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The Order of the Court is stated below:

Dated: August 15, 2022 /s/ John A. Pearce Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

Keming Lu,
Petitioner,

v.

Labor Commission and Northern Utah Healthcare
Corporation D.B.A. St. Marks Hospital,
Respondents.

ORDER

Supreme Court No. 20220539-SC
Court of Appeals No. 20220188-CA
Trial Court No. 8090160

This matter is before the Court upon a Petition for Writ of Certiorari, filed on June 8, 2022.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

App. 2a

FILED

UTAH APPELLATE COURTS

MAY 10 2022

IN THE UTAH COURT OF APPEALS

KEMING LU,

Petitioner,

v.

UTAH LABOR COMMISSION, AND NORTHERN UTAH
HEALTHCARE CORPORATION D/B/A ST. MARKS HOSPITAL
Respondents.

ORDER

Case No. 20220188-CA

This matter is before the court on Petitioner's Pro Se
Motion for Transferring the Case to the District Court.

Petitioner sought judicial review of the Appeals Board
of the Utah Labor Commission's January 19, 2022
decision. On April 5, 2022, this court issued an Order of
Summary Affirmance declining to disturb the Board's
decision.

App. 2a

Petitioner now requests that this court transfer the appeal to the district court so that the district court may take testimony. Petitioner's motion is not well taken. There is no provision in the Utah Rules of Appellate Procedure contemplating the relief that Petitioner seeks in transferring her completed administrative appeal to the district court for testimony.

Accordingly, IT IS HEREBY ORDERED that Petitioner's Motion for Transferring the Case to the District Court is denied.

DATED this 10th day of May, 2022.

FOR THE COURT:

s/ Michele M.
Christiansen Forster, Judge

App. 3a

FILED

UTAH APPELLATE COURTS

APR 5 2022

IN THE UTAH COURT OF APPEALS

KEMING LU,

Petitioner,

v.

UTAH LABOR COMMISSION, AND NORTHERN UTAH
HEALTHCARE CORPORATION D/B/A ST. MARKS HOSPITAL
Respondents.

ORDER OF SUMMARY AFFIRMANCE

Case No. 20220188-CA

Before Judges Orme, Christiansen Forster, and Hagen.

Keming Lu (Petitioner) seeks judicial review of the Appeals Board of the Utah Labor Commission's (the Board) January 19, 2022 decision. This matter is before the court on its own motion for summary disposition. We decline to disturb the Board's decision.

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Petitioner filed a complaint with the Utah Antidiscrimination and Labor Division (the UALD) alleging that St. Mark's Hospital subjected her to unlawful discrimination based upon her race and national origin. The UALD investigated Petitioner's claims and determined that she was not subjected to discriminatory practices. Petitioner appealed the UALD's decision to the Adjudication Division.

Petitioner's appeal was assigned to Administrative Law Judge Decker, who held an evidentiary hearing before retiring from the Commission. Following Judge Decker's retirement, the appeal was reassigned to Administrative Law Judge Newman. Following the evidentiary hearing, Petitioner attempted to submit additional evidence, which was excluded by Judge Newman. Judge Newman dismissed Petitioner's complaint after determining that Petitioner failed to demonstrate that she was subjected to unlawful discrimination, harassment, or retaliation. Petitioner appealed the Division's decision to the Board.

The Board also determined that Petitioner did not meet her burden of demonstrating that she was subjected to unlawful discrimination, retaliation, or harassment. In reaching this decision, the Board

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determined that Petitioner failed to demonstrate any impropriety in the reassignment of her case to Judge Newman following Judge Decker's retirement. The Board also determined that Petitioner failed to demonstrate that Judge Newman was biased against her, or that Judge Newman erred in excluding her untimely evidence. The Board affirmed the Division's decision. Petitioner sought judicial review of the Board's decision.

Based upon Petitioner's docketing statement, this matter was identified as a candidate for summary no disposition. If a Petitioner's response to a motion for summary disposition does not tailor a specific challenge to the rationale of the Board's decision, its determination is placed beyond the reach of judicial review, and an appellate court will not seek out errors in the Board's decision. See *Martinez v. Department of Workforce Servs.*, 2011 UT App 273, ¶ 5, 263 P.3d 457. Furthermore, where the petitioner fails to provide the requisite legal argument and analysis of a challenged issue on appeal, an appellate court may decline judicial review. See *id.* Petitioner's response to this court's motion for summary disposition fails to carry her burden of demonstrating that there is a substantial question for judicial review. See *Partlow Investment Properties v. Yamamoto*, 2013 UT App 259, ¶ 5, 314 P.3d 1090.

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Accordingly, this court declines to disturb the Board's January 19, 2022 decision.

DATED this 5_t_h day of April, 2022. FOR THE COURT:

s/ Gregory K. Orme, Judge

App. 4a

Attorney Ms.Hogan: Do you recall, I am going to draw your intention to August 17th, it's been the day we discussed much about an incident where you allegedly found Ms. Lu sleeping in the control room. Can you please tell the judge that day, what you observed?

Ms. Pitre: Yes. so, It was a Friday. So I wanted to get payroll all completed. I did around the department, picked up all of the payroll books. And I couldn't get into ultrasound, both doors were locked. There are center cores set between these doors. So I just continued to bound the different books and went back did all the payroll, which takes quite some time, and went back, drop off the books and in hopes to get ultrasound's book too, take theirs back, both doors were still locked. I have known that earlier in that day I sent Tina home because they really didn't have very heavy schedule, only one tech can handle it. So I went back to my office again pulled up

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our EPIC sheet. Our EPIC computer screen shows, ok, what patients we have in the ER, what patients we have in the outpatients, there wasn't any patients on at all. So, I went back and unlocked the door. Ultrasound rooms lights were completely off. In the center core, the lights were on, Keming was sitting in the center core. I said the doors need to remain unlocked. And I grabbed the book, there was no conversation at that point.

Attorney Ms. Hogan: Did you see Ms. Lu again that day?

Ms. Pitre: I did. I went to my office and I did ultrasound's payroll. When I came back, the door wasn't locked but sitting in the corner of center core, Keming was sitting there with her arms crossed and her head down. I got all the way to the center core to tell, her eyes were closed, she was sleeping to the point where I put the book in the wall holder to make the noise to wake her up.

App. 5a

Petitioner: That's the only reason I am fired based on that? the only reason?

Mr. Hancock: Yeah !

Petitioner: Yeah, ok, you said ok, only reason. So, you just told me that is the solo reason I have been fired.

Mr. Hancock: Correct !

petitioner: So, there is nothing to do with the prior incidents that they reported.

Mr.Hancock: No.

Petitioner: Ok

Mr.Hancock: Yeah.

Petitioner: Ok.

Mr. Hancock: Ok.

Petitioner: That means your guys did something wrong with that two incidents because that's not what I based on, you know, the firing is not based on that two facts.

Mr. Hancock: Well, we are not saying that's really your termination.

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Attorney Ms. Hogan: You remember issuing a written warning to Ms. Lu

Ms. Pitre: I do at one point.

Attorney Ms. Hogan: Well, we'll pull up Exhibit 7.

Ms. Pitre: Ok. Yes.

Attorney Ms. Hogan: I just want to be clear, you received this email from Ms. St.Thomas on July 25th, and then we have this disciplinary corrective action form on August 3.

Ms. Pitre: Correct.

Attorney Ms. Hogan: So, tell us about this. How did you prepare this? What prompted you to prepare this?

Ms. Pitre: So the first concerns we looked more as it was just going to be a coaching moment, there was no disciplinary. By the second, just the pattern of it, I felt like we need to

App. 6a

get at least acknowledged on paper, that there is a concern that this pattern is happening. I just wanted to document that, let's get it on paper, all recognize that we have multiple complaints coming in and move forward from that point.

Attorney Ms.Hogan: So, what prompted you then to prepare this disciplinary corrective, oh excuse me, let me ask you this. What did you do to prepare this ? Did you work with anybody else to prepare this corrective action?

Ms. Pitre: Tosha and I prepared it for a meeting.

Attorney Ms.Hogan: Do you remember.....

Petitioner interrupted to ask a question: I'm sorry,
who? Tosha?
Tosha and
you?
I'm sorry !

Attorney Ms. Hogan: Yes.

Petitioner: Ok.

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Attorney Ms. Hogan: There have been some testimony about Mr. Hancock running this out and see that it didn't have your signature on that? Do you remember that?

Ms. Pitre: I do.

Attorney Ms. Hogan: What is your explanation for that?

Ms. Pitre: So, when we had the initial disciplinary action, Keming didn't want to sign it, she wanted additional meeting. So, she was, she left. Then I was told I still need to turn this one in, that's I did sign it and wrote that she had requested another meeting. Once the meeting was scheduled, I wrote when that was.

Attorney Ms. Hogan: Ok, all right.

Petitioner: Excuse me, I'll interrupt you, make sure I understand it. You said you signed it on the

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same day, the August 3, because I declined to sign it, but you need to turn in the paper, so you signed it and turned the paper in.

Ms. Pitre: Yeah.

Petitioner: Is that what you are saying?

Ms. Pitre: Yeah.

Petitioner: That would be on the same day, August 3, you signed it.

The Judge: Ok, Ms. Lu, can you ask (her) if you understood the question correctly, but you can't ask additional questions after that.

Petitioner: oh, ok, ok. Thank you, Your Honor !

Attorney Ms. Hogan: Ms. Pitre, did you and Ms. Davis meet with Ms. Lu on about August 3 ?

Ms. Pitre: Yes !

Attorney Ms. Hogan: What do you recall from that meeting ?

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Ms. Pitre: I do know when we discussed all of the different complaints, Keming still didn't feel like she had any wrong doing in it, she didn't have any ownership or accountability. So, that's why she requested another meeting, and with HR as well. She didn't want to accept the complaints from the other department.

Attorney Ms. Hogan: Do you recall approximately how long that meeting was?

Ms. Pitre: About an hour.