



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ASHLEY MICHAUD,  
Appellant,  
vs.  
NEVADA EMPLOYMENT SECURITY  
DIVISION, STATE OF NEVADA;  
KRISTINE NELSON, IN HER  
CAPACITY AS ADMINISTRATOR OF  
THE EMPLOYMENT SECURITY  
DIVISION; AND J. THOMAS SUSICH,  
IN HIS CAPACITY AS CHAIR OF THE  
EMPLOYMENT SECURITY DIVISION  
BOARD OF REVIEW,  
Respondents.

No. 90898-COA

*ORDER OF AFFIRMANCE*

Ashley Michaud appeals from a district court order denying his petition for judicial review in a Pandemic Unemployment Assistance (PUA) matter. Eighth Judicial District Court, Clark County; Hon. Danielle K. Pieper, Judge.

Michaud sought and was awarded PUA benefits in 2020. However, respondent, the Nevada Employment Security Division (ESD), later determined Michaud was ineligible and issued overpayment notices for the amounts he received. Michaud appealed that decision and the matter proceeded to a hearing before an appeals referee. During that hearing, Michaud refused to allow the appeals referee to speak and consequently, the hearing was terminated. The appeals referee attempted to conduct a second hearing, but the same issues persisted, so the referee

terminated the second hearing and dismissed Michaud's appeal pursuant to NRS 233B.121(5), explaining that no testimony was taken because Michaud was disruptive, argumentative, and made inappropriate statements.

Michaud appealed that decision to the ESD PUA Board of Review (Board). The Board affirmed the decision to dismiss Michaud's appeal based on NAC 612.228(3), which allows the appeals referee to exclude disruptive or disorderly persons and to adjourn the hearing if the disruptive person refuses to stop their objectionable behavior. The Board found that Michaud prevented the appeals referee from conducting the evidentiary hearing by being repeatedly rude, speaking over the referee, and attempting to direct the course of proceedings despite numerous warnings from the referee.

Michaud timely filed a petition for judicial review in the district court. He filed various motions in the district court regarding respondents' failure to redact his social security number from the administrative record alleging they violated NRS Chapter 603A. The court ordered respondents to redact the record but did not grant Michaud other relief he sought. Ultimately, after full briefing and a hearing, the court denied Michaud's petition for judicial review. This appeal followed.

On appeal, Michaud challenges the denial of his petition for judicial review. 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). With regard to the Board's factual determinations, the Board conducts de novo review of appeals referee decisions. *Bundley*, 122 Nev. at 1444, 148 P.3d at 754. Therefore, when considering the administrative record, the Board acts as "an independent trier of fact," and the Board's factual findings, when supported by substantial evidence, are conclusive. *Id.*; *see also* NRS 612.530(6) ("In any judicial proceedings under this section, the finding of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, is conclusive."). 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.* 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).

Michaud first contends the appeals referee's dismissal of his appeal was unjustified and he was not provided notice of the rules and procedures for the hearing. Under NRS 233B.121(1), parties to administrative proceedings must be afforded an opportunity for hearing after reasonable notice. The notice must include a statement of the time, place, and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing is to be held, a reference to the

particular sections of statutes and regulations involved, and a short plain statement of the matters asserted. NRS 233B.121(2)(a)-(d). Further, parties must be afforded the opportunity to respond and present evidence and argument on all issues involved, but an informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. NRS 233B.121(4), (5). NAC 612.225 provides that, in unemployment proceedings, in addition to the requirements set forth in NRS 233B.121, notice of the hearing must inform each party that he is entitled to be represented by counsel, to request issuance of subpoenas and to produce witnesses at the hearing. Additionally, at the start of the hearing, the examiner “will present a concise explanation of the issues to be covered and the procedures to be followed.” NAC 612.225(3).

NAC 612.228 sets forth the responsibilities of the examiner in unemployment compensation hearings and subsection 3 provides that “[d]isorderly or disruptive persons may be excluded from the hearing room. If the disruptive or disorderly person refuses or fails to stop the objectionable activity or leave the room, the examiner shall adjourn the hearing.”

Here, the Board determined NAC 612.228(3) justified the dismissal of Michaud’s appeal, finding that Michaud was repeatedly rude, continually spoke over the appeals referee, and attempted to direct the course of proceedings, all of which prevented the referee from conducting the evidentiary hearing. The record supports that Michaud was disorderly and refused to stop the objectionable activity. *See* NAC 612.228(3). Specifically, the transcript shows that Michaud was repeatedly

uncooperative during the hearing. The appeals referee was largely unable to speak due to Michaud's interruptions, although the referee warned him multiple times that he would terminate the hearing if Michaud continued to be disruptive. After terminating the hearing initially, the referee attempted to conduct the hearing again. At that time, the referee explained to Michaud that the hearing was a formal process where the referee would give information to Michaud and collect information from him and then Michaud would be given time to make an additional statement, but that Michaud's inappropriate comments would result in the termination of the hearing. After the referee attempted to initiate the hearing pursuant to NAC 612.225(3), Michaud disregarded the prior admonishment and began arguing with the referee about the overpayment notices. Consequently, the hearing was terminated for a second time and Michaud's appeal dismissed. Under these circumstances, substantial evidence supports the Board's conclusion. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482.

Second, Michaud argues his due process rights were violated because he was not given adequate notice of the proceedings. Due process protections apply to unemployment benefit hearings. *Whitney v. State, Emp. Sec. Dep't*, 105 Nev. 810, 813, 783 P.2d 459, 460 (1989). However, procedural due process is satisfied when parties receive notice and an opportunity to be heard. *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. 10, 17, 481 P.3d 853, 859 (2021); *see also Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (providing that "[d]ue process is satisfied where interested parties are given an opportunity to be heard at a meaningful time

and in a meaningful manner” which may “take[ ] the form of a live hearing” (internal quotation marks omitted)).

And here, although Michaud claims he was not given adequate notice of the proceedings because he was not told the speaking order or informed of NAC 612.228, he received notice in compliance with the statutory requirements and was given the opportunity to be heard at two separate proceedings. At the second hearing, the appeals referee informed Michaud that he would be given the opportunity to give a statement and provide information. As such, he was afforded notice and the opportunity to be heard, and his due process rights were satisfied. Although ultimately Michaud was not able to present evidence, that was due to his conduct during the hearings. As previously explained, the referee attempted to give Michaud an explanation of the proceedings, however, the record demonstrates Michaud would not allow the referee to speak, prompting the referee to warn him that the hearing would be terminated if he continued to be disruptive. Despite being given this warning, as well as the assurance that he would be able to make a statement and give information, Michaud refused to comply with the instructions given to him. Because the result of the proceedings was due to Michaud’s own behavior, he has failed to demonstrate his due process rights were violated by the termination of the hearing.

In light of the foregoing, we conclude the district court did not err by denying Michaud's petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>



Bulla, C.J.



Gibbons, J.



Westbrook, J.

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<sup>1</sup>Michaud additionally argues respondents improperly included his social security number in several filings, but he fails to cogently argue why he was entitled to relief in the underlying judicial review proceedings. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument). Michaud also substantively challenges the propriety of the overpayment amounts, arguing they were duplicative and therefore barred by preclusion doctrines and put him "in jeopardy." However, these issues were not part of the administrative record due to the termination of the hearings, and we therefore cannot consider them on appeal. *See* NRS 233B.135(1)(b); *see also* NAC 612.242(3) ("The evidence which the Board considers in reviewing cases is limited to the evidence submitted to the examiner . . ."). Moreover, we note the Double Jeopardy Clause does not apply to these proceedings. *See Hudson v. United States*, 522 U.S. 93, 99 (1997) (explaining that the Double Jeopardy Clause "protects only against the imposition of multiple *criminal* punishments for the same offense" (emphasis in original)).

In addition, insofar as Michaud raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Danielle K. Pieper, District Judge  
State of Nevada/DETR - Carson City  
Ashley Michaud  
District Court Clerk