

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID S. MANES,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
AND LYNDY 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. 85993-COA

FILED

JUL 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

David S. Manes appeals from a district court order denying consolidated petitions for judicial review in an unemployment matter. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In May 2020, Manes 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 he self-certified that he was self-employed; last worked on March 26, 2020; and was unemployed due to the pandemic for “[a] reason not listed above.”¹ Manes then began to receive PUA benefits as well as two additional types of benefits, which were provided in connection with his claim for PUA benefits—specifically, Federal Pandemic Unemployment Compensation (FPUC) and Lost Wages Assistance (LWA).

¹Manes’s self-certification was made on an online form application, which directed the applicant to select from a list of pandemic-related reasons for unemployment that “best fit[] your circumstances.”

On April 1, 2021, respondent State of Nevada Employment Security Division (ESD) sent Manes a message in which he was directed to submit various documents to prove his identity as well as an “[e]xplanation as to how [he] w[as] COVID-19 affected” within 48 hours so that his claim could be validated. After Manes failed to produce the required documentation, ESD denied his claim on April 6, 2021, indicating that it was unable to authenticate his identity, determined that his claim was filed from outside the United States, or identified the claim as being associated with suspicious activity. ESD also issued determinations in which it found that Manes was liable for overpayments of \$9,412 in PUA benefits, \$13,800 in FPUC benefits, and \$1,500 in LWA benefits.

On April 23, 2021, ESD sent Manes a second message in which it directed him to submit proof that he was self-employed prior to the pandemic within 90 days. In response, Manes eventually submitted certain documentation, including an affidavit from a longtime friend and roommate, who attested that Manes started an accounting and tax preparation business shortly before the pandemic, but his limited clientele stopped requesting his services during the pandemic due to unemployment or an inability to pay for those services.

Manes appealed the denial of his claim for PUA benefits and one of the overpayment determinations to an appeals referee, and the matter proceeded to an administrative hearing. During the hearing, Manes initially testified concerning the pandemic-related reason for his unemployment, indicating that he was self-employed, provided accounting and tax preparation services, and that his only paying client, Ogden Market, closed due to the pandemic. From there, the appeals referee questioned Manes as to why he did not submit a statement from someone associated with Ogden Market to establish the pandemic-related reason for his unemployment, repeatedly asserting that Manes was directed to

produce such documentation when he initially filed his application² and in the two messages from April 2021. Manes expressed surprise at the appeals referee's assertion that he was directed to submit documentation to substantiate his claim when he filed his application and denied that he was directed to submit statements from his clients. Manes also explained that he could not obtain a statement from anyone associated with Ogden Market because the business closed in March 2020, was sold at some point thereafter, and he did not have the owner's contact information. Manes further indicated that, in response to ESD's document production requests, he submitted the affidavit from his friend/roommate and his 2019 and 2020 personal tax returns.³

Following the hearing, the appeals referee affirmed ESD's denial of Manes's claim for PUA benefits and determination that he was liable for an overpayment of benefits. In reaching that decision, the appeals referee found that, although Manes testified that he submitted all the documentation requested by ESD to substantiate his claim, he failed to provide any documentation showing that he was unemployed for pandemic-related reasons. The appeals referee further found that, while Manes testified that he was not asked to provide that type of documentation when he filed his claim, his testimony lacked credibility because he was directed to submit documentation to substantiate his claim when it was filed and in

²The record before this court does not include any notice or other communication from ESD to Manes that directed him to submit any documents at or near the time that he filed his application. Indeed, the first document production request from ESD to Manes that appears in the record before this court was the request sent on April 1, 2021, which was discussed above.

³Manes's 2019 and 2020 personal tax returns do not appear in the record before this court.

the two messages from April 2021. As a result, the appeals referee found that the preponderance of the evidence established that Manes failed to submit all the requested documentation and that he was therefore ineligible to receive PUA benefits and liable for an overpayment of benefits because he misrepresented information in his application. The ESD Board of Review subsequently declined to review Manes's appeal from the appeals referee's decision.

Manes then filed separate petitions for judicial review in district court concerning the denial of his PUA claim and the overpayment determination, naming ESD; Lynda Parven, who is the administrator of ESD; and J. Thomas Susich, who is the chair of the Board of Review, as respondents, and the matters were eventually consolidated into the underlying proceeding. In his opening brief for his petitions for judicial review, Manes essentially contended that, among other things, he demonstrated he was unemployed for pandemic-related reasons. In their answering brief, respondents argued that Manes failed to provide documentation showing he was unemployed for pandemic-related reasons; that the appeals referee found Manes incredibly testified he did not realize he needed to produce such documentation; and that the appeals referee could properly affirm ESD's denial of Manes's claim based on his finding that Manes was not credible.

Without conducting a hearing, the district court entered an order denying Manes's petition for judicial review. In doing so, the district court determined that the appeals referee found the affidavit from Manes's friend/roommate was insufficient to demonstrate Manes was unemployed for pandemic-related reasons, that the court could not reweigh the evidence, and that the appeals referee's decision was supported by substantial evidence. 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 (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 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 Pacific Power Co. v. State, Department of Taxation*, 130 Nev. 940, 944, 338 P.3d 1244, 1247 (2014). In this case, we examine the appeals referee's decision because the Board of Review declined further review of the appeals referee's decision and thereby adopted his factual findings and reasoning. *See Nev. Emp't 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 at the time Manes 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 PUA benefits to self-certify that they were able and available to work but unemployed for pandemic-related reasons, ESD could nevertheless seek supporting documentation in appropriate cases based on its authority 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 (UIPL 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]”).

If an individual met the requirements to receive PUA benefits, then he or she was also entitled to receive benefits under the FPUC and LWA programs, which were additional temporary federal unemployment assistance programs created during the pandemic to provide supplemental benefits to individuals receiving various forms of unemployment benefits. 15 U.S.C. § 9021(d)(1) (listing FPUC benefits as part of the benefit amount that an individual who is eligible for PUA benefits is entitled to receive for a week of unemployment, partial unemployment, or inability to work); 15 U.S.C. § 9023(b)(1), (i)(2)(C) (providing for individuals who receive regular unemployment compensation under state law to also receive FPUC benefits, and indicating that any reference in the statute to unemployment benefits includes PUA benefits); *see also* Presidential Memorandum, Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 (August 8, 2020) (authorizing provision of LWA benefits under the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207, to individuals who received PUA benefits).

On appeal, Manes essentially contends that, although he produced the affidavit from his friend/roommate concerning the pandemic-related reason for his unemployment, the appeals referee improperly determined that he was ineligible for PUA benefits on grounds that he failed to produce such documentation and was not credible to the extent he testified he was not directed to do so. Respondents argue that Manes failed to submit sufficient documentation to substantiate his claim for PUA benefits and that the appeals referee's determination that he was ineligible for benefits was therefore supported by substantial evidence.

As discussed above, the appeals referee determined that Manes was ineligible for PUA benefits based on his findings that Manes failed to produce documentation to substantiate the pandemic-related reason for his unemployment in accordance with ESD's requests⁴ and that Manes was not credible to the extent he testified he was not directed to do so when he filed his claim. However, the appeals referee's finding that Manes failed to produce any documentation to substantiate the pandemic-related reason for his unemployment was not supported by substantial evidence, as Manes presented the affidavit from his friend/roommate, who addressed that subject. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Moreover, while

⁴As discussed *supra* note 2, nothing in the record before this court demonstrates that ESD requested any documentation when Manes filed his application for PUA benefits, and to the extent the appeals referee found that such a request was sent to Manes when he filed his claim, that finding is unsupported by substantial evidence. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Nevertheless, the record demonstrates that ESD directed Manes to submit various documents on April 1, 2021, and April 23, 2021, including an explanation of how he was affected by the pandemic, and we therefore analyze the appeals referee's decision in this matter based on those requests.

the appeals referee found that Manes's testimony concerning the substance of ESD's document production requests was not credible, that credibility determination did not address whether the affidavit Manes produced from his friend/roommate and Manes's related testimony sufficiently supported his self-certification that he was unemployed for pandemic-related reasons. To the contrary, because the appeals referee focused on Manes's purported failure to produce documentation concerning the pandemic-related reason for his unemployment and the credibility of his testimony relating to the substance of ESD's document production requests,⁵ it does not appear that the appeals referee considered the sufficiency of the evidence and testimony that Manes proffered in support of his self-certification or otherwise determined that Manes failed to meet the CARES Act's requirements for some other reason.⁶ Consequently, we are constrained to conclude that the appeals referee abused his discretion by affirming ESD's denial of Manes's claim for PUA benefits and its overpayment determination. *See Langman*, 114 Nev. at 206-07, 955 P.2d at 190.

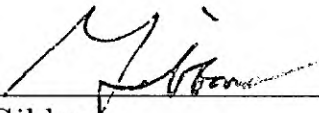
Thus, in light of the foregoing, we reverse the district court's order denying Manes's petitions for judicial review and we remand this matter to the district court with instructions to remand the case to the appeals referee, who should consider and make findings regarding whether

⁵While the appeals referee also found that Manes misrepresented information in his application, no explanation was provided beyond the summary statement that the misrepresentation occurred.


⁶While the district court determined that the appeals referee found the affidavit was insufficient to demonstrate Manes was unemployed for pandemic-related reasons, this determination is belied by the record. The appeals referee only acknowledged the affidavit insofar as he admitted it into evidence, and nothing in the transcript from the relevant hearing or in the appeals referee's written decision demonstrates that he considered the affidavit.

the affidavit from Manes's friend/roommate and Manes's testimony sufficiently supported his self-certification that he was unemployed for pandemic-related reasons.

It is so ORDERED.⁷


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
David S. Manes
State of Nevada/DETR - Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk

⁷Insofar 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.