



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIA CONSUELO JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
ALLEGIANT AIR, LLC; 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. 90866-COA

ORDER OF AFFIRMANCE

Maria Consuelo Johnson appeals from a district court order dismissing a petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Hon. Carli Lynn Kierny, Judge.

In September 2020, Johnson applied for and was deemed eligible to receive unemployment insurance benefits. In April 2022, the Employment Security Division (ESD) issued Johnson a disqualification letter (decision) and notice of overpayment. The decision stated Johnson was not entitled to benefits because she had possibly failed to report or underreported benefits from her prior employers and had not provided weekly gross wage information for her employment. The decision informed Johnson that the deadline for appeal was April 19, 2022, and provided instructions for submitting an appeal. Johnson, however, did not appeal the decision until May 23, 2022.

In September 2024, Johnson appeared at a hearing before an appeals referee. Johnson testified that she received, read, and understood the decision. When pressed as to whether she recalled reviewing the deadline for appeal, Johnson testified, “I honestly don’t think I read the whole thing” because the decision “freaked [her] out,” and that, “maybe I didn’t pay attention to the actual date.” Johnson confirmed, however, that she acknowledged the untimeliness of her appeal when she transmitted it to ESD; indeed, the record shows Johnson included a cover letter on her appeal in which she acknowledged that she was “sending [the requested wage documentation] past my appeal date.” Johnson testified she waited until May 23, 2022, to submit her appeal because she was gathering paperwork from her former employers. The appeals referee determined that this did not constitute good cause for extending the appeal deadline. The appeals referee thereafter informed Johnson that she did not have jurisdiction to hear the issues relating to eligibility or overpayment.

In the written order, the appeals referee affirmed ESD’s disqualification of benefits and overpayment decision and found that Johnson failed to timely file her appeal without good cause. The appeals referee found that ESD’s decision and notification of overpayment were mailed to Johnson’s residence where she had lived since 2017; Johnson received and read the decision and notification of overpayment which indicated her last day to appeal was April 19, 2022, although the date she received the letter was unknown; that she had access to her online portal; and that she understood the information on filing an appeal. The appeals referee further found there was no evidence in the record establishing that the delay in filing the appeal was unavoidable or outside of Johnson’s control. Consequently, the appeals referee determined that Johnson’s appeal was untimely and without good cause

pursuant to NRS 612.495(1), and it therefore did not have jurisdiction to review the case on the merits.

Johnson subsequently appealed to the Board of Review (Board), which declined further review and adopted the decision of the appeals referee. Johnson then filed a timely petition for judicial review. Following briefing, the district court entered an order dismissing Johnson's petition. This appeal followed.

On appeal, Johnson challenges the decisions of the appeals referee and Board. Johnson also argues that the district court applied an incorrect and overly deferential review standard concerning the dismissal of her appeal on procedural grounds and thereby "effectively abdicated its review obligation."¹ We disagree. "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).

Additionally, this court "will not substitute [our] judgment as to the weight of the evidence for that of the administrative agency." *Langman v.*

¹In arguing that the district court applied the wrong standard of review, Johnson fails to identify with any cogent argument or relevant authorities what standard of review the district court should have applied. Thus, we do not reach these arguments. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that an appellate court need not consider claims not cogently argued). We nonetheless note, as set forth *supra*, that the district court's review of an administrative decision is limited to ascertaining whether an administrative agency acted arbitrarily and capriciously and thereby abused its discretion.

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 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).

“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.* It is undisputed that Johnson submitted her appeal to the appeals referee after the April 19 deadline specified in the determination letter. Thus, 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 single issue.

The appeals referee gave Johnson an opportunity to testify regarding the untimeliness of her appeal of ESD’s decision. At the hearing, Johnson initially testified that she had received and reviewed the disqualification letter and overpayment. Although Johnson testified that she may not have read the disqualification letter in full or noted the appeal deadline, she expressly acknowledged upon the submission of her appeal that she had missed the appeal deadline. And while Johnson also testified that she had submitted her appeal late because she was obtaining the requested wage information from her former employer, the record indicates she never supplied all the information ESD had requested.

In light of the foregoing, we conclude the record demonstrates the appeals referee did not act arbitrarily or capriciously in determining that Johnson failed to demonstrate good cause for an extension.² *See Bundley*, 122 Nev. at 1444, 148 P.3d at 754. As a result, Johnson fails to demonstrate the district court erred by denying her petition for judicial review. Accordingly, we ORDER the judgment of the district court AFFIRMED.³


Bulla, C.J.


Gibbons, J.


Westbrook, J.

²In her reply brief, Johnson raises arguments concerning good cause as provided for by NRS 612.495(1). In her opening brief, however, Johnson did not include cogent argument—or even refer to—NRS 612.495. As a result, she has forfeited any arguments raised for the first time in her reply brief. *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).

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

cc: Hon. Carli Lynn Kierny, District Judge
Gabrielle Jeanne Carr, Settlement Judge
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Eighth District Court Clerk