

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELAINE GOLDSTEIN-SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION,
AND LYNDA PARVEN, IN HER
CAPACITY AS 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. 85920-COA

FILED

MAR 25 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Elaine Goldstein-Sanchez appeals from a district court order denying a petition for judicial review in an unemployment matter. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Senior Judge.

Goldstein-Sanchez filed an application for Pandemic Unemployment Assistance (PUA) under the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act) in which she self-certified that she became unemployed because a member of her household was diagnosed with COVID-19. Respondent State of Nevada Employment Security Division (ESD) subsequently denied Goldstein-Sanchez's claim, indicating that it was unable to authenticate her identity, determined that the claim was filed from outside of the United States, or identified the claim as being associated with suspicious activity.

Goldstein-Sanchez appealed ESD's determination to an appeals referee. At the subsequent hearing, Goldstein-Sanchez's testimony primarily focused on how the pandemic affected her online business, such that she became unemployed or suffered a loss of wages, although she also briefly addressed her original self-certification that she was unemployed because a member of her household was diagnosed with COVID-19. Following the hearing, the appeals referee affirmed ESD's decision, concluding that Goldstein-Sanchez could not show that she experienced a loss of wages or unemployment for pandemic-related reasons and was therefore ineligible to receive benefits under the CARES Act. To support that decision, the appeals referee found that Goldstein-Sanchez's testimony was self-serving and lacked credibility. Moreover, addressing Goldstein-Sanchez's testimony that her business could not make sales during the pandemic, the appeals referee found that Goldstein-Sanchez did not present any corroborating evidence and that she could continue operating her online business since Nevada's closure of non-essential businesses did not extend to retailers that could ship, deliver, or offer curbside pickup. The ESD board of review subsequently declined to review Goldstein-Sanchez's appeal from the appeals referee's decision.

Goldstein-Sanchez then petitioned the district court for judicial review, and respondents, which include ESD; the administrator of ESD, Lynda Parven; and the chair of the board of review, J. Thomas Susich, filed an answer. The district court denied Goldstein-Sanchez's petition for judicial review. In doing so, the district court found that substantial evidence supported the appeals referee's decision since the record lacked evidence to show that Goldstein-Sanchez could not make sales during the

pandemic, aside from her own testimony, which the court concluded the referee was entitled to discount as incredible. This appeal followed.

The appellate court's role in reviewing an administrative agency's decision is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2012). 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 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 and will not disturb those findings unless they are unsupported by substantial evidence. *Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Substantial evidence is that which a reasonable person could find adequate to support the agency's decision. *Id.* Although this court normally defers to an agency's conclusions of law that are closely related to the facts, *State v. Talalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44 (2013), we review purely legal issues de novo. *Sierra Pac. Power Co. v. State, Dep't of Tax'n*, 130 Nev. 940, 944, 338 P.3d 1244, 1247 (2014).

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 Goldstein-Sanchez 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 to work . . . except [that he or she was] 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). Although 15 U.S.C. § 9021(a)(3)(A)(ii)(I) authorized applicants for benefits under PUA to self-certify that they are able and available to work but unemployed for pandemic-related reasons, individual states were nevertheless authorized to ensure the efficacy and integrity of the self-certification process by “tak[ing] reasonable and customary precautions to deter and detect fraud.” U.S. Dep’t of Labor, *Unemployment Insurance Program Letter No. 16-20, attachment 1*, I-7 (April 5, 2020); see also 15 U.S.C. § 9021(f) (requiring states to have “adequate system[s] for administering . . . assistance [under the CARES Act]”).

On appeal, the parties’ dispute focuses on whether Goldstein-Sanchez established two of the enumerated pandemic related reasons for unemployment—specifically, those set forth at 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(jj) and (kk)—such that the appeals referee improperly found that she failed to satisfy the eligibility test’s self-certification requirement. Under subsection (jj), an individual was eligible to receive benefits if his or her “place of employment [wa]s closed as a direct result of the COVID-19 public health emergency.” As to subsection (kk), it was a catchall provision that authorized the Secretary of Labor to establish additional pandemic-related reasons for unemployment sufficient to establish eligibility for benefits under the CARES Act, which the Secretary did for self-employed individuals who “experienced a significant diminution of their customary or usual services because of the COVID-19 public health

emergency.” U.S. Dep’t of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 4*, I-8 (January 8, 2021) (identifying the foregoing as one of the additional pandemic-related reasons for unemployment).

Goldstein-Sanchez specifically contends that, although she presented uncontroverted evidence and testimony sufficient to satisfy 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(jj) and (kk), the appeals referee improperly concluded otherwise because the referee misapplied the CARES Act by focusing on her credibility rather than simply accepting her testimony as her self-certification that she was unemployed for pandemic-related reasons. However, in the proceedings before the appeals referee and the board of review, Goldstein-Sanchez failed to argue that the appeals referee could not consider or weigh the credibility of her testimony and was instead required to simply accept her self-certification claims as true. As a result, she has waived this argument. *See State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) (concluding that issues not raised to an administrative body are waived when raised for the first time before the district court on judicial review).¹

Moreover, ESD’s initial denial of Goldstein-Sanchez’s claim was essentially based on a determination that the claim was potentially fraudulent, as it was permitted to do. *See* 15 U.S.C. § 9021(f); *Unemployment Insurance Program Letter No. 16-20, attachment 1*, I-7 (April 5, 2020). By way of her subsequent appeal to the appeals referee,

¹Because Goldstein-Sanchez failed to provide this court with a copy of any of the briefing filed in connection with her petition for judicial review, it is not clear whether she raised this issue before the district court.

Goldstein-Sanchez had the opportunity to prove that ESD's determination was incorrect and that she was eligible for PUA benefits. But the appeals referee ultimately found that her claims and assertions were not credible.

During the hearing, the appeals referee questioned Goldstein-Sanchez concerning a utility bill that she submitted to substantiate her identity, which ESD had determined to be suspicious because it was for a residential address in Nevada yet bore the logo of Pacific Gas & Electric Company (PG&E), which the referee indicated typically operates in California and Oregon. Goldstein-Sanchez, who suffered from medical issues that affected her ability to testify and proceeded at the hearing with the assistance of her sister and husband,² was unable to address the presence of the PG&E logo herself, although her husband expressed shock and confusion over the logo, and her sister offered to submit a copy of Goldstein-Sanchez's current utility bill.³

²Goldstein-Sanchez's sister represented Goldstein-Sanchez during the hearing before the appeals referee, acting as her authorized agent. *See* NAC 612.228(1) (requiring an appeals referee to permit a claimant's authorized agent to examine and cross-examine witnesses); *see also* NAC 612.017 (stating that "[a]n agent is duly authorized for the purpose of representing a claimant if a notarized authorization from the claimant has been presented on a form prescribed by the Division"). Goldstein-Sanchez's husband was designated as a witness at the hearing and interjected during her testimony but was never called as a witness or placed under oath.

³The utility bill was also styled as a "Nevada Energy Statement," listed an internet address for the company of "www.Nevada-energy.com," and included a graph of monthly electric billing history with an x-axis labeled 2019 through 2020, even though the statement was from September 2021, and the individual months displayed on the x-axis were all from 2020.

As to the question of whether Goldstein-Sanchez became unemployed for pandemic-related reasons, although her application originally self-certified that she became unemployed because a member of her household was diagnosed with COVID-19, she did not initially advance that basis for her eligibility for PUA benefits before the appeals referee. Instead, Goldstein-Sanchez primarily sought to demonstrate that she became unemployed or suffered a loss of wages because the pandemic affected the operations of her business. In particular, Goldstein-Sanchez testified that she opened an online store in 2020, that she developed the store's clientele through meetings with prospective clients, that she made online sales during the beginning of 2020, and that she was unable to work from March 2020 onwards due to the pandemic because she could not meet new clients in person and did not otherwise make any online sales to existing clients during the pandemic. In doing so, Goldstein-Sanchez did not produce any business records showing that her online store ceased making sales in March 2020, with the onset of the pandemic, nor did she offer any explanation as to why she could not expand her client base through means other than in person contact or elaborate as to what efforts she made to make online sales to her existing clientele.

Although Goldstein-Sanchez focused on her business in attempting to establish that she was unemployed for pandemic-related reasons, the appeals referee eventually brought up Goldstein-Sanchez's original self-certification that she became unemployed in March 2020 because a member of her household was diagnosed with COVID-19, asking what member of her family received the diagnosis. Goldstein-Sanchez testified that it was her, but proceeded to explain that she was not

diagnosed with COVID-19 until November 2020, long after she had purportedly become unemployed due to the pandemic. Then, when the hearing later proceeded to Goldstein-Sanchez's closing argument, her sister baldly asserted that "Goldstein-Sanchez was initially impacted by COVID because her husband . . . was sick."

The foregoing demonstrates that Goldstein-Sanchez was unable to satisfactorily address ESD's and the referee's concerns regarding the original utility bill that she submitted; presented shifting explanations as to how she became unemployed or suffered a loss of wages due to the pandemic; and presented relatively vague testimony, largely without supporting documentation, concerning her primary explanation for her unemployment or loss of wages. Under these circumstances, we conclude that substantial evidence supported the appeals referee's finding that Goldstein-Sanchez was not a credible witness.⁴ *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482.

⁴We recognize that Goldstein-Sanchez suffered from a medical condition that made it difficult for her to testify at the hearing before the appeals referee. However, insofar as she contends that the appeals referee could not properly evaluate her credibility in light of her medical condition, she has not directed this court's attention to any relevant legal authority to support that proposition, and we therefore decline to consider the issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider issues unsupported by relevant legal authority). Moreover, the hearing transcript demonstrates that the appeals referee was cognizant of Goldstein-Sanchez's circumstances and afforded extensive leeway in allowing her husband and sister to interject during Goldstein-Sanchez's testimony to provide clarification. While the parties dispute whether the appeals referee could consider these unsworn statements pursuant to NRS 612.500(2) (providing

Insofar as Goldstein-Sanchez nevertheless argues that the appeals referee was required to simply accept her testimony because it was uncontroverted, her argument is unavailing because uncontroverted evidence and testimony need not be accepted if it is determined to be lacking in credibility. *See, e.g., Hirschfeld v. N.M. Corr. Dep't*, 916 F.2d 572, 580 (10th Cir. 1990) (reasoning that uncontroverted evidence is insufficient to meet a party's evidentiary burden if the evidence is not credible); *Glauser Storage, L.L.C. v. Smedley*, 27 P.3d 565, 571 (Utah Ct. App. 2001) ("Even where testimony is uncontroverted, a trial court is free to disregard such testimony if it finds the evidence "self-serving and not credible" (internal quotation marks omitted)). Thus, because it is not this court's role to reweigh the appeals referee's credibility determinations on appeal, *see Lellis v. Archie*, 89 Nev. 550, 554, 516 P.2d 469, 471 (1973) (providing that appellate courts will not pass upon the credibility of witnesses when reviewing an unemployment compensation decision), Goldstein-Sanchez has failed to demonstrate that the appeals referee abused his discretion by finding her to be an incredible witness. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482.

Given the foregoing and because Goldstein-Sanchez did not present any evidence aside from her own testimony to show that she became unemployed for pandemic-related reasons, the appeals referee did not abuse his discretion by finding that Goldstein-Sanchez did not demonstrate that

that an appeals referee "shall receive and consider evidence without regard to statutory and common-law rules"), we need not address that issue because the statements did not resolve the deficiencies discussed above.

she was unemployed for one of the enumerated pandemic-related reasons set forth at 15 U.S.C. § 9021(a)(3)(A)(ii)(I). *See id.* As a result, we conclude that the district court did not err by denying Goldstein-Sanchez's petition for judicial review of the appeals referee's determination that she was not entitled to PUA benefits. Accordingly, we affirm that determination.

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. Carolyn Ellsworth, Senior Judge
Nevada Legal Services/Las Vegas
State of Nevada/DETR - Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk

⁵Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.