

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRISTINE CHO, AN INDIVIDUAL,
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,
IN HIS CAPACITY AS CHAIRPERSON
OF THE EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW,
Respondents.

No. 89333-COA

FILED

NOV 24 2025

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

ORDER OF AFFIRMANCE

Kristine Cho appeals from a district court order denying a petition for judicial review in an unemployment matter. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

In 2020, Cho sought and received Pandemic Unemployment Assistance (PUA) under the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Cho was deemed eligible for benefits with an effective date of April 26, 2020 and received a weekly benefit until September 2021.

The month after she stopped receiving benefits, Cho received multiple notices from the Department of Employment, Training and Rehabilitation (DETR) informing her that she did not qualify for benefits. She also received several non-fraud overpayment notices for overpayments of PUA benefits, Federal Pandemic Unemployment Compensation (FPUC)

benefits, and Lost Wages Assistance benefits for failing to meet the qualifications required by the CARES Act.

Cho thereafter requested a waiver for the overpayments of benefits, stating that repayment would cause a financial hardship. DETR denied her waiver request, sending her letters stating that the CARES Act allows waiver of overpaid benefits for PUA and FPUC only if the overpayment would be contrary to equity and good conscience and that, while repayment may pose a hardship, DETR must consider the potential for repayment through installments. Cho appealed, and a hearing was held on the denial of her request for a hardship waiver of the overpayment amount before an appeals referee. At the hearing, Cho testified that she did not have the money to repay the overpayment amount but also stated that if she was required to repay the overpayments, she could "only pay it back monthly as any other method will cause financial hardship." Cho further stated that she answered her claims truthfully, submitted all requested documents, and was not notified that there were issues until after her benefits had ended. Further, because she used the payments to meet her basic needs, collecting the overpayment would be against equity and good conscience.

Following the hearing, the appeals referee issued a written decision affirming DETR's decision. The referee found that Cho testified at the hearing that she requested a hardship waiver because she did not have money to pay the overpayment, and she was employed and responsible for approximately \$400 per month in expenses because she lives with family. The referee concluded Cho did not show that repayment would pose a permanent hardship because she was employed and had minimal expenses

that her income covered, and ESD allowed for payment plans. Cho appealed to the Board of Review, who declined further review.

Cho timely filed a petition for judicial review, which the district court ultimately denied following briefing and a hearing. This appeal followed.

On appeal, Cho argues that the appeals referee committed an error of law by failing to apply the two-prong analysis when it denied her request for a hardship waiver of the overpayment of her PUA benefits and instead finding that she suffered no permanent hardship. 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 will not disturb those findings unless they are not supported 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.* 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, 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. The CARES Act has a recoupment provision for overpaid PUA benefits but permits a discretionary waiver of recoupment in certain circumstances. 15 U.S.C. § 9021(d)(4). Section 2102(d)(4) of the CARES Act provides that states must require individuals to repay PUA benefits if they have received amounts to which they were not entitled. *Id.* However, a state agency “may waive such repayment if it determines that (A) the payment of such [PUA] was without fault on the part of any such individual; and (B) such repayment would be contrary to equity and good conscience.” *Id.*¹ Whether to grant a waiver is a matter of discretion for the state agency. *See* Unemployment Insurance Program Letter (UIPL) No. 20-21, at 6 (May 5, 2021).

Here, the appeals referee affirmed the denial of Cho’s request for a hardship waiver because repayment would not cause permanent hardship based on the fact that Cho had minimal expenses and ESD allowed for payment plans. Substantial evidence in the record, including Cho’s testimony and responses on the waiver questionnaire, indicating her income would permit her to make payments toward the overpayment of PUA benefits, supports the referee’s determination. *See Elizondo*, 129 Nev. at

¹We note the record reflects that Cho also received FPUC benefits, but the parties do not distinguish between the overpayment of FPUC and PUA benefits. Nevertheless, section 9023(f)(2) of the CARES Act contains a nearly identical waiver provision for FPUC benefits to section 2102(d)(4), so our analysis is the same under either statute. *See* 15 U.S.C. § 9023(f)(2) (requiring states to recoup FPUC benefits from individuals who received amounts to which they were not entitled, but permitting a state agency to waive such repayments if it determines the individual was without fault and repayment would be contrary to equity and good conscience).

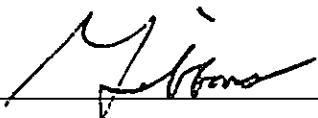
784, 312 P.3d at 482. Notably, Cho acknowledged in her waiver questionnaire, which was admitted as an exhibit, that if she was required to repay the overpayment amount, she could “only pay it back monthly as any other method would cause financial hardship.” By making this statement, Cho effectively acknowledged that a monthly payment plan would not cause financial hardship. While Cho argues that she was without fault and repayment would be against equity and good conscience and cause financial hardship, she essentially asks this court to reweigh the evidence in her favor, which this court does not do. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) (refusing to reweigh evidence and credibility determinations on appeal).

Moreover, Cho overlooks the fact that whether to grant a waiver, even if both eligibility conditions are met, is within the referee’s discretion. *See* UIPL No. 20-21, at 6 (May 5, 2021); *see also* 15 U.S.C. § 9021(d)(4) (providing that a state “may” waive overpayment in the event the state determines the individual was without fault and repayment would not be contrary to equity and good conscience); *Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 627, 310 P.3d 560, 566 (2013) (“It is a well-settled principle of statutory construction that statutes using the word ‘may’ are generally directory and permissive in nature, while those that employ the term ‘shall’ are presumptively mandatory.” (internal quotation marks and citations omitted)). Thus, even if the appeals referee made waiver findings in her favor, it was not required to grant her waiver request. Accordingly, given the deferential standard and under these circumstances, where substantial evidence supports the appeals referee’s decision, we cannot conclude the decision was arbitrary or capricious and thus an abuse of the

agency's discretion. *See Langman*, 114 Nev. at 206-07, 955 P.2d at 190. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Nevada Legal Services/Las Vegas
Carolyn M. Broussard
Jen J. Sarafina
State of Nevada/DETR - Carson City
Eighth District Court Clerk