IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA EMPLOYMENT SECURITY DIVISION,
Respondent.

No. 88717-COA

FILED

FEB 28 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

John Taylor appeals from district court orders denying a petition for judicial review and a motion for post-judgment relief in an unemployment insurance (UI) benefits matter. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

John Taylor, who was approximately 63 at the time, filed for UI benefits in February 2020. Taylor listed EDS Stations as his last employer, but the State Employment Security Division (ESD) discovered a W-2 that indicated Taylor received $122.31 from AGR Group Nevada in the fourth quarter of 2019. On June 25, 2020, ESD sent Taylor a letter requesting more information about AGR, as the 2019 W-2 appeared to indicate that AGR was his last employer. Taylor, who maintained that he did not work for AGR in 2019, contacted AGR to correct the mistake. Taylor apparently exchanged calls and emails with AGR in which it confirmed that the 2019 W-2 was issued in error and that an error correction process had begun.

One of the purported emails from AGR, sent on July 2, 2020, instructed Taylor to have ESD contact AGR's payroll department or finance team to confirm the error. Before Taylor contacted ESD with this information, ESD sent a disqualification letter to Taylor on July 8. This

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letter was sent about two weeks after ESD first requested more information about AGR. The disqualification letter informed Taylor that he was not eligible for UI benefits because he had not provided the requested information regarding his last employer and therefore had not met the requirements of NRS 612.375(1)(a) and (b). Taken together subsections (a) and (b) of NRS 612.375 provide that an unemployed person is eligible to receive benefits for any week of unemployment only if the Administrator finds that (1) "[t]he person has registered for work at, and thereafter has continued to report at, an office of the Division in such a manner as the Administrator prescribes" and (2) "[t]he person has made a claim for benefits in accordance with the provisions of NRS 612.450 and 612.455."

Taylor appealed the decision to an appeals referee, providing excerpted copies of emails in his appeal statement, which reflected the email exchange between Taylor and AGR referenced above where AGR apparently confirmed the 2019 W-2 issued to Taylor was issued in error. Taylor also documented the conversations he had with AGR and that he gave ESD AGR's contact information. The record reflects that ESD emailed AGR in October 2020 attempting to confirm Taylor's alleged employment with AGR in 2019 but does not show a response received from AGR or any attempt by ESD to follow up.[1]

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[1]Around the same time, Taylor had applied for pandemic unemployment assistance (PUA). Although Taylor's PUA claim is not at issue in this appeal, the record shows that ESD paid Taylor some amount of PUA benefits before discovering he was not eligible. ESD determined Taylor was liable for overpayment of these benefits. This did not affect Taylor's UI benefits claim and, therefore, Taylor's arguments regarding overpayment are outside the scope of this appeal. *See Highroller Transp., LLC v. Nev. Transp. Auth.*, 139 Nev., Adv. Op. 51, 541 P.3d 793, 799 (Ct.

Taylor's appeal proceeded to a hearing before an appeals referee in February 2023. During the hearing, the appeals referee reviewed the appeals packet with ESD's exhibits and notified Taylor that the hearing would address his failure to report his last employer based on the 2019 W-2 from AGR. One of the exhibits admitted was Taylor's appeal statement, which included the copies of excerpted emails between AGR and Taylor that Taylor had previously produced to ESD. Taylor testified that the W-2 issued to him by AGR was an error and that he had not worked for AGR since 2015. Although Taylor pointed to the email correspondence he provided in his appeal statement as evidence, the appeals referee orally found that none of the emails contained an express acknowledgement by AGR that the 2019 W-2 had been issued in error, or that AGR had not paid him the money reflected on the 2019 W-2. The appeals referee further indicated that there was no reason to proceed further with the hearing unless Taylor could produce such an express acknowledgement, and when he was unable to do so, the appeals referee concluded the hearing.

The following day, the appeals referee entered her written decision affirming ESD's denial of Taylor's claim for UI benefits, concluding that Taylor was ineligible for UI benefits because he failed to provide, as requested, additional information about his last employer, AGR, in violation of NRS 612.375(a) and (b). In doing so, the appeals referee found that Taylor testified, without supporting evidence, that he did not work for AGR since 2015, notwithstanding that he submitted a copy of the 2019 W-2 with his appeal statement. The appeals referee further found that Taylor failed

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App. 2023) ("Appellate review of a final agency decision is confined to the record before the agency." (internal quotation marks omitted)).

to produce "clear and convincing evidence" to resolve the discrepancy between the 2019 W-2 issued by AGR and Taylor's testimony that he had not worked for AGR since 2015.

Taylor appealed the appeals referee's decision to the ESD Board of Review which declined further review. Taylor filed a petition for review in the district court. The court denied Taylor's petition, finding that substantial evidence supported the appeals referee's decision because Taylor failed to provide the appeals referee with the requested documentation from AGR confirming that he did not work for AGR in 2019. The court also found that neither the appeals referee nor the Board of Review committed any error of law. Taylor moved for post-judgment relief pursuant to NRCP 52(b) and NRCP 59(e), which the district court denied. This appeal followed.

On appeal, Taylor argues that ESD's determination that he was ineligible for UI benefits was not supported by substantial evidence and was therefore erroneous. ESD generally disagrees.

"The standard for reviewing petitions for judicial review of administrative decisions is the same for this court as it is for the district court." *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). We do not give deference to the district court when reviewing appellate challenges to district court decisions on petitions for judicial review. *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). The role of the appellate court is to "review an administrative agency's factual findings for clear error or an arbitrary abuse of discretion and [we] will only overturn those findings if they are not supported by substantial evidence." *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013) (internal quotation marks omitted). "Substantial evidence exists if a reasonable person could find the

evidence adequate to support the agency's conclusion." *Id.* (internal quotation marks omitted). Where substantial evidence in the record supports a hearing officer's factual findings, the "court will not reweigh the evidence or revisit an appeals officer's credibility determination." *Id.* (internal quotation marks omitted). Nevertheless, this court reviews questions of law de novo. *See MGM Mirage v. Cotton*, 121 Nev. 396, 399, 116 P.3d 56, 57 (2005).

Initially, in concluding that Taylor failed to produce clear and convincing evidence to resolve the discrepancy between the 2019 W-2 and Taylor's testimony that he had not worked for AGR since 2015, the appeals referee applied the incorrect burden of proof. Indeed, it is well recognized that the preponderance-of-the-evidence standard is the general burden of proof in civil cases in Nevada. *See Mack v. Ashlock*, 112 Nev. 1062, 1066, 921 P.2d 1258, 1261 (1996) (stating the same). And nothing in Chapter 612 of the NRS, which governs unemployment compensation in Nevada, suggests that the legislature intended to require claimants seeking UI benefits to establish that they meet the basic eligibility requirements by clear and convincing evidence. *See id.* (explaining that the preponderance-of-the-evidence standard governs civil matters "absent a clear legislative intent to the contrary").

We therefore conclude that, to satisfy his obligations under NRS 612.375(a) and (b), Taylor was only required to produce evidence and testimony showing by a preponderance of the evidence that he did not work for AGR in 2019, notwithstanding the 2019 W-2 from AGR. Thus, the appeals referee erred by applying the heightened clear-and-convincing-evidence standard in reaching her decision, which warrants reversal. *See King v. St. Clair*, 134 Nev. 137, 139, 414 P.3d 314, 316 (2018) (recognizing that "[c]lear and convincing evidence is beyond a mere preponderance of the

evidence" (internal quotation marks omitted)); *Calissie v. State*, No. 65500, 2016 WL 6395372, at *1 n.1 (Nev. Oct. 27, 2016) (Order of Reversal and Remand) (reversing a denial of UI benefits because the appeals referee incorrectly required the claimant to provide "substantial evidence" in support of her claim, rather than applying the correct preponderance-of-the-evidence standard, amongst other reasons).

However, the appeals referee's decision is problematic for additional reasons. As a pro se litigant attempting to navigate the unemployment benefits system, Taylor sought to satisfy his obligation under NRS 612.375(1)(a) and (b) by producing all the information he was able to collect from AGR to show that AGR was not his last employer because he did not work for the company in 2019. Taylor provided excerpted copies of emails between himself and AGR, which when read in context, suggest that AGR had acknowledged there was an error regarding the W-2 and that it was correcting the error. Taylor also provided documentation suggesting that ESD believed that Taylor and AGR were corresponding. Specifically, Taylor provided email correspondence showing that, after AGR requested that Taylor have ESD contact it to discuss the 2019 W-2, and Taylor relayed that information to ESD, ESD reached out to AGR.[2] And Taylor provided testimony at the hearing as to what transpired between himself and AGR and ESD that was consistent with the documentation he produced, and he expressly testified that he had not worked for AGR in 2019.

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[2]Throughout these proceedings, ESD has never raised any concerns that the excerpted email copies provided by Taylor were either inaccurate or fraudulent, and the appeals referee did not raise any concerns to that effect at the hearing.

While AGR did not expressly identify what error it believed occurred with respect to the 2019 W-2 in the emails that Taylor provided, Taylor testified that AGR indicated that the W-2 was issued in error. And taking the documentation provided by Taylor together with his testimony, they raised substantial questions concerning the validity of the 2019 W-2 and whether Taylor's identification of EDS Stations as his last employer, and not AGR, was in fact correct. ESD and AGR did not participate in the hearing, and nothing in the record contradicted Taylor's evidence and testimony, aside from the 2019 W-2 itself. Yet, without addressing the concerns that Taylor's evidence and testimony raised, the appeals referee simply rejected them because Taylor did not produce documentation containing an express acknowledgement from AGR that the 2019 W-2 was erroneous. The appeals referee also seemingly determined that Taylor's testimony that he did not work for AGR in 2019 was not sufficient, in and of itself, without the specific documentation she requested.

However, Chapter 612 of the NRS imposes no requirements concerning the form of evidence that a claimant must produce to establish who their last employer was or was not. To the contrary, NRS 612.500(2) requires the appeals referee to "receive and consider evidence *without* regard to statutory and common law rules." (Emphasis added.) The statute further requires the appeals referee to inquire into and develop all facts bearing on the issues" and to "consider all issues affecting the claimant's rights to benefits from the beginning of the period covered by the determination to the date of the hearing." *Id.* And NRS 612.500(1) mandates that claimants receive "[a] reasonable opportunity for a fair hearing." NRS 612.500(1). Read together, these provisions provide for a relaxed procedure and evidentiary standard that is meant to make it easier for litigants, who are often pro se, to navigate the appeals process when

applying for UI benefits. NAC 612.228(2) ("Technicalities must be minimized so that parties not represented by attorneys are not at a disadvantage."). Requiring a claimant to disprove that they worked for an employer by providing specific forms of evidence is inconsistent with that relaxed procedure and evidentiary standard and opens the door to arbitrary and capricious decisions by ESD. *See* NRS 233B.135(3)(f) (providing that an administrative agency's decision requires reversal if it is arbitrary and capricious); *see also City of Reno*, 127 Nev. at 119, 251 P.3d at 721. Indeed, the appeals referee's rejection of Taylor's evidence and testimony because it was not presented in the manner required by the appeals referee and without any further inquiry into the facts surrounding the 2019 W-2 is problematic given the substantial questions that Taylor's evidence and testimony raised concerning the validity of the 2019 W-2.

As to any credibility determination made by the appeals referee, the referee's finding that Taylor did not provide any evidence to support his testimony that he did not work for AGR in 2019 is belied by the email correspondence that he submitted. *See Benes v. State, Emp. Sec. Div.*, No. 85942-COA, 2024 WL 1792968, at *4 (Nev. Ct. App. Apr. 24, 2024) (Order of Reversal and Remand) (explaining that "although it is generally true that an appellate court cannot reevaluate witness credibility, an appeals referee's credibility determination must still be made for appropriate legal reasons and based on substantial evidence"). And the fact that Taylor provided a copy of the 2019 W-2 with his appeals statement was not a sufficient basis to discount the credibility of Taylor's testimony explaining that the 2019 W-2 was issued in error. *See id.* While Taylor provided a copy of the 2019 W-2, he did so in the context of an appeal in which he specifically challenged its veracity, presumably to show what he was challenging, and he provided supporting evidence and testimony to

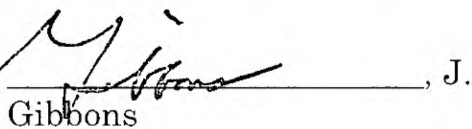
demonstrate that AGR believed that some correction was required with respect to the 2019 W-2.

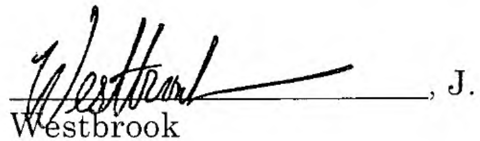
Given the lack of development of the factual circumstances surrounding the 2019 W-2, we conclude that the record lacked substantial evidence to support a determination by a preponderance of the evidence as to whether AGR was Taylor's last employer and, by extension, whether Taylor satisfied his obligations under NRS 612.375(1)(a) and (b). Thus, the appeals referee abused her discretion in affirming ESD's denial of Taylor's UI benefits.

Accordingly, we reverse the district court's order denying Taylor's petition for judicial review and we remand this matter to the district court with instructions to remand the case to the appeals referee for further proceedings consistent with this order.

It is so ORDERED.[3]

_______________, C.J.
Bulla


_______________, J.
Gibbons


_______________, J.
Westbrook

[3]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Veronica Barisich, District Judge
Nevada Legal Services/Las Vegas
State of Nevada/DETR - Las Vegas
Eighth District Court Clerk