy of your judicial appeal by mail or personal service within the thirty (30) day

judicial appeal period on the Commissioner of the Employment Security Department, the Office of the Attorney General, and all parties of record.

The copy of your judicial appeal you serve on the Commissioner of the Employment Security Department should be served on or mailed to: Commissioner, Employment Security Department, Attention: Agency Records Center Manager, 212 Maple Park Drive, Post Office Box 9555, Olympia, WA 98507-9555. To properly serve by mail, the copy of your judicial appeal must be received by the Employment Security Department on or before the thirtieth (30th) day of the appeal period. See RCW 34.05.542(4) and WAC 192-04-210.

CP at 82 (emphasis added).

Ms. Helvey timely filed an appeal of the Commissioner's dismissal order in the Kitsap County Superior Court. CP at 1. She served the Attorney General's Office before the deadline, but before any assistant attorney general had appeared for the Employment Security Department. CP at 54. She served the Department on March 3, 2023—10 days late. CP at 110.

The Department moved to dismiss the superior court appeal under RCW 34.05.542(2), due to untimely service. CP at

4–8. The superior court granted the Department’s motion, and Ms. Helvey appealed to the Court of Appeals. CP at 22–35.

Division One issued an unpublished opinion affirming the superior court’s dismissal order. *Helvey v. Employment Security Department, et al.*, No. 86626-5-I, 2024 WL 4025835 (Wash. Ct. App., Sept. 3, 2024) (unpublished). The court rejected Helvey’s argument that service on the Attorney General’s Office satisfied the requirement of timely service on the Department. *Id.* at *3. The court also declined to use Ms. Helvey’s status as a pro se litigant as a basis to excuse her untimely service on the Department. *Id.* Ms. Helvey seeks this Court’s review.

IV. REASONS WHY REVIEW SHOULD BE DENIED

The Court should deny Ms. Helvey’s Petition for Review for Writ of Certiorari (Petition) because she has not established any of the criteria set forth in RAP 13.4(b), and has not even argued that any of those grounds are met here. The Court of Appeals correctly applied well-settled precedent when it affirmed the superior court’s dismissal of Ms. Helvey’s petition

for judicial review due to her failure to timely serve the Department as required by RCW 34.05.542(2). The Court of Appeals' opinion does not conflict with any decision of this Court or of the Court of Appeals, and the opinion poses no significant question of constitutional law or of substantial public interest. RAP 13.4(b).

A. The Court of Appeals Correctly Applied Binding, Well-Settled Precedent

Under Washington's APA, petitioners who wish to seek judicial review of a final adjudicative order must file their appeal with the superior court and serve it on the agency and the office of the attorney general within 30 days of the service of the final order. RCW 34.05.542(2). Service of the agency order on the petitioner is complete upon mailing. RCW 34.05.010(19). If a petition for reconsideration is timely filed, the appeal period commences after that reconsideration petition has been decided. RCW 34.05.470(3). Under *Stewart v. Department of Employment Security*, 191 Wn.2d 42, 47, 54, 419 P.3d 838

(2018), dismissal is mandatory when service of the petition for judicial review is late.

Under RCW 34.05.542(6), serving the petition on the attorney of record for an agency “constitutes service upon the agency[.]” However, if the Attorney General’s Office (AGO) has not appeared in the administrative proceedings on behalf of the agency or filed a notice of appearance in superior court on behalf of the agency, then service of the petition for judicial review on the AGO is not service on the agency. *Matter of Botany Unltd. Design and Supply, LLC*, 198 Wn. App. 90, 96–97, 391 P.3d 605 (2017); *Cheek v. Emp. Sec. Dep’t*, 107 Wn. App. 79, 84–85, 25 P.3d 481 (2001).

Ms. Helvey concedes she failed to timely serve the Department with her judicial appeal, stating that she “did not timely file her judicial appeal on ESD.” Petition at 6–7. However, she claims that “she did serve the AG’s Office timely, on Feb. 15; their attorney.” Petition at 7. While Ms. Helvey did timely serve a copy of her petition for judicial review on the

Attorney General's Office in mid-February 2023, that service came before any assistant attorney general appeared on behalf of the Department. *See* CP at 54. Ms. Helvey presented no evidence that an assistant attorney general appeared on the agency's behalf in the administrative proceedings or had filed a notice of appearance on the agency's behalf by the time Ms. Helvey served the Attorney General's Office. *Helvey*, No. 86626-5-I, 2024 WL 4025835 at *3. Thus, the Court of Appeals correctly concluded that service on the AGO did not constitute service on the Department. *Id.*; RCW 34.05.542(6); *Matter of Botany*, 198 Wn. App. at 96–97; *Cheek*, 107 Wn. App. at 84–85.

Because Ms. Helvey concedes service on the Department was untimely, and because service on the AGO did not effectuate service on the agency, dismissal was required. *Stewart*, 191 Wn.2d at 47, 54.

Ms. Helvey's petition for judicial review was properly dismissed because she failed to timely serve it under RCW 34.05.542(2). Her Petition to this Court establishes no conflicts

with appellate decisions, constitutional questions, or significant issues of public interest that this court should decide. *See* RAP 13.4(b). The Court should deny review.

B. The Good Cause Standard Is Inapplicable to Untimely Petitions for Judicial Review

Ms. Helvey asserts that the Court should grant review because “good cause” excuses her untimely service on the Department. Petition at 6–7. This argument is misplaced, as the “good cause” framework does not apply to the statutory procedural requirements necessary to invoke the superior court’s appellate jurisdiction. *Clymer v. Emp. Sec. Dep’t*, 82 Wn. App. 25, 30, 917 P.2d 1091 (1996). Nor does it provide a basis for review under RAP 13.4(b).

The APA’s time limitations for service of a judicial petition require strict compliance. *Stewart*, 191 Wn.2d at 53. The superior court dismissed Ms. Helvey’s appeal because she did not comply with those time limitations: she did not timely serve her judicial appeal as required by the APA.

Ms. Helvey cites to WAC 192-04-090 for authority that “good cause” excuses her untimely service on ESD. But that provision relates to waiver of the time limitations for *administrative* appeals or petitions under the Employment Security Act, RCW 50.32.075, not judicial petitions filed under the APA. Indeed, “[t]he APA contains no exception for ‘good cause.’” *Clymer*, 82 Wn. App. at 30. Ms. Helvey has not shown a basis for this Court to reconsider the well-settled principle that the APA’s time limitations for service of a judicial petition require strict compliance.

C. Ms. Helvey’s Remaining Arguments Fail to Establish a Basis for Review

Ms. Helvey also argues that review should be granted on a variety of grounds that are beyond the scope of this appeal. *See* Petition at 5–6, 14–18. For example, she alleges that she lacked actual knowledge of her administrative hearing because mail-forwarding issues precluded her receipt of a mailed copy of a Notice of Hearing. Petition at 5–6. However, she acknowledges

that she failed to review several emails from the Office of Administrative Hearings because it was “campaign season.” Petition at 6. She also takes issue with the merits of the Department’s initial eligibility determination and suggests that the Department should provide claimants with more extensive instructions regarding superior court litigation. Petition at 14–18. But she does not argue the Department’s existing guidance is in any respect incorrect or misleading. *See* Petition at 15–18.

More importantly, the Court should decline to grant review on bases that are unrelated to the correctness of the Court of Appeals’ opinion. The Court of Appeals affirmed the superior court’s order dismissing Ms. Helvey’s appeal, because Ms. Helvey failed to timely serve her petition for judicial review on the Department as required by RCW 34.05.542(2). *Helvey*, No. 86626-5-I, 2024 WL 4025835 at *3. When Ms. Helvey failed to timely serve the Department, she failed to invoke the superior court’s appellate jurisdiction. *Id.* Because that defect deprived the superior court of appellate jurisdiction to review the final

administrative order, the Court of Appeals also lacked appellate jurisdiction to review the Department's final order. The Court of Appeals' review was limited to the superior court's dismissal order and whether the superior court correctly determined that appellate jurisdiction was not perfected under RCW 34.05.542(2). *Id.* at *1, 3; RAP 2.4(a). Therefore, any issues Ms. Helvey now raises in her Petition relating to the administrative proceedings are beyond the scope of this appeal. They do not provide a basis for this Court's review.

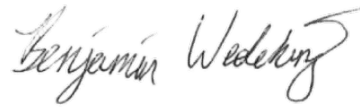
V. CONCLUSION

This Court's review is not warranted under RAP 13.4(b), and the Court should therefore deny Ms. Helvey's Petition.

I certify that this document contains 1,929 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 04th day of December, 2024.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in cursive script, reading "Benjamin Wedekking". The signature is written in dark ink and is positioned between the text of Robert W. Ferguson and Benjamin Wedekking.

BENJAMIN WEDEKING
WSBA #55809
Assistant Attorney General
Attorney for Respondent

PROOF OF SERVICE

I, Audrey Price, certify that I caused to be served a copy of **Department's Answer to Petition for Review** on all parties on their counsel of record on the date below as follows:

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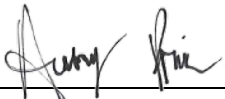
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helveya@gmail.com

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 04th day of December 2024, in Olympia, Washington.



AUDREY PRICE, Paralegal

AGO/LICENSING AND ADMINISTRATIVE LAW DIV

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