

FILED

AUG 19 2021

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

ELENI KONSOLAKIS GARCIA,

Complainant,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1107,

Respondent.

Case No. 2021-0006

NOTICE OF ENTRY OF ORDER

ITEM NO. 873

TO: Complainant pro se, Eleni Konsolakis Garcia;

TO: Respondent SEIU Local 1107 and its attorneys of record, Paul Cotosnis, Esq. and The Urban Law Firm.

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on August 19, 2021.

A copy of said order is attached hereto.

DATED this 19th day of August 2021.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations
3 Board, and that on the 19th day of August 2021, I served a copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Eleni Konsolakis Garcia
6 8112 Mt. Royal Ct.
7 Las Vegas, NV 89145

8 Paul D. Cotsonis, Esq.
9 The Urban Law Firm
10 4270 S. Decatur Blvd., Suite A-9
11 Las Vegas, NV 89103



12 _____
13 **MARISU ROMUALDEZ ABELLAR**
14 **Executive Assistant**

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ELENI KONSOLAKIS GARCIA,
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SERVICE EMPLOYEES INTERNATIONAL
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ORDER

EN BANC

ITEM NO. 873

On August 10, 2021, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provisions of the Government Employee-Management Relations Act (NRS Chapter 288, EMRA), NAC Chapter 288 and NRS Chapter 233B. At issue was Respondent’s Motion to dismiss the Complaint.

Respondent argues that the Complaint is untimely. Specifically, Complainant alleges that Respondent’s lack of representation in June 2020 to September 2020 forced her to hire her own attorney. Further, Complainant resigned her membership in October 2020. As this is more than 6 months from the date of the filing of the Complaint, Complainant is barred from proceeding.

In opposition, Complainant states that she did not comply with the time limitations set forth in the EMRA as she “was waiting on the EEOC response” and “was not familiar with the statute of limitation.” Complainant asserts that while the limitations has passed, this does not change whether there were substantive violations. In reply, Respondent reiterates the allegations made in the Complaint, notes Complainant’s admission, and argues equitable tolling does not apply.

DISCUSSION

The Board may not consider any complaint filed more than 6 months after occurrence which the subject of the complaint. NRS 288.110(4). “[T]he limitations period begins to run ‘when the victim of an unfair labor practice receives unequivocal notice of a final adverse decision.’” *City of N. Las Vegas*

1 v. *EMRB*, 127 Nev. 631, 639, 261 P.3d 1071, 1076-77 (2011).¹ However, the limitations period set
2 forth in the EMRA is subject to the doctrine of equitable tolling. *Id.*

3 The Board does not find equitable tolling to apply in this case. “[E]quitable tolling ‘focuses on
4 ‘whether there was excusable delay by the plaintiff: If a reasonable plaintiff would not have known of
5 the existence of a possible claim within the limitations period, then equitable tolling will serve to extend
6 the statute of limitations for filing suit until the plaintiff can gather what information he needs.’” *City*
7 *of N. Las Vegas*, 127 Nev. at 640, 261 P.3d at 1077. “[T]he following factors, among any other
8 relevant considerations, should be analyzed when determining whether equitable tolling will apply: the
9 claimant’s diligence, knowledge of the relevant facts, reliance on misleading authoritative agency
10 statements and/or misleading employer conduct, and any prejudice to the employer.” *City of N. Las*
11 *Vegas*, 127 Nev. at 640, 261 P.3d at 1077; *Charles v. City of Henderson*, No. 67125, 2016 WL
12 2757394, at *1 (Nev. May 10, 2016) (noting that “[t]he law does not permit equitable tolling when a
13 party simply did not realize the ‘extent’ of his claim.”); *see also Bantz v. Washoe County Sch. Dist.*,
14 Item No. 832, Case No. 2017-028 (2018); *Woodard v. Sparks Police Prot. Ass’n*, Case No, 2018-026,
15 Item No. 853 (2019); *Gil v. City of Las Vegas*, Case No. 2019-020, Item No. 852-A (2020).

16 Diligence

17 In *City of N. Las Vegas*, approximately two months after learning of a similarly situated
18 employee’s differential treatment, Spannbauer filed a complaint with the EMRB. The Nevada Supreme
19 Court approved this as diligent. *See City of N. Las Vegas*, 127 Nev. at 640-41, 261 P.3d 1077. In
20 *Woodard*, Complainant did not learn of different treatment in another case until summer 2018 and filed
21 his complaint approximately 3 months after in October (as such, the complainant was determined to be
22 diligent). In previous cases, the Board found a lack of diligence when the complainant waited 1 to 6
23 years. *See e.g., Bantz v. Washoe County Sch. Dist.*, Item No. 832, Case No. 2017-028 (2018); *Danser*
24 *v. the City of North Las Vegas*, Case No. 2017-035 (2018). Here, the Complaint was filed on June 10,
25 2021, 8 months after she resigned from Respondent. Even if the Board found the resignation as a

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27 ¹ Citing *N.L.R.B v. Public Serv. Elec. And Gas Co.*, 157 F.3d 222, 227 (3rd Cir. 1998) , *Cone*, 116 Nev. at 477 n. 2, 998 P.2d
28 at 1181 n. 2; *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990); *see also*
Frabbiele v. City of N. Las Vegas, Item No. 680I, Case No. A1-045929 (2014), *citing Public Serv. Elec. And Gas Co.*, 157
F.3d at 227, *quoting Esmark, Inc. v. N.L.R.B.*, 887 F.2d 739, 746 (7th Cir. 1989); *Pershing County Law Enforcement Ass’n*
v. Pershing County, Item No. 725C, Case No. A1-045974 (2013).

1 potential violation, which is unlikely as Complainant states she resigned because she received no
2 response, Complainant admitted that she did not file her Complaint sooner as she was waiting on the
3 EEOC. The Board and the EEOC are separate entities with differing jurisdictions and this is not a basis
4 to apply equitable tolling. *See, e.g., Campos v. Town of Pahrump*, Case No. A1-046081, Item No. 785
5 (2013). As such, the Board finds this factor cuts against the application of equitable tolling.

6 Knowledge of the Relevant Facts

7 In the *City of N. Las Vegas* and *Woodard*, the complaints were filed after obtaining knowledge
8 of the alleged differential treatment of a similarly situated employees. In *Bantz*, however, she did not
9 provide any new factual information pertaining to her claims including admitting that there were no
10 new relevant facts pertaining to her claims. *Bantz v. Washoe County Sch. Dist.*, Item No. 832, Case No.
11 2017-028 (2018); *see also, e.g., Danser v. the City of North Las Vegas*, Case No. 2017-035 (2018).
12 Here, the Board was not presented with any argument that there was any new factual information
13 pertaining to Complainant's claims in the relevant time period. As the Board has repeatedly held,
14 failing to have knowledge of this Board or the limitations period is not sufficient to defeat the statutory
15 requirements. *See also City of N. Las Vegas v. State, EMRB*, 127 Nev. 631, 640, 261 P.3d 1071, 1077
16 (2011) (holding that equitable tolling will extend a statute of limitations if a reasonable plaintiff would
17 not have known of the existence of their claim within the limitations period); *Charles v. City of*
18 *Henderson*, No. 67125, 2016 WL 2757394, at *1 (Nev. May 10, 2016) (noting that "[t]he law does not
19 permit equitable tolling when a party simply did not realize the 'extent' of his claim."); *Campos v.*
20 *Town of Pahrump*, Case No. A1-046081, Item No. 785 (2013) (holding that a belated understanding of
21 the existence of this Board is not a basis for equitable tolling); *Danser v. The City of N. Las Vegas*, Case
22 No. 2017-035, Item No. 830 (2018) (finding that equitable tolling does not apply simply because
23 complainant did not know to file a complaint with this Board, which was not new factual information
24 pertaining to complainant's claims).

25 As such, the Board finds this factor cuts against the application of equitable tolling.

26 Reliance on Misleading Agency Statements or Conduct

27 As in *Woodard*, the Board was not presented with any argument of this factor. Complainant
28 admits that she resigned after no contact from Respondent. Thus, this factor cuts against the application

1 of the doctrine of equitable tolling.

2 Prejudice

3 In *Bantz* and *Danser*, the hearings showed that witnesses would not have sufficient memory if
4 called to testify. The Board thus found prejudice. However, here, as in *Woodard*, the Board was not
5 presented with any reasonable argument of an inability to present clear testimony of the events. In the
6 same vein, the Nevada Supreme Court agreed that prejudice was lacking in these instances. *See City of*
7 *N. Las Vegas*, 127 Nev. at 641, 261 P.3d 1077.

8 As such, the Board finds this factor cuts in favor of the application of equitable tolling.

9 * * *

10 While we recognize that Complainant is unrepresented, given the foregoing, the Board finds on
11 balance that the doctrine of equitable tolling cannot be applied to toll the statutory time limitations as
12 set forth in the EMRA. We note for Complainant that this decision does not determine the merits of the
13 substantive allegations in her Complaint. However, as stated, the Board does not have the jurisdiction
14 to consider the merits of the Complaint due to the failure to meet the statutorily required time
15 limitations and providing no legal or factual basis for equitable tolling to extend the limitations period.

16 FINDINGS OF FACT

17 1. Complainant alleged that Respondent's lack of representation in June 2020 to September
18 2020 forced her to hire her own attorney.

19 2. Complainant resigned her membership in October 2020.

20 3. Complainant conceded that she did not comply with the time limitations set forth in the
21 EMRA as she "was waiting on the EEOC response" and "was not familiar with the statute of
22 limitation."

23 4. If any of the foregoing findings is more appropriately construed as a conclusion of law,
24 it may be so construed.

25 CONCLUSIONS OF LAW

26 1. The Board is authorized to hear and determine complaints arising under the Local
27 Government Employee-Management Relations Act.

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1 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
2 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

3 3. The Board may not consider any complaint filed more than 6 months after occurrence of
4 the subject of the complaint. NRS 288.110(4).

5 4. Time limitations are not triggered until the victim receives unequivocal notice of a final
6 decision. *City of N. Las Vegas v. EMRB*, 127 Nev. 631, 639, 261 P.3d 1071, 1076-77 (2011).

7 5. “[E]quitable tolling ‘focuses on ‘whether there was excusable delay by the plaintiff: If a
8 reasonable plaintiff would not have known of the existence of a possible claim within the limitations
9 period, then equitable tolling will serve to extend the statute of limitations for filing suit until the
10 plaintiff can gather what information he needs.’”

11 6. “[T]he following factors, among any other relevant considerations, should be analyzed
12 when determining whether equitable tolling will apply: the claimant's diligence, knowledge of the
13 relevant facts, reliance on misleading authoritative agency statements and/or misleading employer
14 conduct, and any prejudice to the employer.”

15 7. The law does not permit equitable tolling when a party simply did not realize the extent
16 of their claim.

17 8. The factor of diligence cuts against the application of equitable tolling.

18 9. The factor of knowledge of relevant facts cuts against the application of equitable
19 tolling.

20 10. The factor of reliance on misleading agency statements cuts against of the application of
21 equitable tolling.

22 11. The factor of prejudice cuts in favor of the application of equitable tolling.

23 12. The doctrine of equitable tolling is not applicable in this case.

24 13. If any of the foregoing conclusions is more appropriately construed as a finding of fact,
25 it may be so construed.

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ORDER

Based on the foregoing, it is hereby ORDERED that the Complaint is barred by the limitations period set forth in NRS 288.110 and is DISMISSED.

DATED this 19th day of August 2021.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ., Chair

By: 
SANDRA MASTERS, Vice-Chair

By: 
GARY COTTINO, Board Member