

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD CARRILLO,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
LYNDA PARVEN, ADMINISTRATOR
OF THE EMPLOYMENT SECURITY
DIVISION; AND J. THOMAS SUSICH,
IN HIS CAPACITY AS CHAIRPERSON
OF THE EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW,
Respondents.

No. 85300-COA

FILED

AUG 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Donald Carrillo appeals from a district court order denying a petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Carrillo was employed with NP Palace, LLC, as a sports betting manager until September 2019 when he quit his employment due to job dissatisfaction.¹ A year later, Carrillo applied for Pandemic Unemployment Assistance² (PUA) through the Nevada Employment Security Division (the Division). In his application, Carrillo indicated that he had quit his employment, but also reported that he was laid off due to a lack of work after a business closure caused by the COVID-19 pandemic. In October 2020, the Division denied Carrillo's claim because it determined that he

¹We recount the facts only as necessary for our disposition.

²See 15 U.S.C. § 9021. PUA is provided under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). See 15 U.S.C. § 9001-9141.

failed to demonstrate how COVID-19 affected his claim for benefits prior to March 8, 2020—the start of the pandemic, and thus did not meet the requirements for PUA under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act).

Carrillo appealed the denial and was given a hearing before the Division appeals referee. At the hearing, Carrillo confirmed that he understood the advisement in the PUA application against making fraudulent statements and misrepresentations. When asked how his unemployment was related to the pandemic, Carrillo provided various reasons unrelated to COVID-19 and eventually conceded that he quit his employment voluntarily.³ Additionally, Carrillo submitted a physician's note that provided that he was at high risk of COVID-19 infection due to uncontrolled diabetes and recommended to get the COVID-19 vaccine as soon as possible, which Carrillo relied on to demonstrate he was unemployed for a pandemic-related reason.

The appeals referee found that Carrillo was not eligible for PUA benefits on two grounds. First, the appeals referee determined that Carrillo became unemployed for reasons unrelated to COVID-19. Second, the appeals referee determined that Carrillo was disqualified from receiving PUA benefits pursuant to 20 C.F.R. § 625.14 because he had made a false statement on his PUA application by indicating that he had been laid off for a business closure caused by COVID-19, when he in fact quit for a reason unrelated to the COVID-19 pandemic. Carrillo appealed to the Board of Review (the Board), but the Board adopted the referee's findings and

³We note that Carrillo's reasons for quitting his employment related to his bipolar disorder, high blood pressure, diabetes, and alleged customer verbal abuse.

reasons, thereby affirming the referee's decision. Carrillo then petitioned the district court for judicial review. The district court denied the petition, determining that substantial evidence supported the Board's decision that Carrillo's unemployment was not caused by a pandemic-related reason and referenced the United States Department of Labor's (the DOL) "Question 14" as authority. This appeal followed.

Carrillo raises the following issues on appeal: first, that the Division incorrectly interpreted the CARES Act when his PUA benefits were denied because the DOL's guidance under "Question 14" was not applicable to this case;⁴ second, that substantial evidence does not support the Division's determination that he committed fraud on his PUA application and was disqualified from receiving PUA benefits pursuant to 20 C.F.R. § 625.14; and, finally, that he was entitled to a waiver of PUA

⁴In light of our disposition that substantial evidence in the record supports the decisions of the appeals referee and the Board that Carrillo made a false statement on his PUA application and was thus disqualified from receiving PUA benefits for the entire Pandemic Assistance Period, we need not reach 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 at bar). Additionally, the record supports that the Division did not raise the applicability of Question 14 before the appeals referee or the Board, and therefore we decline to consider its applicability as "[o]ur review is confined to the record before the agency." *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008). Further, to the extent that Carrillo, in response to the Division's argument, argues in his reply brief that Question 12 instead of Question 14 applies, we also decline to consider the applicability of Question 12 as Carrillo, if he believed Question 12 governed, should have raised the issue before the appeals referee or the Board. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal").

overpayments.⁵ We disagree and primarily address the issue of fraud as it is dispositive of Carrillo's appeal.

PUA was a temporary federal unemployment assistance program offered to claimants who were not eligible for traditional unemployment benefits, but who were nevertheless unemployed or underemployed as a result of the COVID-19 pandemic. See 15 U.S.C. § 9021. To qualify for PUA benefits at the time Carrillo applied, an applicant needed to show three things: (1) ineligibility for standard unemployment benefits, (2) self-certification that he or she was "otherwise able to work and available for work . . . except [that he or she is] unemployed, partially unemployed, or unable or unavailable to work"; and (3) self-certification that the reason for being unable to work was for one of eleven pandemic-related reasons within the statute. 15 U.S.C. § 9021(a)(3)(A). One of the enumerated reasons that allowed for PUA eligibility was if an applicant could self-certify he is "unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19." *Id.* at (a)(3)(A)(ii)(I)(ff).

Because individual states' workforce agencies were tasked with administration of the PUA program, the DOL gave periodic updates and guidance through a series of letters directed to the states. In these letters, the DOL answered states' frequently asked questions about how to determine an applicant's PUA eligibility. Relevant here is "Question 22,"

⁵Carrillo raised this issue for the first time on appeal, so we need not address it. See *Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. Additionally, the record is devoid of any overpayment of PUA benefits to Carrillo, as the Division acknowledged in its answering brief on appeal.

which is found under the DOL's Unemployment Insurance Program Letter no. 16-20, Change 2:

Question: May a state impose its own disqualification period when an individual commits fraud on a PUA claim?

Answer: No. The provisions set out in 20 C.F.R. 625.14 apply with respect to PUA overpayments to the same extent and in the same manner as in the case of DUA. 20 C.F.R. 625.14(i) sets the disqualification period for PUA and requires that the disqualification be based on when the fraud occurs.

If the fraud was in connection with the initial application (for example, the individual says he or she quit the job because of COVID-19 and the state determines the individual was fired for reasons not related to COVID-19), the individual would be disqualified for the entire Pandemic Assistance Period.

U.S. Dep't of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 2*, I-9 (July 21, 2020).⁶

The appellate court's role in reviewing an administrative agency's decision is identical to that of the district court. *Elizondo v. Hood*

⁶20 C.F.R. § 625.14(i)(1) provides that an individual who made a "false statement, misrepresentation, or nondisclosure" on his initial application for DUA "shall be disqualified from the receipt of any DUA". DUA is an acronym for Disaster Unemployment Assistance, which like PUA, "is an emergency program activated in response to a crisis and designed to provide benefits to certain individuals who are ineligible for or who have exhausted entitlement to regular unemployment compensation (UC) or extended benefits (EB)." See U.S. Dep't of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 1*, I-1 (Apr. 27, 2020). The DOL has provided that "the PUA program should be administered using the same initial application, continued claims forms, and adjudication procedures utilized by the state for the DUA program." *Id.*

Mach., Inc., 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). The appellate court, therefore, gives no deference to the district court's decision. *Id.* Like the district court, this court reviews the evidence presented to the administrative agency in order to determine whether the agency's decision was arbitrary or capricious and thus an abuse of the agency's discretion. *Langman v. Nev. Adm'rs, Inc.*, 114 Nev. 203, 206-07, 955 P.2d 188, 190 (1998). This court reviews the factual findings of an administrative agency for clear error or an abuse of discretion. *Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Although this court normally defers to an agency's conclusions of law that are closely related to the facts, *State v. Tatalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44 (2013), we review purely legal issues de novo, including matters of statutory interpretation, see *Sierra Pac. Power Co. v. State, Dep't of Tax'n*, 130 Nev. 940, 944, 338 P.3d 1244, 1247 (2014).

Legislative bodies are the parents of unemployment benefits. See *Anderson v. State, Emp't Sec. Div.*, 130 Nev. 294, 304, 324 P.3d 362, 368 (2014). When we are called upon to interpret a statute, the starting point is the statute's plain language. See *Branch Banking v. Windhaven & Tollway, LLC*, 131 Nev. 155, 158, 347 P.3d 1038, 1040 (2015). If the language of the statute is clear, we do not go beyond it. *Id.* The Division is a Nevada state agency that interpreted a federal statute when it, the referee, and the Board determined that Carrillo did not qualify to receive PUA. While we defer to the referee for findings of fact, we review de novo whether it properly applied the law to the facts.

Here, the record supports that Carrillo committed fraud on his PUA application by making a false statement. Although Carrillo indicated on his PUA application that he quit his employment, he also indicated that he was laid off due to a business closure caused by COVID-19. Substantial

evidence in the record supports that Carrillo quit his employment with NP Palace, LLC, in September 2019 due to job dissatisfaction, and not for COVID-19-related reasons.

At the hearing before the appeals referee, Carrillo acknowledged that he understood the advisement on the PUA application against making fraudulent statements and misrepresentations. However, when he was asked to explain how his unemployment was a direct result of the pandemic, Carrillo provided various reasons unrelated to COVID-19 and eventually conceded that he quit his employment because of job dissatisfaction, and not because of a business closure related to COVID-19 as he represented on his initial application.⁷ Thus, substantial evidence supports the Board's decision to deny Carrillo's eligibility for PUA benefits due to fraud—here, he made a false statement—pursuant to 20 C.F.R. § 625.14.⁸ *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Because 20 C.F.R. § 625.14 provides that, as a result of making a false statement, Carrillo is

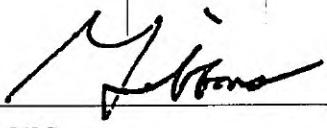
⁷To the extent that Carrillo argues that he made a mistake on the PUA application or sufficiently explained the situation to the appeals referee, we do not substitute our judgment for that of the Division's on issues of credibility or weight of the evidence. *See Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283-84, 112 P.3d 1093, 1097 (2005).

⁸We are not persuaded by Carrillo's contention that the Board's finding of fraud was not in line with Nevada and the DOL's definitions of fraud, when the DOL's guidance essentially acknowledges this type of situation. *Compare* U.S. Dep't of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 2, I-9* (July 21, 2020) (“[F]or example, the individual says he or she quit the job because of COVID-19 and the state determines the individual was fired for reasons not related to COVID-19”), *with Pac. Maxon, Inc. v. Wilson*, 96 Nev. 867, 870, 619 P.2d 816, 818 (1980) (noting that actual fraud is making a “false representation knowingly and with the intention that the other party be deceived by it”).

disqualified from receiving PUA benefits for the entire Pandemic Assistance Period, we conclude that the district court did not err by denying Carrillo's petition for judicial review of the Board's decision to deny his PUA benefits.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Melissa Mangiaracina, Settlement Judge
Nevada Legal Services/Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk

⁹Insofar as the parties have raised any other 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.