

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR ROBLES,
Appellant,
vs.
STATE OF NEVADA EMPLOYMENT
SECURITY DIVISION; DEPARTMENT
OF EMPLOYMENT, TRAINING &
REHABILITATION, ADMINISTRATOR
OF EMPLOYMENT SECURITY
DIVISION, KRISTINE NELSON;
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW CHAIRPERSON J.
THOMAS SUSICH,
Respondent.

No. 90235-COA

FILED

MAR 18 2026

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

ORDER OF AFFIRMANCE

Victor Robles appeals from a district court order denying his petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

In September 2020, Robles applied for and was determined eligible to receive unemployment insurance benefits. In September 2022, respondent, the Employment Security Division (ESD), issued Robles a disqualification letter and notice of overpayment based on a finding that he voluntarily quit his last employment without good cause and without first securing new employment. The decision listed the appeal deadline as October 3, 2022, and provided appeals instructions in both English and

Spanish. Robles, however, did not appeal the decision until October 11, 2022.

In June 2024, Robles appeared at hearing before an appeals referee. Robles, who spoke Spanish, was provided an interpreter for the hearing. During the hearing, Robles admitted that he did not review the appeal file containing the agency's exhibits but was still comfortable proceeding with the hearing. Robles testified to the following. He had lived at the address where ESD mailed the disqualification letter and overpayment notice for 11 years. He acknowledged receiving and reading the letter and notice, which were mailed on September 21, 2022, though he did not know when he received them. He also did not know if he received the letter and notice before the October 3 appeal date, but he did understand that he was being denied benefits. Robles acknowledged that he read the part of the letter setting forth the last date to appeal.

Robles further testified that he contacted ESD when he received the letter and notice and asked for instructions on how to appeal, but he did not recall when he called ESD. When asked whether he had issues with his mail at the time, he responded that he sent "the information" immediately after seeing the letter but acknowledged that when he sent it, he "was some days behind." Robles filed his appeal on October 11 after speaking with ESD, who informed him of the procedure he needed to follow. He did not file it by October 3 because it was past that date when he spoke with ESD. When the appeals referee asked Robles if he had additional statements regarding the untimeliness of his appeal, he testified that he did not see the appeal deadline in time and when he spoke with ESD, they "let [him] know

that everything was ok when [he] filed.” The appeals referee thereafter informed Robles that he lacked jurisdiction at that time over the issues relating to the denial of benefits or his overpayment but would reschedule a second hearing on the substantive issues if he determined there was good cause for Robles’ late filing.

In its written order, the appeals referee affirmed ESD’s disqualification of benefits and overpayment decision and found that Robles failed to timely file his appeal without good cause. The referee found that Robles received and read the disqualifying determination, which stated October 3 as the last date to appeal but nevertheless faxed his appeal letter on October 11. The referee further found that Robles provided self-serving, contradicting testimony at the hearing because he initially testified that he read, reviewed, and understood the determinations and the last date to appeal and then subsequently testified that he did not see the appeal date and required appeal instructions from ESD. Further, Robles initially testified that he did not know if he received the determinations before or after the last date to appeal and later testified that he did not get instructions from ESD until after the last date to appeal. Ultimately, the referee found Robles’ testimony was unpersuasive and lacking in credibility and that he presented no evidence to substantiate that the delay was unavoidable or beyond his control. Consequently, the appeals referee determined that Robles’ appeal was untimely and without good cause pursuant to NRS 612.495(1), so it did not have jurisdiction to review the case on the merits.

Robles subsequently appealed to the Board of Review, which declined further review and adopted the decision of the appeals referee. Robles thereafter filed a timely petition for judicial review. Following briefing, the district court denied Robles' petition. This appeal followed.

On appeal, Robles challenges the decisions of the appeals referee and the Board. "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); *see also* NRS 233B.135(3) (setting forth the grounds on which an agency decision may be set aside on appeal). This court will not disturb those findings unless they are not supported by substantial evidence. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). Substantial evidence is that which a reasonable person could find adequate to support the agency's decision. *Id.*

Additionally, this court "will not substitute [our] judgment as to the weight of the evidence for that of the administrative agency." *Langman v. Nev. Adm'rs, Inc.*, 114 Nev. 203, 210, 955 P.2d 188, 192 (1998); *see also* *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966) ("[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence."). 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 his

factual findings and reasoning. *See Nev. Emp. Sec. Dep't v. Holmes*, 112 Nev. 275, 279-80, 914 P.2d 611, 613-14 (1996).

“Any person entitled to a notice of determination or redetermination may file an appeal” but the appeal “must be filed within 11 days” of the date of service of the notice. NRS 612.495(1). However, this deadline “may be extended for good cause shown.” *Id.*

Here, it was undisputed that Robles filed his appeal to the appeals referee after the October 3 deadline. *See* NRS 612.495(1). Therefore, the appeals referee had to determine whether good cause existed to excuse the late filing and extend the deadline, and the hearing was confined to this issue. *See id.* The record demonstrates that correspondences sent to Robles were in both the English and Spanish languages and he was provided a translator during the hearing before the appeals referee.

The appeals referee also provided Robles the opportunity to explain and make statements concerning the untimeliness of his appeal of the ESD decision. At the hearing, Robles gave inconsistent testimony regarding why his appeal was untimely filed. He initially testified that he read, received, and understood the disqualification letter and overpayment notice and that he read the appeal date, then he later testified that he did not see the appeal date. Robles also testified that he did not know the date he received the letters and he did not know the date he contacted ESD, but he later testified that he did not file until after October 3 because that deadline had already passed by the time he contacted ESD. And, as

explained previously, Robles stated his belief that ESD provided insufficient information concerning the appeal and caused him to be confused.

However, based on the conflicting nature of Robles' testimony, the appeals officer made a credibility determination and found Robles' testimony self-serving, not credible, and unpersuasive. And this court will not reweigh evidence or reevaluate credibility determinations. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) (“[C]redibility determinations and the weighing of evidence are left to the trier of fact.”); *see also Langman*, 114 Nev. at 210, 955 P.2d at 192; *Consolo*, 383 U.S. at 620. Accordingly, the record demonstrates the appeals referee did not act arbitrarily or capriciously in determining that Robles failed to demonstrate good cause for an extension.¹ *See Bundley*, 122 Nev. at 1444, 148 P.3d at 754. And we discern no abuse of discretion in the Board's decision to decline to conduct further review and in adopting the referee's decision. *See* NRS 612.515(1) (requiring appeals to the Board as a matter


¹In his reply brief, Robles' raises several arguments concerning good cause as provided for by NRS 612.495(1). However, in his opening brief, Robles did not include cogent argument, or even acknowledge, NRS 612.495. As a result, he has forfeited any arguments raised in his reply brief for the first time. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (citing NRAP 28(c) and concluding that an issue raised for the first time in an appellant's reply brief was forfeited). To the extent Robles contends the hearing was improperly delayed from the filing of his appeal, he did not raise the delay of the hearing before the appeals referee, so he cannot raise it for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are “deemed to have been [forfeited] and will not be considered on appeal”).

of right if the appeals referee reversed or modified the administrator's decision but in all other cases further review is within the Board's discretion); *see also* NRS 612.515(3) (providing that the Board may affirm, modify, or reverse the appeals referee "solely on the basis of evidence previously submitted, or upon the basis of such additional evidence as it may direct to be taken").

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

²To the extent Robles challenges the denial of benefits and the overpayment notice, in light of Robles' failure to timely appeal from the ESD's decision and to demonstrate good cause to extend the appeal timeline, those issues are not properly before this court on appeal. *See Bundley*, 122 Nev. at 1444, 148 P.3d at 754.

cc: Hon. Jacqueline M. Bluth, District Judge
Hatfield & Associates, Ltd.
State of Nevada/DETR - Carson City
Eighth District Court Clerk