

NOT DESIGNATED FOR PUBLICATION

No. 125,852

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JUDE MONYE,
Appellant,

v.

KANSAS EMPLOYMENT SECURITY BOARD OF REVIEW,
Appellee.

MEMORANDUM OPINION

Appeal from Douglas District Court; MARK A. SIMPSON, judge. Opinion filed September 8, 2023.
Affirmed.

Jude Monye, appellant pro se.

Jessica A. Bryson, special assistant attorney general, of Office of Legal Services, Kansas
Department of Labor, for appellee.

Before BRUNS, P.J., PICKERING, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: This appeal arises out of the district court's dismissal of a petition for judicial review filed by Jude Monye from a decision issued by the Kansas Employment Security Board of Review. In dismissing the petition, the district court found that Monye failed to file it within the time required under K.S.A. 44-709(i). As a result, the district court determined that it lacked jurisdiction as a matter of law. On appeal, Monye does not dispute that the filing of his petition was untimely. Rather, he asserts—without citing any legal authority—that the district court erred in dismissing his petition for judicial review. Finding no error, we affirm the district court.

FACTS

On June 3, 2021, Monye filed an application for unemployment insurance benefits. Although a Kansas Department of Labor examiner initially found that he was entitled to receive benefits, an unemployment insurance referee reversed the examiner's decision and found that Monye's application should be denied. Subsequently, the Kansas Employment Security Board of Review affirmed the referee's ruling.

Significant to this appeal, the Board of Review mailed its decision to the parties on April 27, 2022. The decision included a notice advising Monye of his right to file a petition for judicial review under the provisions of K.S.A. 44-709(i). After applying the three-day mail rule, Monye had until May 16, 2022, to file his petition with the district court. See *Transam Trucking, Inc. v. Kansas Dept. of Human Resources*, 30 Kan. App. 2d 1117, 1122, 54 P.3d 527 (2002). Nevertheless, he did not file his petition for judicial review until June 15, 2022.

Although Monye acknowledged that the filing of his petition was untimely, he asked the district court to consider it anyway because he traveled out of the country before receiving the Board of Review's decision in the mail. Further, he attributed "[m]ost of the delay . . . to getting help to file the petition." In response, the Board of Review filed a motion to dismiss. In its motion, the Board of Review argued that the district court lacked jurisdiction to consider the petition because it was filed after the expiration of the deadline set forth in K.S.A. 44-709(i).

On October 5, 2022, the district court held a hearing on the motion to dismiss. Following the hearing, the district court filed a journal entry finding that the filing of the petition for judicial review was untimely and dismissing it for lack of jurisdiction. Monye subsequently filed a timely notice of appeal.

ANALYSIS

On appeal, Monye contends that the district court erred in dismissing his petition for judicial review. Without citing any legal authority and offering only a five-sentence argument, he asserts that "the deadline would have been met had [he] been in the country for the duration of the time allotted to meet the deadline." In response, the Board of Review contends that Monye's arguments should be deemed waived or abandoned due to his failure to cite any legal authority or otherwise support his position. Moreover, the Board of Review contends that the dismissal was appropriate as a matter of law.

As a general rule, issues and arguments are deemed to be waived or abandoned if not adequately briefed on appeal. Likewise, a point raised incidentally in a brief is deemed to be waived or abandoned. *Russell v. May*, 306 Kan. 1058, 1089, 400 P.3d 647 (2017). Consequently, we conclude that Monye's failure to cite any legal authority or to otherwise establish that the district court erred is a sufficient reason—in and of itself—for us to affirm the dismissal of his untimely petition for judicial review.

Based on our review of the record on appeal, we also find that Monye's assertion that the district court erred in dismissing his untimely petition for judicial review fails on the merits. As the Board of Review accurately points out, the issue presented involves statutory interpretation. In Kansas, the interpretation of statutes presents a question of law over which we have unlimited review. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019).

Additionally, when interpreting a statute, we must first attempt to determine the Kansas Legislature's intent based on the explicit language of the statute and by giving common words their ordinary meaning. If a statute is plain and unambiguous, we are not to speculate about the legislative intent behind the statutory language. Also, we are to

refrain from reading something into a statute that is not found in its words. *Nauheim*, 309 Kan. at 149-50.

K.S.A. 44-709(i) provides:

"An action of the board . . . shall become final unless a petition for review . . . is filed within 16 calendar days after the date of the mailing of the decision. If an appeal has not been filed within 16 calendar days of the date of the mailing of the decision, the decision becomes final."

As noted previously, the three-day mail rule found in K.S.A. 77-613(e) is also applicable to K.S.A. 44-709(i). *Transam Trucking*, 30 Kan. App. 2d at 1122. As a result, Monye had 19 days from the mailing of the Board of Review's decision to file a petition for judicial review. Notwithstanding, he did not file his petition in this case until 30 days *after* the deadline had already expired. Accordingly, we find that the dismissal of the untimely petition for judicial review was appropriate as a matter of law.

If our Legislature had desired to do so, it could have included a provision for excusable neglect in K.S.A. 44-709(i). In fact, other provisions of K.S.A. 44-709 include such exceptions for certain levels of the administrative review process relating to applications for unemployment insurance benefits. For example, the deadline for appeal an examiner's decision to a referee "may be waived or extended by the referee or board of review if a timely response was impossible due to excusable neglect." K.S.A. 44-709(b)(3). Similarly, the deadline for a party appealing a referee's decision to the Board of Review may be extended if "a timely response was impossible due to excusable neglect." K.S.A. 44-709(c).

On its face, the plain and unambiguous language of K.S.A. 44-709(i) contains no such exceptions to excuse the untimely filing of a petition for judicial review from a decision rendered by the Board of Review. Although we do not find K.S.A. 44-709(i) to

be ambiguous and it is unnecessary to look to the rules of statutory construction, we note that our interpretation—as well as the district court's interpretation—of the statute is consistent with the canon of *expressio unius est exclusio alterius*. Under this canon, a court may presume that the inclusion of one thing in a statute implies the exclusion of another thing not expressly specified. See *Patterson v. Cowley County*, 307 Kan. 616, 626, 413 P.3d 432 (2018); see also *In re Marriage of Killman*, 264 Kan. 33, 42, 955 P.2d 1228 (1998) ("[T]he inclusion of one thing implies the exclusion of another.").

Finally, we note that the record reflects that Monye returned home on May 14, 2022. This was two days *prior* to the expiration of the deadline for filing the petition for judicial review. Even so, Monye did not file seek judicial review on May 16, 2022. Likewise, he failed to seek extension of the deadline prior to its expiration. Instead, instead waited another 30 days before he filed his untimely petition. Under these circumstances, we conclude that the district court's dismissal of Monye's untimely petition for judicial review was appropriate.

Affirmed.