

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEBORAH PRIEBE,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION,
Respondent.

No. 89058-COA

FILED

OCT - 9 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Deborah Priebe appeals from a district court order denying her petition for judicial review in an unemployment matter. Eighth Judicial District Court, Clark County; Anna C. Albertson, Judge.

Priebe is a real estate agent who operates a company, Elegant Properties, LLC. She applied for pandemic unemployment assistance (PUA) benefits on May 16, 2020, with an effective date of March 15, 2020, and self-certified that she was self-employed. The Department of Employment, Training and Rehabilitation (DETR) notified Priebe that she was eligible to receive weekly benefits, and she filed weekly claims and received PUA benefits until May 2021.

After she stopped receiving benefits, DETR notified Priebe that it reduced her weekly benefit amount based on her failure to provide supporting documentation relating to her income. DETR also determined she was disqualified from receiving benefits from March 15, 2020, to September 4, 2021, based on her failure to report wages during the claims

period, including paycheck protection program (PPP) loans. Based on her disqualification and the decreased weekly benefit amount, Priebe received various overpayment notices. Priebe appealed these determinations.

Priebe appeared at two hearings before appeals referees. The evidence at those hearings revealed that Priebe received two PPP loans, which were approved on April 28, 2020, and February 10, 2021, respectively. Priebe also acknowledged that she had various real estate closings in April 2020, May 2020, September 2020, November 2020, January 2021, and March 2021. She testified the money from the PPP loans and her real estate closings went to her business and she did not report the income because there was nothing left after paying business expenses.

Following the hearings, the appeals referee issued a written decision finding that Priebe filed her PUA application on May 16, 2020, but failed to disclose her PPP loans to the Employment Security Division (ESD), who then denied her benefits from March 15, 2020, onward, resulting in an overpayment of \$26,817. Further, Priebe filed weekly certifications but did not report any work or earnings. But the evidence at the hearing, including Priebe's testimony, showed that she continued to work and sold real estate properties while filing for PUA benefits. Priebe denied receiving income from the sales and testified that her business received the income. Although Priebe testified she paid employees with the PPP loans, she also testified that she used the loans for business expenses, which is income that she was required to report under Unemployment Insurance Program (UIP) Letter No. 14-20, Change 1 at I-4 (Aug. 12, 2020) (providing that a sole-proprietor or other self-employed individual who applies for a PPP loan may be eligible

for partial unemployment benefits and requiring such an individual to report any income, regardless of the source of the funds, which would be deducted from the benefit amount consistent with state law). Moreover, she continued to work through the pandemic and failed to provide her 2020 tax returns to show that she had a significant reduction of work due to the pandemic.

Further, the appeals referee concluded that a preponderance of the evidence established Priebe misrepresented her PUA application, weekly certifications, and gross earnings and she was therefore not entitled to benefits from March 15, 2020, onward. Additionally, relying on 20 C.F.R. § 625.14, the referee concluded that because Priebe misrepresented information in her weekly certifications and was paid full benefits while working, the overpayment of benefits could not be waived, and she was liable for the entire amount. Priebe appealed the referee's determinations to the Board of Review. The Board affirmed the referee and adopted its findings and reasoning with respect to the adjustment of Priebe's weekly benefits amount. The Board, however, declined further review of the referee's disqualification decision.

Priebe filed a timely petition for judicial review, arguing she was eligible for PUA benefits because she met the requirements of 15 U.S.C. § 9021. Respondents ESD, the ESD Administrator, and the Board Chairperson argued the agency's decision was supported by substantial evidence and therefore not arbitrary or capricious. In reply, Priebe argued she did not owe the State money, she was eligible for benefits, and she answered all questions truthfully in applying for benefits.

The district court thereafter entered an order denying Priebe's petition for judicial review, finding the referee's and Board's decisions were supported by substantial evidence and neither committed an error of law. This appeal followed.

On appeal, Priebe argues the district court should have granted her petition for judicial review and erroneously concluded that substantial evidence supported the agency's disqualification of her PUA benefits. She contends the record shows she should have been eligible for benefits or, alternatively, any overpayment should have been waived.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.* 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

¹The Board additionally affirmed the appeals referee's decision regarding the adjustment of Priebe's weekly benefit amount (if she was otherwise eligible for benefits). However, Priebe's arguments on appeal focus on her disqualification and eligibility for benefits rather than the adjustment of weekly her benefit amount. Priebe was required to provide a specific argument as to that issue if she wished to challenge it, and her failure to do so results in forfeiture of any argument regarding the adjustment of her weekly benefit amount. See *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 forfeited).

(1998). 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 for an abuse of discretion because the Board of Review declined further review of the appeals referee's decision and thereby adopted the referee's factual findings and reasoning. *See Nev. Emp. Sec. Dep't v. Holmes*, 112 Nev. 275, 279-80, 914 P.2d 611, 614 (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 and encompassed self-employed individuals if other eligibility requirements were met. *See* 15 U.S.C. § 9021. Because individual state workforce agencies were tasked with administration of the PUA program, the U.S. Department of Labor (DOL) gave periodic updates and guidance through a series of letters directed to the states. Question 22 from the DOL's Unemployment Insurance Program (UIP) Letter No. 16-20, Change 2, at I-9 (July 21, 2020) instructs that "[t]he provisions set forth in section 625.14 apply with respect to PUA overpayments to the same extent and in the same manner as in the case of [Disaster Unemployment Assistance (DUA)]."

Section 625.14 of the Code of Federal Regulations provides that if a state agency finds that an individual has received a payment of DUA to which the individual was not entitled, whether or not the payment was due

to the individual's fault or misrepresentation, the individual shall be liable to repay the sum. 20 C.F.R. 625.14(a). Further, section 625.14 disqualifies individuals from receiving benefits who, with respect to major disasters, make a false statement or misrepresentation of a material fact, knowing it to be false, or knowingly fail to disclose a material fact in order to obtain payments of DUA to which they are not entitled. 20 C.F.R. 625.14(i). If the misrepresentation or nondisclosure pertains to the initial application for benefits, the individual "shall be disqualified" from DUA benefits with respect to that major disaster. 20 C.F.R. 625.14(i)(1)(i). If the misrepresentation or nondisclosure pertains to a weekly certification, the individual "shall be disqualified" from benefits for that week and the first two compensable weeks in the Disaster Assistance Period immediately following that week, with respect to which the individual is otherwise entitled to benefit payments. 20 C.F.R. 625.14(i)(2)(i).

As previously described, the referee found that Priebe misrepresented information in her application, weekly certifications, and earnings based on her failure to disclose two PPP loans and several real estate closings throughout the claims period and provide documentation to show she had a significant reduction in work related to the pandemic. Priebe's argument on appeal focuses on whether she was eligible to receive PUA benefits based on the enumerated eligibility requirements set forth in section 9021. However, Priebe overlooks the fact that the appeals referee determined she was disqualified from receiving benefits based on her non-disclosure of, and misrepresentations relating to, her income and work on her initial application and subsequent weekly certifications. Critically,

Priebe fails to address the referee's findings regarding her misrepresentations. She further fails to cite to relevant authority demonstrating that the referee's decision was arbitrary and capricious in light of the evidence before it and her failure to provide supporting documentation to corroborate her claims. Given Priebe's failures in these respects, we cannot conclude that the appeals referee abused his discretion in determining that she was disqualified from receiving PUA benefits. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing it is the party's "responsibility to cogently argue, and present relevant authority" that supports the party's claims).

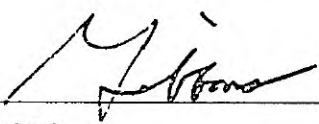
With regard to the overpayment, Priebe contends that any overpayment amount should be waived because she provided correct information to the best of her knowledge and in good faith. To be eligible for a waiver, the claimant must be without fault for any overpayments and repayment would be contrary to equity and good conscience. 15 U.S.C. § 9021(d)(4).² Priebe makes no argument regarding either waiver factor and, thus, fails to cogently argue this point, so we need not consider it. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

²We note that 20 C.F.R. 625.14(e) provides that any provision of state law authorizing waiver of recovery of overpayments of compensation shall not be applicable to DUA. However, the Coronavirus Aid, Relief, and Economic Security (CARES) Act specifically contains a waiver provision that states could elect to utilize. See 15 U.S.C. § 9021(d)(4) (providing that a state "may" waive overpayment under certain circumstances).

However, even if we were to consider her argument, Priebe fails to demonstrate she was eligible for a waiver of the overpayment amount. The appeals referee determined Priebe was at fault for the overpayment of PUA benefits, making her ineligible for a waiver. *See* 15 U.S.C. § 9021(d)(4)(A) (providing agencies may waive repayment of an overpayment if it determines that the overpayment was without fault on the part of any such individual). And that determination was supported by substantial evidence given that, as previously discussed, Priebe failed to disclose her income. Moreover, even if we were to accept her representation that she provided information in good faith, that is still insufficient to demonstrate eligibility for waiver. *See, e.g.,* UIPL No. 20-21, Change 1, at 10 (Feb. 7, 2022) (“Not all non-fraud overpayments are without fault on the part of the individual.”). In light of the foregoing, we affirm the district court’s denial of Priebe’s petition for judicial review.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Anna C. Albertson, Judge
Gabroy | Messer
Carolyn M. Broussard
Jen J. Sarafina
Kelly Anne M. Figueroa
State of Nevada/DETR - Carson City
State of Nevada/DETR - Las Vegas
Eighth District Court Clerk