

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIMBERLY MOORE,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
AND LYNDIA PARVEN, AS
ADMINISTRATOR OF THE
EMPLOYMENT SECURITY DIVISION,
Respondents.

No. 84185-COA

FILED

JUL 21 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kimberly Moore appeals from a district court order denying her petition for judicial review in an action for unemployment benefits. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Moore challenges a district court order denying her petition for judicial review of the Division's¹ decision to deny her Pandemic Unemployment Assistance (PUA)² benefits under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act).³ Prior to the COVID-19 pandemic, Moore was self-employed as a paid babysitter for her grandchildren and a gig worker through Wonolo, Inc.⁴ However, Moore

¹Employment Security Division, State of Nevada.

²Subject to the specific requirements detailed herein, PUA benefits are for individuals whose work was affected by COVID-19 but who do not qualify for regular unemployment benefits.

³We recount the facts only as necessary for our disposition.

⁴Wonolo is a platform whereby businesses hire independent contractors for gig work. Jobs are awarded on a first-come first-served basis. Moore claimed to have performed various jobs for Wonolo such as shipping and packing.

claimed that when Governor Sisolak declared a state of emergency in March 2020 due to the COVID-19 pandemic, school closures nullified her grandchildren's need for babysitting services and job openings posted on Wonolo significantly diminished. Purportedly due to these circumstances, on July 1, 2020, Moore applied for PUA.

In response, the Division notified Moore that she needed to provide documentation establishing her identity, residency, and proof of income or else it may deny her claim. The Division determined it had received no such documents, and therefore denied her claim, citing the lack of documentation as cause. Moore administratively appealed to an appeals referee.

During a telephonic appeals hearing, Moore provided some documentation and the referee admitted, among other things, the following: (1) Moore's PUA application; (2) the email the Division sent to Moore, prior to denying her claim, requesting she provide substantiating documents; (3) case notes showing the Division again requested Moore send proving documents prior to denying her claim, but that she still had not sent any when she filed her first appeal; (4) case notes showing that Moore called the Division about the denial of her benefits at which time she was informed that the reason for the denial was her failure to provide substantiating documentation; (5) screenshots of payment records for work Moore allegedly performed that did not show her name; (6) a copy of Moore's driver's license; (7) a copy of Moore's auto insurance; (8) the Division's letter to Moore rejecting her claim for PUA; and (9) Moore's appeal case information sheet wherein she indicated her belief that she qualified for PUA and that she provided all requested documents.

After the referee admitted the foregoing evidence, Moore testified regarding the effects the COVID-19 pandemic had on her self-employment. The referee then asked Moore if she had a Schedule C for her

2019 tax return to substantiate her self-employment. Moore indicated that she had submitted a tax return with a Schedule C for 2019, but that she also had an amended tax return and was unsure whether the Division had a copy of the Schedule C for the amended return. The referee requested that Moore confirm whether she submitted the Schedule C for the amended tax return and to submit it by 5:00 p.m. the following day if she had not already done so. The referee advised “if I do not receive it, then I can’t mark it as an exhibit and I can’t consider it into evidence.” Moore then gave the following closing statement: “*if we do supply the tax information* then you already have the Social Security card and identification, driver’s license then it seems to me that we have supplied the information requested by [the Division], so I would ask that the PUA benefits be granted.” (emphasis added). The hearing then concluded, but Moore never provided the Schedule C for her amended 2019 tax return.

The referee issued a decision affirming the PUA denial and finding that Moore failed to substantiate her employment or prove that the COVID-19 pandemic affected her ability to work during the period for which she sought benefits. Specifically, the referee found that Moore failed to submit a Schedule C for her amended 2019 tax return and that Moore’s submitted federal income tax documents were confusing such that the referee doubted their “accuracy and legitimacy.” Moore appealed to the PUA board of review, which affirmed the referee’s decision and fully adopted the referee’s findings of fact and reasons. Moore then filed a petition for judicial review, which the district court denied after concluding that substantial evidence supported the referee’s decision. Moore now appeals the district

court's decision, arguing the court should have granted her petition because substantial evidence did not support the referee's decision.⁵

Under the CARES Act, the Secretary of Labor “shall” provide PUA to any covered individual who is “unemployed, partially employed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation.” 15 U.S.C. § 9021(b). A “covered individual” is one who meets three requirements. First, the individual must not be eligible for regular unemployment compensation. *Id.* § 9021(a)(3)(i). Second, the individual must self-certify that they are otherwise able to and available for work but that certain qualifying COVID-19 related circumstances affected their ability to work. *Id.* § 9021(a)(3)(ii). Finally, the individual must substantiate her employment through documentation within 21 days of submitting her PUA application or within 21 days of being advised by the Division to submit such documentation, whichever is later, unless she is granted a discretionary extension for good cause. *Id.* § 9021(a)(3)(iii).

“An individual may appeal any determination or redetermination regarding the rights to pandemic unemployment assistance

⁵Moore further appears to argue that the appeals referee erroneously applied the CARES Act by requiring her to prove the COVID-19 pandemic affected her ability to work rather than allowing her to self-certify to that effect and that substantial evidence did not support the Division's finding that Moore failed to prove the same. However, as discussed below, an individual must establish all three requirements to be a “covered individual” and receive PUA under the CARES Act—ineligibility for traditional unemployment, a self-certified qualifying circumstance, *and* employment substantiated by documentation. *See* 15 U.S.C § 9021(a)(3)(A). And substantial evidence supports the referee's finding that Moore did not establish the third requirement—she did not substantiate her employment with documentation. Therefore, we need not interpret federal law or otherwise consider this issue. *See Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case).

under [the CARES Act] made by the State agency of any of the States.” *Id.* § 9021(c)(5)(A). Such an appeal “shall be conducted in the same manner and to the same extent as the applicable State would conduct appeals of determinations or redeterminations regarding rights to regular compensation under State law.” *Id.* § 9021(c)(5)(B)(ii).

Turning then to Nevada law, the supreme court has made clear that “the standard for reviewing petitions for judicial review of administrative decisions is the same for this court as it is for the district court.” *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013) (alteration and internal quotations omitted). As such, this court does “not give any deference to the district court decision when reviewing an order regarding a petition for judicial review.” *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). Instead, this court directly reviews the decision of the administrative agency, *see id.*, which in this case is the referee’s decision because the board adopted the referee’s factual findings and reasons in whole. *See Nev. Emp’t Sec. Dep’t v. Holmes*, 112 Nev. 275, 279-80, 914 P.2d 611, 613-14 (1996).

Specifically, Moore appears to argue that substantial evidence did not support the appeals referee’s findings regarding the third PUA requirement—that she failed to substantiate her employment via documentation—because she provided screenshots and tax documents at the hearing. Respondents answer that substantial evidence supports the referee’s findings that she could not substantiate Moore’s employment with nameless screenshots and that Moore’s tax documents were “confusing” because they were contradictory and missing a Schedule C from the amended returns.

We will not overturn an agency’s factual findings if they are supported by evidence that a reasonable mind might accept as adequate to support the agency’s conclusion. *See* NRS 233B.135(3). For purposes of PUA

eligibility, “[p]roof of self-employment includes, but is not limited to, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual’s self-employment.” See U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 Change 4, I-10 (Jan. 8, 2021), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_4.pdf.

Here, respondents’ appendix reveals that none of the screenshots included Moore’s first or last name.⁶ Respondents’ appendix also reveals that the Schedule C Moore provided for her original tax return indicated that Moore’s principal business was “housekeeping,” which is not among the principal businesses the tax instructions list.⁷ Further, Moore indicated at the hearing that she had an amended tax return that superseded the original return and the referee specifically requested that Moore provide the corresponding Schedule C for the amended return, presumably because the original Schedule C was of questionable veracity. In her closing statement, Moore argued that she was entitled to PUA “if we

⁶Without citing any authority, Moore argues that respondents improperly supplied this court with the screenshots because they were not part of the record before the district court. However, “judicial review of administrative decisions is limited to the record before the *administrative body*,” see *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) (emphasis added), not the record before the district court. And because the referee reviewed and relied on the screenshots, we also consider them.

⁷A Schedule C is used to report income or loss from a business operated or a profession practiced as a sole proprietor. The Schedule C specifically directs taxpayers to see the tax instructions for the list of principal businesses. The tax instructions in turn provide a list of more than 200 business activities and instructs taxpayers to select the one that best describes their primary business activity. And we note that the instructions list other businesses that would have more accurately summarized the services Moore claimed to provide.

do supply the tax information.” However, she never provided the referee the Schedule C for the amended return. And Moore never provided an affidavit, declaration, or other sufficient substantiating documents to establish her employment.

Therefore, substantial evidence supports the referee’s finding regarding Moore’s failure to substantiate her employment with documentation, which is the third of three requirements necessary to receive PUA under the CARES Act. *See* 15 U.S.C. § 9021(a)(3)(iii). As such, the district court did not err by denying Moore’s petition for judicial review of the appeals referee’s decision to deny her PUA. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, C.J.
Gibbons


_____, J.
Bulla

TAO, J., concurring:

I concur in the judgment.


_____, J.
Tao

⁸Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Veronica Barisich, District Judge
Nevada Legal Services/Las Vegas
State of Nevada/DETR
Eighth District Court Clerk