


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCA EDMOWONYI,
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 CHAIR OF THE
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW,
Respondents.

No. 86471-COA

FILED
JUN 21 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Franca Edomwonyi appeals from a district court order denying a petition for judicial review in an unemployment matter. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Edomwonyi 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 last worked on August 12, 2019, and that she was scheduled to commence new employment but was unable to due to the closure of a business caused by the pandemic. Respondent State of Nevada Employment Security Division (ESD) subsequently denied Edomwonyi's claim, finding that she failed to demonstrate that she was unemployed for pandemic-related reasons, and, therefore, did not meet the eligibility requirements for PUA benefits.

Edomwonyi appealed ESD's determination to an appeals referee, and the matter proceeded to an administrative hearing. During the hearing, Edomwonyi testified that, after being terminated from her job on August 12, 2019, which was the last day she worked prior to the pandemic, she received a job offer from a new employer and completed unpaid training in connection with that offer on February 21, 2020. Edomwonyi further testified that she was scheduled to commence her new job on February 24, 2020, but her prospective employer did not permit her to do so because she could not produce her social security card, although the employer indicated that she could commence work once she provided some form of proof of her social security number. From there, Edomwonyi testified that she was prevented from commencing work since, while she was in the process of obtaining such proof, the restrictions associated with Nevada's newly implemented lockdown caused rideshare services to become prohibitively expensive, such that she would not be able to afford the commute to her prospective place of employment. Moreover, Edomwonyi testified that she had to care for a family member who became sick, "showing signs of COVID," around the same time, and that she, herself, contracted the illness in April 2020.

Following the hearing, the appeals referee affirmed ESD's denial of Edomwonyi's claim for PUA benefits, finding that the preponderance of the evidence demonstrated that Edomwonyi was unemployed for reasons unrelated to the pandemic. In reaching that decision, the appeal referee relied on Edomwonyi's testimony that she last worked on August 12, 2019, and that, although she was scheduled to commence work with a new employer on February 24, 2020, she was not able to do so because she could not produce her social security card.

Moreover, the appeals referee found that Edomwonyi was not a credible witness and that she failed to produce documentation to show that she was unemployed for pandemic-related reasons.

Edomwonyi then petitioned the district court for judicial review, 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.¹ In her opening brief in support of her petition for judicial review, Edomwonyi argued that she was eligible for PUA benefits since the pandemic prevented her from moving forward with the job with her prospective employer. Moreover, Edomwonyi asserted that the appeals referee improperly denied her oral request to issue certain subpoenas. In their answering brief, respondents argued that Edomwonyi was unemployed for reasons unrelated to the pandemic since she was terminated from her old job on August 12, 2019, and was unable to start the new job with her prospective employer because she could not produce her social security card.

Following a hearing, the district court entered an order denying Edomwonyi's petition for judicial review. The district court reasoned that, although the pandemic played a part in preventing Edomwonyi from commencing her job with the prospective employer, the initial reason she could not do so was her inability to produce a copy of her social security

¹Although Edomwonyi's prospective employer was also named as a respondent in her petition for judicial review, it did not appear before the district court, and, therefore, is not a proper party to this appeal. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (explaining that a person who does not appear below is not a party to that action). As a result, the clerk of the court shall amend the caption for this case to conform to the caption on this order.

card. Edomwonyi then filed a motion for reconsideration and subsequently filed a notice of appeal from the denial of her petition for judicial review. The district court later entered an order denying the motion for reconsideration.

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 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 Edomwonyi 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).

On appeal, the parties’ dispute focuses on whether Edomwonyi established that she was unemployed for the pandemic-related reason set forth at 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(gg), which made an individual eligible to receive benefits if he or she “was scheduled to commence employment and d[id] not have a job or [wa]s unable to reach the job as a direct result of the COVID-19 public health emergency.” In this respect, Edomwonyi attempts to show that the restrictions associated with Nevada’s lockdown were the reason that her employment with her prospective employer did not go forward by emphasizing that the prospective employer did not fire her when she was unable to furnish her social security card, but instead, the employer allowed her “unlimited time” to obtain some form of proof of her social security number.

However, while Edomwonyi testified that she was scheduled to commence employment on February 24, 2020, her testimony affirmatively demonstrated that her inability to do so was not the direct result of the pandemic. *See id.* Indeed, Edomwonyi specifically testified that her prospective employer did not permit her to commence employment on February 24, 2020, as scheduled because she could not produce a copy of her social security card. Moreover, while Edomwonyi testified that her prospective employer indicated that she would be permitted to commence employment once she produced some form of proof of her social security

number, her testimony also demonstrated that she never did so and that no concrete arrangements were made for her to commence employment following February 24, 2020. And although Edomwonyi provided various reasons for her failure to do so, some of which related to the pandemic, those circumstances were tangential to the direct reason why she could not commence employment with the prospective employer—her inability to furnish a social security card—and did not establish eligibility for PUA benefits under 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(gg). And Edomwonyi has not otherwise demonstrated that the circumstances fall within any of the other pandemic-related reasons for unemployment that gave rise to eligibility for PUA benefits under 15 U.S.C. § 9021(a)(3)(A)(ii)(I).² Consequently, Edomwonyi has failed to establish a basis for relief in this respect.

²Although we recognize Edomwonyi testified that she contracted COVID-19 and had to care for a family member who showed symptoms of the disease, she failed to provide any evidence or testimony to show that she or her family member tested positive for the disease, received such a diagnosis by a qualified medical professional, or otherwise sought a diagnosis. See 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(aa), (cc) (providing for PUA eligibility where an individual is unemployed because he or she “has been diagnosed with COVID-19 or experiencing symptoms of COVID-19 and seeking a medical diagnosis” or “is providing care for a family member . . . who has been diagnosed with COVID-19); U.S. Dep’t of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 1*, I-9 (April 27, 2020) (explaining that an individual may rely on a positive test for COVID-19 or such a diagnosis by a qualified medical professional to satisfy 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(aa) and (cc). Moreover, Edomwonyi does not present any argument or explanation on appeal to establish a link between these circumstances and her unemployment. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that appellate courts need not consider issues unsupported by cogent argument).

Edomwonyi nevertheless attempts to demonstrate that the appeals referee abused his discretion in affirming ESD's decision to deny her claim by arguing that the appeals referee violated NRS 612.270 and 612.275 by refusing to subpoena certain documents and witnesses, which she contends would have established the credibility of her testimony. However, regardless of the appeals referee's credibility determination, Edomwonyi's testimony affirmatively demonstrated that she was not entitled to PUA benefits for the reasons discussed above. As a result, the issuance of any subpoenas was not necessary to the resolution of Edomwonyi's appeal before the appeals referee, who therefore did not abuse his discretion by denying Edomwonyi's request for subpoenas to issue. *See* NRS 612.270(1)(c) (the appeals referee may issue subpoenas for witnesses and documents "deemed necessary as evidence in connection with an appealed claim"); *State of Nev. Empls. Ass'n, Inc. v. Daines*, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992) (explaining that, in statutes, the term "may" is permissive). Consequently, Edomwonyi has failed to demonstrate that the appeals referee abused his discretion by affirming ESD's denial of her claim for PUA benefits. *See Langman*, 114 Nev. at 206-07, 955 P.2d at 190.

Despite the foregoing, Edomwonyi seeks to demonstrate that the district court should have granted her petition for judicial review based on procedural issues that arose during the proceedings before the court. First, Edomwonyi asserts that respondents did not timely file an answering brief to her opening brief in support of her petition for judicial review. However, the district court treated respondents' answering brief as timely because it found that Edomwonyi failed to serve her opening brief on them, which finding she does not challenge on appeal. *See* NRS 233B.133(2) (requiring that the respondent "serve and file a reply memorandum of

points and authorities within 30 days *after service* of the [petitioner's] memorandum of points and authorities" (emphasis added)); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Second, Edomwonyi asserts that the district court improperly entered a proposed order denying her petition for judicial review prepared by respondents even though they did not timely submit that order after being directed to do so. But relief is unwarranted in this respect since EDCR 7.21 requires the prevailing party to provide a draft order or judgment within 14 days of being notified of the court's decision, "unless additional time is allowed by the court," which is what the court did here. And Edomwonyi does not offer any argument or explanation as to how the district court's decision in this respect was prejudicial to her. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (providing that a prejudicial error is one that "affects [a] party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"); *cf.* NRCPC 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Thus, relief is unwarranted in these respects.

For the foregoing reasons, we conclude that the district court did not err by denying Edomwonyi's petition for judicial review of the appeals referee's determination that she was not entitled to PUA benefits. Moreover, insofar as Edomwonyi contends that the district court should have granted her motion for reconsideration of the order denying her petition for judicial review based on respondents' failure to oppose it, we conclude that the district court acted within its discretion by denying the

motion under the circumstances presented here. See EDCR 2.20(e) (“Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion . . . is meritorious and a consent to granting the same.”); *Daines*, 108 Nev. at 19, 824 P.2d at 278; see also *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584-85, 589, 245 P.3d 1190, 1194-95, 1197 (2010) (recognizing that the denial of a timely motion for reconsideration of a final judgment can be reviewed, in the context of an appeal from that judgment, under an abuse of discretion standard); *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 277-78, 182 P.3d 764, 768 (2008) (reviewing the district court’s decision whether to grant a motion as unopposed for an abuse of discretion). Accordingly, we affirm the denial of Edomwonyi’s petition for judicial review and motion for reconsideration.

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Insofar 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.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. Fourteen
Franca Edomwonyi
State of Nevada/DETR - Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk