

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL LIBERATORE,
Appellant,

vs.

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

MICHAEL LIBERATORE,
Appellant,

vs.

THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
KRISTINE NELSON IN HER
CAPACITY AS ADMINISTRATOR OF
THE EMPLOYMENT SECURITY
DIVISION; AND J. THOMAS SUSICH
IN HIS CAPACITY AS THE
CHAIRPERSON OF THE
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW,
Respondents.

MICHAEL LIBERATORE,
Appellant,

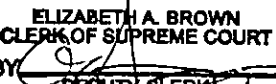
vs.

THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
KRISTINE NELSON IN HER
CAPACITY AS ADMINISTRATOR OF
THE EMPLOYMENT SECURITY
DIVISION; AND J. THOMAS SUSICH
IN HIS CAPACITY AS THE
CHAIRPERSON OF THE
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW,
Respondents.

No. 87486-COA

FILED

JUN 26 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

No. 87704-COA

No. 87705-COA

25-28031

AMENDED ORDER OF AFFIRMANCE

Michael Liberatore appeals from district court orders denying petitions for judicial review in unemployment matters. These cases were consolidated on appeal.¹ See NRAP 3(b)(2). Eighth Judicial District Court, Clark County; Maria A. Gall, Judge (Docket No. 87486-COA); Eighth Judicial District Court, Clark County; Nadia Krall, Judge (Docket Nos. 87704-COA and 87705-COA).

In 2020, Liberatore filed an application for Pandemic Unemployment Assistance (PUA) under the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) in which he self-certified that he was self-employed, last worked in March 2020, and he became unemployed as a direct result of the COVID-19 pandemic. Respondent the State of Nevada Employment Security Division (ESD) later notified Liberatore that, within 21 days, he had to submit documentation in support of his self-employment claim, and such documentation could include his tax documents, business records, or paychecks. The record further indicates ESD directed Liberatore to submit proof of his identity through ID.me. However, Liberatore did not submit documentation demonstrating that he was self-employed and did not submit proof of his identity. ESD subsequently denied Liberatore's claim in November 2020, as ESD was unable to authenticate his identity and his claim was identified as being associated with suspicious activity. ESD also issued another decision in which it informed Liberatore that it had conducted a review and an

¹We issue this order to correct a typographical error in the original order of affirmance and apologize for the mistake. We have also reviewed Liberatore's petition for rehearing and conclude that no relief is warranted. Accordingly, we deny the petition for rehearing. See NRAP 40(a), (h).

additional investigation into his claim and it again determined that he did not present substantiation of his claim of self-employment.

Liberatore appealed ESD's decision to an appeals referee and the matter proceeded to an administrative hearing. The hearing was scheduled for January 18, 2022. However, during that hearing the appeals referee discovered Liberatore had not provided his income tax records and rescheduled the hearing to allow him to file those records. Liberatore later filed his 2020 tax records and those documents stated Liberatore did not earn any income in 2020. The hearing resumed on March 22, 2022, and Liberatore testified at that hearing.

Liberatore testified that he became self-employed in the field of search engine optimization in January 2020 but also stated he had merely begun training for his role in January 2020 and had not yet had clients or earned income prior to the COVID-19 pandemic. Liberatore further acknowledged he did not have a business license. Liberatore also acknowledged that he did not provide proof of his identity to ESD. In addition, Liberatore presented a letter and testimony from Chris Edwards concerning the training Liberatore undertook and the nature of the work Liberatore would have performed had the pandemic not occurred.

Following the hearing, the appeals referee issued two written decisions in which the referee found that Liberatore failed to provide sufficient documentation to show that he qualified for PUA. Specifically, the appeals referee found that Liberatore failed to submit proof of his identity, either through ID.me or through ESD's portal. The appeals referee found that Liberatore also failed to submit sufficient documentation to substantiate his claim of self-employment and that she could not conclude with any certainty that Liberatore had actually been self-employed and lost that employment due to the COVID-19 pandemic. In light of Liberatore's failure to submit proof of his identity and sufficient documentation to verify

his claim of self-employment, the appeals referee affirmed ESD's decision to deny Liberatore's claim. The ESD Board of Review later declined to review Liberatore's appeals from the appeals referee's decisions.

Liberatore subsequently petitioned the district court for judicial review of the decisions, and respondents filed answers. In separate orders, the district court denied Liberatore's petitions for judicial review. In those orders, the district court found that substantial evidence supported the appeals referee's rejection of Liberatore's PUA claims. These appeals followed.

On appeal, Liberatore argues that ESD erroneously found that his claim was fraudulent, and the appeals referee erroneously found that he provided insufficient evidence to substantiate his PUA claim.

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 (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 was 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 will not disturb those findings unless they are not supported 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. Tatalovich*, 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). In this case, we examine the appeals referee's decision for an abuse of discretion because the Board of

Review declined further review of the appeals referee's decision and thereby adopted her factual findings and reasoning. *See Nev. Emp. Sec. Dep't v. Holmes*, 112 Nev. 275, 279-80, 914 P.2d 611, 613-14 (1996).

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 Liberatore needed: (1) ineligibility for standard unemployment benefits; (2) self-certification that he was "otherwise able to work and available to work . . . except [that he 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. *See* 15 U.S.C. § 9021(a)(3)(A). Although 15 U.S.C. § 9021(a)(3)(A)(ii)(I) allowed applicants for benefits under PUA to self-certify that they were 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*, 1-7 (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]"). Moreover, "the state ha[d] authority to request supporting documentation when investigating the potential for fraud." U.S. Dep't of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 2, attachment 1*, I-9 (July 21, 2020).

Here, Liberatore was directed by ESD to submit information to substantiate his identity and his claim of self-employment but he did not do so. In light of ESD's responsibility to deter and detect fraud and its

authority to request supporting documentation for a PUA claim when investigating potential fraud, Liberatore fails to demonstrate that ESD improperly issued the initial denial of his claim based on his failure to provide sufficient information concerning his identity and because it identified his claim as one associated with suspicious activity.

In addition, by way of his subsequent appeal to the appeals referee, Liberatore had the opportunity to provide evidence in support of his claim of self-employment and to prove that ESD's determination was incorrect. However, as explained previously, at the hearing Liberatore did not present sufficient information to prove his identity. Liberatore also did not submit sufficient documentation showing that he had been self-employed. After consideration of Liberatore's testimony and his failure to submit information to substantiate his identity or his claim of self-employment, the appeals referee concluded that Liberatore failed to establish the validity of his PUA claim, as he did not establish that he was actually self-employed and lost that employment as a result of the COVID-19 pandemic. The appeals referee accordingly affirmed ESD's decision to deny Liberatore's PUA claim.

The appeals referee's findings made in support of these determinations are supported by substantial evidence in the record. While Liberatore contends that his self-certification of self-employment and the information provided to the appeals referee was sufficient to establish his PUA claim, it is not this court's role to reweigh the evidence 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 or weigh the evidence" when reviewing an unemployment compensation decision). Because the appeals referee's findings are supported by substantial evidence, Liberatore fails to demonstrate that the appeals referee abused

her discretion by finding Liberatore failed to provide sufficient evidence to prove the PUA claim. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482.

Based on the foregoing, we conclude the appeals referee's rejection of Liberatore's appeal was not arbitrary or capricious and, thus, Liberatore fails to demonstrate he is entitled to relief. *See id.*


Next, Liberatore argues his due process rights were violated because ESD took too long to evaluate the merits of his PUA claim. Due process protections apply to unemployment benefit hearings. *Whitney v. State, Emp. Sec. Dep't*, 105 Nev. 810, 813, 783 P.2d 459, 460 (1989). However, procedural due process is satisfied when parties receive notice and an opportunity to be heard. *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. 10, 17, 481 P.3d 853, 859 (2021); *see also Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (providing that "[d]ue process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner" which may "take[] the form of a live hearing" (internal quotation marks omitted)).

Here, the record demonstrates that Liberatore was provided with notice of the relevant hearings and he had the opportunity to be heard and to present evidence at the hearings before the appeals referee. Liberatore's right to due process was thus satisfied. Liberatore does not present cogent argument as to how any delay prejudiced him or precluded him from presenting evidence in support of his claim, and he accordingly fails to demonstrate that any delay in evaluating his claim constituted a violation of his due process rights. Moreover, even assuming, without deciding, that any delay in the proceedings constituted error, any such error was harmless as the appeals referee's decisions were supported by substantial evidence. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the

party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"). In light of the foregoing, we affirm the district court's denial of Liberatore's petitions for judicial review.

It is so ORDERED.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Maria A. Gall, District Judge
Hon. Nadia Krall, District Judge
Michael Liberatore
State of Nevada/DETR - Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk

²Insofar as Liberatore raises 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.

In addition, we have reviewed Liberatore's March 4, 2025, motion to consolidate and conclude no relief is warranted.