

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

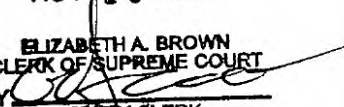
GLEND A SCOTT,  
Appellant,  
vs.

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

No. 87518-COA

**FILED**

NOV 25 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Glenda Scott appeals from a district court order denying a petition for judicial review in an unemployment matter. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

In June 2020, Scott filed an application for Pandemic Unemployment Assistance (PUA) under the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) in which she self-certified that she was self-employed, last worked in March 2020, and she became unemployed as a direct result of the COVID-19 pandemic. Scott thereafter submitted additional documents concerning her identity. Respondent the State of Nevada Employment Security Division (ESD) later directed Scott to submit proof that she was self-employed prior to the pandemic. In response, Scott submitted her 2020 schedule C, which stated she earned \$480 from janitorial services. Scott later submitted ledgers for her business activities in 2021 and 2022, a business license exemption Scott filed in 2021,

additional tax information, and several handwritten receipts dated 2019 and 2020. Scott also submitted letters from clients, in which the clients discussed the impact the COVID-19 pandemic had upon their ability to hire Scott for housekeeping work. ESD subsequently denied Scott's claim, stating that Scott did not meet the qualifications required by the CARES Act for PUA.

Scott appealed ESD's determination to an appeals referee and the matter proceeded to an administrative hearing. During the hearing, Scott testified that the pandemic occurred shortly after she started her housekeeping business. Scott stated she had one client and was forced to cease work for that client in March 2020 due to the pandemic. Scott further testified that there were several other potential clients but she was unable to work for them due to the pandemic. Scott also acknowledged that she did not have many records related to her work or potential clients from 2020. During the hearing, the appeals referee reviewed Scott's documentation and noted that Scott had not submitted documents showing her employment during 2020. The appeals referee also reviewed the client letters and noted that they were written in 2022. The appeals referee further noted that Scott had not submitted documentation created contemporaneously with her alleged loss of employment in 2020. In addition, the appeals referee noted that Scott submitted documents concerning her business activities in 2021 or 2022 and that Scott also submitted handwritten documents that were not verifiable.

Following the hearing, the appeals referee issued a written decision in which the referee found that Scott failed to provide sufficient documentation to show that she qualified for PUA. The appeals referee also noted that at the hearing, Scott acknowledged that she did not have

adequate paperwork to support her claim. In light of Scott's failure to submit the documentation to verify that she was unemployed because of the pandemic, the appeals referee affirmed ESD's decision to deny Scott's claim. The ESD board of review later declined to review Scott's appeal from the appeals referee's decision.

Scott subsequently petitioned the district court for judicial review, and respondents filed an answer. The district court thereafter denied Scott's petition for judicial review. In so doing, the district court found that substantial evidence supported the appeals referee's decision since Scott failed to meet her burden to file documents to substantiate her self-employment. This appeal followed.

On appeal, Scott argues that the appeals referee erroneously found that Scott provided insufficient evidence to substantiate her PUA claim.<sup>1</sup> Scott contends the documentation she submitted and her testimony at the hearing were sufficient to validate her 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 (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 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

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<sup>1</sup>On appeal, Scott does not argue that she should not have been required to provide documentation to substantiate her claim, and thus she has waived any argument related to the same. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellant does not raise on appeal are waived).

(1998). This court 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. 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 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 Scott needed: (1) ineligibility for standard unemployment benefits; (2) self-certification that she was "otherwise able to work and available to work . . . except [that 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. *See* 15 U.S.C. § 9021(a)(3)(A). Scott also was required to "provide[ ] documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment." *See* 15 U.S.C. § 9021(a)(3)(A)(iii).

Here, the appeals referee correctly noted that Scott was required to provide documentation to substantiate her self-employment.




See 15 U.S.C. § 9021(a)(3)(A)(iii). The appeals referee reviewed the handwritten receipts that were dated 2019 and 2020 but concluded that they were unverifiable and thus insufficient to substantiate Scott's PUA claim. The appeals referee also concluded that the letters Scott submitted were insufficient to substantiate her PUA claim. Moreover, Scott submitted tax records and ledgers concerning her business activities in 2021 and 2022, but those records had no bearing upon whether Scott was self-employed in 2020 and lost that employment as a result of the pandemic. In addition, Scott submitted a 2021 notice of business license exemption but that also did not bear upon whether Scott was self-employed in 2020. After consideration of the documents and Scott's testimony, the appeals referee concluded that Scott failed to establish that she was self-employed and lost that employment as a result of the pandemic. The appeals referee accordingly affirmed ESD's decision to deny Scott's PUA claim.

The appeals referee's findings made in support of these determinations are supported by substantial evidence in the record. While Scott wishes for this court to reevaluate the evidence she submitted in support of her PUA claim, it is not this court's role to reweigh the evidence or reconsider 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 or weight the evidence" when reviewing an unemployment compensation decision). Because the appeals referee's findings are supported by substantial evidence, Scott fails to demonstrate that the appeals referee abused her discretion by finding her documentation unverifiable and insufficient 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 decision to reject Scott's appeal was not arbitrary or capricious and, thus, Scott fails to demonstrate she is entitled to relief. *See id.* Accordingly, we affirm the district court's denial of Scott's petition for judicial review.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michael Montero, District Judge  
Nevada Legal Services/Las Vegas  
State of Nevada/DETR - Las Vegas  
Humboldt County Clerk