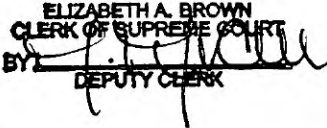


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK OST,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT
OF EMPLOYMENT, TRAINING &
REHABILITATION, EMPLOYMENT
SECURITY DIVISION,
Respondent.

No. 87352-COA

FILED
JUL 30 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Frederick Ost appeals from a district court order denying a petition for judicial review in an unemployment benefits matter. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Ost sought unemployment benefits following the termination of his employment and he subsequently received unemployment benefits. However, upon further review, respondent State of Nevada Department of Employment, Training & Rehabilitation, Employment Security Division (ESD) concluded that Ost received severance payments covering the time-period of January 24, 2021, through April 24, 2021, and Ost was therefore not eligible for unemployment benefits for that period. *See* NRS 612.420(1) (stating “a person is disqualified for benefits for any week with respect to which the person receives either wages in lieu of notice or severance pay”). ESD further concluded that Ost received overpayments in the amount of \$9,096 during that period. ESD therefore mailed Ost a notice explaining its findings related to the overpayment of benefits and it informed Ost that he

was liable for the overpayment of benefits. *See* NRS 612.365(1) (stating “[a]ny person who is overpaid any amount as benefits under this chapter is liable for the amount overpaid”).

Ost appealed ESD’s decision to an appeals referee and the matter was set for an administrative hearing. On September 30, 2022, ESD mailed Ost a notice informing him that a telephonic hearing was set for October 14, 2022. However, Ost did not appear at the hearing. The appeals referee subsequently entered a written order finding that Ost did not appear at the hearing and did not request postponement of the hearing. The referee accordingly dismissed Ost’s appeal pursuant to NRS 233B.121(5), which permits disposition of contested cases by default.

Ost subsequently appealed the appeals referee’s decision to the Board of Review. Ost stated he rarely checks his mail and did not see the notice of the hearing until after the hearing took place. However, the Board of Review found that Ost was mailed a notice advising him of the telephonic hearing and he did not thereafter appear at the hearing or contact the referee or request a postponement of the hearing. The Board of Review further stated that it considered Ost’s reason for failing to appear at the hearing but found it was not a compelling reason. The Board of Review therefore affirmed the appeals referee’s decision to dismiss the appeal based on Ost’s failure to appear at the hearing.

Ost thereafter filed a petition for judicial review and contended he disclosed he received severance pay when he initiated his claim for unemployment benefits and any overpayments were not his fault. ESD

opposed the petition. The district court subsequently entered a written order denying the petition for judicial review. This appeal followed.

On appeal, Ost challenges the denial of his petition for judicial review, arguing that the district court should have reviewed the underlying facts concerning the merits of his unemployment claim.¹

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.* "When reviewing an administrative unemployment compensation decision, this court, like the district court, examines the evidence in the administrative record to ascertain whether the Board acted arbitrarily or capriciously, thereby abusing its discretion." *Clark Cnty. Sch. Dist. v. Bundley*, 122 Nev. 1440, 1444, 148 P.3d 750, 754 (2006). "Therefore, when considering the administrative record, the Board acts as an independent trier of fact, and the Board's factual findings, when supported by substantial evidence, are conclusive." *Id.* (internal quotation marks omitted); *see also* NRS 612.530(4) ("In any judicial proceedings under this section, the finding

¹Ost also argues that ESD violated the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), but he does not explain why he believes the CARES Act was violated or how it applied to this matter. Because Ost failed to provide cogent argument in support of this claim, we decline to consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument).

of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, is conclusive, and the jurisdiction of the court is confined to questions of law.”). Substantial evidence is that which a reasonable person could find adequate to support the agency’s decision. *Elizondo*, 129 Nev. at 784, 312 P.3d at 482.

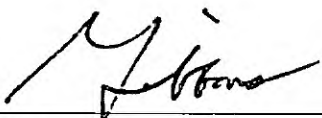
The Board of Review may affirm an appeals referee’s decision “solely on the basis of evidence previously submitted.” NRS 612.515(3). Here, the Board of Review found Ost was provided the required notice of the hearing but he failed to appear at the relevant administrative hearing, contact the appeals referee, or seek a postponement of the hearing. The Board of Review thus affirmed the appeals referee’s decision to dismiss this matter based on Ost’s failure to appear. Substantial evidence supports the Board of Review’s factual findings in this regard. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Because Ost failed to appear at the relevant hearing, the appeals referee was statutorily authorized to dismiss his appeal. *See* NRS 233B.121(5) (stating “informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default”).

Moreover, Ost’s contention that the district court should have reviewed additional facts concerning the merits of his claim for unemployment benefits is unavailing. As stated previously, the Board of Review’s factual findings, if supported by substantial evidence, are conclusive, and the district court’s review is confined to questions of law. *See* NRS 612.530(4); *Clark Cnty. Sch. Dist.*, 122 Nev. at 1444, 148 P.3d at 754. Because the district court’s review is confined to questions of law, Ost

does not demonstrate that the district court improperly failed to consider additional evidence concerning his underlying claim.

Based on the foregoing, we conclude the Board of Review did not act arbitrarily or capriciously by rejecting Ost's appeal and, thus, Ost fails to demonstrate the Board of Review abused its discretion in this regard. Accordingly, we affirm the district court's denial of Ost's petition for judicial review.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Frederick Ost
State of Nevada/DETR - Las Vegas
Washoe District Court Clerk

²We have reviewed Frederick Ost's motion for stay, and we conclude no relief is warranted.