



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMY C. LUCIANO,
Appellant,

vs.

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 CHAIRPERSON OF THE
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW,
Respondents.

No. 91233-COA

ORDER OF AFFIRMANCE

Amy C. Luciano appeals from a district court order denying a petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Hon. Mark R. Denton, Judge.

In 2020, Luciano filed a claim for unemployment benefits and was required to submit weekly benefit claims to receive benefit payments. Luciano ceased submitting weekly benefit claims in July 2021 and, as a result, respondent Employment Security Division (ESD) ceased paying her benefits. In 2023, Luciano submitted a request for unemployment benefits and predated her claim to July 2021. Specifically, Luciano sought payment for benefits she alleged she was entitled to between July 2021 and September 2021. ESD denied her request because NAC 612.110(1) does not permit a claimant to predate any claim by more than two weeks.

Luciano appealed and an appeals referee held a hearing at which Luciano stated she ceased submitting her weekly benefits claim

because she was unable to verify her identity through ID.me. Further, Luciano stated no one informed her that she would not be able to backdate her claim request in the future and had she been aware of this regulation, she would have submitted her weekly benefit claim in person. The appeals referee affirmed ESD's disqualification finding and the Board of Review declined to review the appeals referee's decision. Accordingly, Luciano filed a petition for judicial review.

Luciano alleged the appeals referee failed to consider her technical issues with ID.me, and thus, the decision was not supported by substantial evidence and was legally erroneous. ESD filed an opposition, which argued Luciano failed to comply with NAC 612.110(1) and admittedly failed to file her weekly benefit claim, either online or in person. Luciano filed a reply along with a supplemental application to admit additional evidence. Specifically, in the supplemental application, Luciano requested the district court order ESD transmit the audio recording of the hearing so she could verify the transcript was accurate. Luciano further alleged the audio recording would demonstrate the referee was attempting to induce her into admitting she was required to file her claim in person. ESD opposed the supplemental application, and Luciano filed a reply. Ultimately, the district court denied the petition for judicial review, finding NRS 612.375(1) required an applicant to comply with ESD's procedures to obtain benefits and NAC 612.110(1) prohibited an applicant from predating a claim by more than two weeks. Luciano now appeals.

“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 an administrative agency’s factual 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). 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 her factual findings and reasoning. *See Nev. Emp. Sec. Dep’t v. Holmes*, 112 Nev. 275, 279-80, 914 P.2d 611, 613-14 (1996).

We conclude substantial evidence supports the appeals referee’s decision as Luciano concedes she ceased filing her weekly benefit claims in July 2021 and had predated her 2023 benefits request by nearly two years. NRS 612.375(1) states for an unemployed person to be eligible to receive benefits they must comply with ESD’s reporting regulations. And NAC 612.110(1)(c) states “[i]n no case may a claim be predated more than 2 weeks preceding the week in which the claim is actually filed.” Here, Luciano concedes her 2023 claim was predated nearly two years before the week in which she filed the claim. And although Luciano contends she had good cause for the delay, we conclude the appeals referee did not err as NAC 612.110(1)(c) mandated the denial of her claim. Further, Luciano provided no documentary evidence to support her claim that the alleged technical

difficulties took nearly two years to resolve. Accordingly, we affirm the appeals referee's decision.

On appeal, Luciano raises various arguments for the first time, including that certain statutes relating to unemployment benefits violate her constitutional rights. In response, ESD argues Luciano is precluded from raising new arguments on appeal. Luciano replies that constitutional arguments cannot be forfeited. We conclude that to the extent Luciano raises new arguments on appeal she has forfeited them as they are not jurisdictional challenges. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating “[a] point not urged in the trial court, unless it goes to the jurisdiction of that court,” is forfeited). And although we have the discretion to address constitutional issues not raised below, we decline to do so here as the appeals referee did not rely upon the challenged statutes when rendering her decision. *See Desert Chrysler-Plymouth, Inc. v. Chrysler Corp.*, 95 Nev. 640, 643-44, 600 P.2d 1189, 1191 (1979) (explaining that this court has discretion whether to consider unpreserved constitutional issues on appeal).¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Bulla, C.J.


Gibbons, J.


Westbrook, J.

¹Insofar as Luciano raises additional arguments we have considered them and conclude they do not provide a basis for relief.

cc: Mark R. Denton, District Judge
State of Nevada/DETR - Carson City
Amy C. Luciano
Eighth District Court Clerk