IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LIBERATORE,
Appellant,
vs.
THE STATE OF NEVADA EMPLOYMENT SECURITY DIVISION; LYNDA PARVEN IN HER CAPACITY AS ADMINISTRATOR OF THE EMPLOYMENT SEURITY DIVISION; AND J. THOMAS SUSICH IN HIS CAPACITY AS THE CHAIRPERSON OF THE EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW,
Respondents.

No. 87337

FILED

AUG 04 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER DENYING PETITION FOR REVIEW*

Review denied. NRAP 40B(a), (g).

It is so ORDERED.

_____, C.J.
Herndon

_____, J.
Pickering

_____, J.
Parraguirre

_____, J.
Bell

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Lee



25-33926

cc: Hon. Jessica K. Peterson, District Judge
Daniel Liberatore
State of Nevada/DETR - Carson City
Eighth District Court Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

| | |
|---|---|
| DANIEL LIBERATORE,<br>Appellant,<br>vs.<br>THE STATE OF NEVADA EMPLOYMENT SECURITY DIVISION; LYNDA PARVEN IN HER CAPACITY AS ADMINISTRATOR OF THE EMPLOYMENT SEURITY DIVISION; AND J. THOMAS SUSICH IN HIS CAPACITY AS THE CHAIRPERSON OF THE EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW,<br>Respondents. | No. 87337-COA ✓ |
| DANIEL LIBERATORE,<br>Appellant,<br>vs.<br>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 THE CHAIRPERSON OF THE EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW,<br>Respondents. | No. 87703-COA |

FILED

APR 15 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Daniel Liberatore appeals from district court orders denying petitions for judicial review in unemployment matters. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge (Docket No. 87337-COA); Eighth Judicial District Court, Clark County; Maria A. Gall, Judge (Docket No. 87703-COA).



25-1108606

In 2020, Liberatore filed an application for Pandemic Unemployment Assistance (PUA) under the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) in which he self-certified that he was self-employed, last worked in March 2020, and he became unemployed as a direct result of the COVID-19 pandemic. Respondent the State of Nevada Employment Security Division (ESD) later notified Liberatore that, within 21 days, he had to submit documentation in support of his self-employment claim, and such documentation could include his tax documents, business records, or paychecks. The record further indicates ESD directed Liberatore to submit proof of his identity through ID.me. However, Liberatore did not submit documentation demonstrating that he was self-employed and did not submit proof of his identity. ESD subsequently denied Liberatore's claim in November 2020, as ESD was unable to authenticate his identity and his claim was identified as being associated with suspicious activity. ESD also issued another decision in which it informed Liberatore that it had conducted a review and an additional investigation into his claim and it again determined that he did not present substantiation of his claim of self-employment.

Liberatore appealed ESD's decision to an appeals referee and the matter proceeded to an administrative hearing. The hearing was scheduled for January 18, 2022. However, during that hearing the appeals referee discovered Liberatore had not provided his income tax records and rescheduled the hearing to allow him to file those records. Liberatore later filed his 2020 tax records and those documents stated Liberatore did not earn any income in 2020. The hearing resumed on March 22, 2022, and Liberatore testified at that hearing.

Liberatore testified that he became self-employed in January 2020 but also stated he had merely begun training for his role in January 2020 and had not yet had clients or earned income prior to the COVID-19 pandemic. Liberatore further acknowledged he had not had any business expenses and believed customers would not have paid him directly but would have instead paid a third-party, Chris Edwards, for Liberatore's services. In addition, Liberatore presented a letter and testimony from Edwards concerning the training Liberatore undertook and the nature of the work Liberatore would have performed had the pandemic not occurred.

Following the hearing, the appeals referee issued two written decisions in which the referee found that Liberatore failed to provide sufficient documentation to show that he qualified for PUA. Specifically, the appeals referee found that Liberatore failed to submit proof of his identity, either through ID.me or through ESD's portal. The appeals referee found that Liberatore also failed to submit sufficient documentation to substantiate his claim of self-employment and that she could not conclude with any certainty that Liberatore had actually been self-employed and lost that employment due to the COVID-19 pandemic. In light of Liberatore's failure to submit proof of his identity and sufficient documentation to verify his claim of self-employment, the appeals referee affirmed ESD's decision to deny Liberatore's claim. The ESD Board of Review later declined to review Liberatore's appeals from the appeals referee's decisions.

Liberatore subsequently petitioned the district court for judicial review of the decisions, and respondents filed answers. In separate orders, the district court denied Liberatore's petitions for judicial. In both orders, the district court found that substantial evidence supported the appeals referee's rejection of Liberatore's PUA claims. These appeals followed.

On appeal, Liberatore argues that ESD erroneously found that his claim was fraudulent, and the appeals referee erroneously found that he provided insufficient evidence to substantiate his PUA claim.

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 was 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 unsupported 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.* 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). In this case, we examine the appeals referee's decision 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).

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. To qualify for PUA benefits Liberatore needed: (1) ineligibility for standard unemployment benefits; (2) self-certification that he was "otherwise able to work and available to work . . . except [that he was] unemployed, partially unemployed, or unable or unavailable to work;" and (3) self-certification that the reason for being unable to work was for one of eleven pandemic-related reasons within the statute. *See* 15 U.S.C. § 9021(a)(3)(A). Although 15 U.S.C. § 9021(a)(3)(A)(ii)(I) allowed applicants for benefits under PUA to self-certify that they were able and available to work but unemployed for pandemic-related reasons, individual states were nevertheless authorized to ensure the efficacy and integrity of the self-certification process by "tak[ing] reasonable and customary precautions to deter and detect fraud." U.S. Dep't of Labor, *Unemployment Insurance Program Letter No. 16-20, attachment 1*, 1-7 (April 5, 2020); *see also* 15 U.S.C. § 9021(f) (requiring states to have "adequate system[s] for administering . . . assistance [under the CARES Act]"). Moreover, "the state ha[d] authority to request supporting documentation when investigating the potential for fraud." U.S. Dep't of Labor, *Unemployment Insurance Program Letter No. 16-20, Change 2, attachment 1*, I-9 (July 21, 2020).[1]

Here, Liberatore was directed by ESD to submit information to substantiate his identity and his claim of self-employment but he did not do so. In light of ESD's responsibility to deter and detect fraud and its

[1]Of note, Liberatore contends that later amendments to federal law requiring documentary proof of self-employment should not apply because he filed his claim prior to those amendments. However, Liberatore is not entitled to relief based on this argument in light of the aforementioned program letters issued by the U.S. Dep't of Labor authorizing states to investigate potential fraud and to request supporting documentation concerning PUA claims when so doing.

authority to request supporting documentation for a PUA claim when investigating potential fraud, Liberatore fails to demonstrate that ESD improperly issued the initial denial of his claim based on his failure to provide sufficient information concerning his identity and because it identified his claim as one associated with suspicious activity.

In addition, by way of his subsequent appeal to the appeals referee, Liberatore had the opportunity to provide evidence in support of his claim of self-employment and to prove that ESD's determination was incorrect. However, as explained previously, at the hearing Liberatore did not present sufficient information to prove his identity. Liberatore also did not submit sufficient documentation showing that he had been self-employed. After consideration of Liberatore's testimony and his failure to submit information to substantiate his identity or his claim of self-employment, the appeals referee concluded that Liberatore failed to establish the validity of his PUA claim, as he did not establish that he was actually self-employed and lost that employment as a result of the COVID-19 pandemic. The appeals referee accordingly affirmed ESD's decision to deny Liberatore's PUA claim.

The appeals referee's findings made in support of these determinations are supported by substantial evidence in the record. While Liberatore contends that his self-certification of self-employment and the information provided to the appeals referee was sufficient to establish his PUA claim, it is not this court's role to reweigh the evidence on appeal. *See Lellis v. Archie*, 89 Nev. 550, 554, 516 P.2d 469, 471 (1973) (providing that appellate courts will "not pass upon the credibility of witnesses or weigh the evidence" when reviewing an unemployment compensation decision). Because the appeals referee's findings are supported by substantial

evidence, Liberatore fails to demonstrate that the appeals referee abused her discretion by finding Liberatore failed to provide sufficient evidence to prove the PUA claim. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482.

Based on the foregoing, we conclude the appeals referee's rejection of Liberatore's appeal was not arbitrary or capricious and, thus, Liberatore fails to demonstrate he is entitled to relief. *See id.*

Next, Liberatore argues his due process rights were violated because ESD took too long to evaluate the merits of his PUA claim. 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)).

Here, the record demonstrates that Liberatore was provided with notice of the relevant hearings and he had the opportunity to be heard and to present evidence at the hearings before the appeals referee. Liberatore's right to due process was thus satisfied. Liberatore does not present cogent argument as to how any delay prejudiced him or precluded him from presenting evidence in support of his claim, and he accordingly fails to demonstrate that any delay in evaluating his claim constituted a violation of his due process rights. Moreover, even assuming, without deciding, that any delay in the proceedings constituted error, any such error was harmless as the appeals referee's decisions were supported by

substantial evidence. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"). In light of the foregoing, we affirm the district court's denial of Liberatore's petitions for judicial review.

It is so ORDERED.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Jessica K. Peterson, District Judge
Hon. Maria A. Gall, District Judge
Daniel Liberatore
State of Nevada/DETR - Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk

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[2]Insofar as Liberatore raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

In addition, we have reviewed Liberatore's March 4, 2025, motion to consolidate and conclude no relief is warranted.

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL LIBERATORE,
Appellant,
vs.
THE STATE OF NEVADA EMPLOYMENT SECURITY DIVISION; LYNDA PARVEN IN HER CAPACITY AS ADMINISTRATOR OF THE EMPLOYMENT SEURITY DIVISION; AND J. THOMAS SUSICH IN HIS CAPACITY AS THE CHAIRPERSON OF THE EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW,
Respondents.

No. 87337-COA

FILED

JUN 26 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

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

No. 87703-COA

*ORDER DENYING REHEARING*



25-28012

Rehearing denied. NRAP 40(a), (h).

It is so ORDERED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Jessica K. Peterson, District Judge
Hon. Maria A. Gall, District Judge
Daniel Liberatore
State of Nevada/DETR - Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk

**NEOJ**

CAROLYN BROUSSARD, ESQ.
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State of Nevada, Department of
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Employment Security Division (ESD)
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Las Vegas, NV 89104-4267
Telephone No.: (702) 486-0295
*Attorney for* **DETR/ESD**

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DANIEL LIBERATORE;

Petitioner,

vs.

EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA and LYNDA PARVEN in her capacity as Administrator of the EMPLOYMENT SECURITY DIVISION; J. THOMAS SUSICH, in his capacity as the Chairperson of the EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW, and PUA, N/A, as Employer,

Respondents.

CASE NO.: A-22-856803-J

DEPT. NO.: VIII

**NOTICE OF ENTRY OF ORDER DISMISSING PETITION FOR JUDICIAL REVIEW**

**PLEASE TAKE NOTICE** that on the 25th day of August, 2023, the Court entered the Order Dismissing Petition for Judicial Review in the above-entitled case. A copy of said Order is attached hereto.

**DATED** this 26th day of August, 2023.

/s/ *Carolyn Broussard*
CAROLYN BROUSSARD, ESQ.
*Attorney for* Nevada ESD Respondents

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DISMISSING PETITION FOR JUDICIAL REVIEW, ***by either*** electronic means (N.E.F.C.R. Administrative Order 14-2), if possible, as indicated by an email address set forth below, ***and/ or*** by placing the same within an envelope and depositing said envelope with the State of Nevada Mail for postage and mailing from Las Vegas, Nevada, addressed for delivery as follows:

Daniel Liberatore
1995 Thunder Ridge Cir
Henderson, NV 89012
PO Box 13743
Las Vegas, NV 89112
Dmandmail@protonmail.com

***And via e-file Courtesy Copy to:***

Dept08LC@clarkcountycourts.us

**DATED** this 26th day of August, 2023.

*/s/ Andrew Wiersema*
ANDREW WIERSEMA

**ORDD**
CAROLYN BROUSSARD, ESQ.
Nevada State Bar No. 4545
State of Nevada, Department of
Employment, Training & Rehabilitation (DETR)
Employment Security Division (ESD)
500 East Third Street
Carson City, NV 89713
Telephone No.: (775) 684-3996
*Attorney for* **DETR/ESD**

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DANIEL LIBERATORE;

Petitioner,

vs.

EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA and LYNDA PARVEN in her capacity as Administrator of the EMPLOYMENT SECURITY DIVISION; J. THOMAS SUSICH, in his capacity as the Chairperson of the EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW, and N/A, as Employer,

Respondents.

CASE NO.: A-22-856803-J

DEPT. NO.: VIII

**ORDER DISMISSING PETITION FOR JUDICIAL REVIEW**

This action was commenced by Petitioner, with the filing of a Petition for Judicial Review on August 11, 2022. The Record in this case was filed on October 27, 2022. The Petitioner's Opening Brief was filed on December 6, 2022, the

Respondent's Answering Brief was filed on January 5, 2023, and the Petitioner's Reply Brief was filed on January 25, 2023. The Court reviewed the Petitioner's Petition for Judicial Review in Chambers on June 12, 2023, and at that time the Court read and reviewed the Opening Brief, Answering Brief, Reply Brief and record on Appeal, and decided the matter on the pleadings pursuant to EDCR 2.23 as follows:

In order for the Court to reverse the administrative decision of the Board of Review, the Court must find that the Board's actions were arbitrary and capricious or that the Board committed an error of law. *Leeson v. Basic Refractories*, 101 Nev. 384, 386, 705 P.2d 137, 138 (1985). The Board's factual determinations, when supported by substantial evidence, are conclusive. *Clark Cnty. Sch. Dist. V. Bundley*, 122 Nev. 1440, 1444, 148 P.3d 750, 754 (2006).

Here, The Court does not find that the Board acted arbitrarily or capriciously or that it committed a clear error of law, and therefore affirms the decision of the Board.

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On July 12, 2023 Petitioner filed a Motion to Amend the Judgment asking the Court to Amend the Order entered on June 14, 2023 to change the wording to dismissed without prejudice instead of dismissed with prejudice. Respondent filed an Opposition on July 19, 2023. The Court heard oral argument on August 15, 2023. Once the District Court renders its decision on the Petition for Judicial Review, there is nothing left for the Court to do unless the matter is appealed to a higher COurt and then reversed and remanded. Accordingly, dismissal with prejudice when the Court affirms the Referee's decision is the appropriate resolution of the matter. Based on the foregoing, Petitioner's Motion to Amend the Order is DENIED.

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**Therefore,** the Petition for Judicial Review is hereby DENIED, and the case is dismissed, with prejudice.

**IT IS SO ORDERED** this _____ day of _____, 2023.

**Dated this 25th day of August, 2023**

Jessica K Peterson

District Judge

**735 CD4 3C7A EF43**
**Jessica K. Peterson**
**District Court Judge**

Prepared and Submitted by:

CAROLYN BROUSSARD, ESQ.
*Attorney for* Respondent ESD

Approved as to form and content:

NO RESPONSE
DANIEL LIBERATORE
*Petitioner*

| | |
|---|---|
| **From:** | Andrew Wiersema |
| **To:** | dmadmail@protonmail.com |
| **Cc:** | ESD Legal; Carolyn Broussard; Jen Sarafina; Andrew Wiersema; Barbara Jones |
| **Subject:** | Proposed Order |
| **Date:** | Tuesday, August 15, 2023 2:41:25 PM |
| **Attachments:** | 20230815 Order Denying Mtn to Amend Jt.pdf |

Good day,

Please find attached the proposed order for review and comment. If you approve, respond to this email confirming your consent to affix your e-signature for submission to the court.
Please respond by close of business 08/21/2023.

Respectfully,

*Andrew R. Wiersema*
Legal Secretary II
Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
Phone: (702) 486-0295
Internal ext. 60295
arwiersema@detr.nv.gov

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Daniel Liberatore, Petitioner(s) | CASE NO: A-22-856803-J |
| vs. | DEPT. NO. Department 8 |
| Nevada Employment Security Division, Respondent(s) | |

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/25/2023

| | |
|---|---|
| Daniel Liberatore | dmadmail@protonmail.com |
| Carolyn Broussard | ESDLegal@detr.nv.gov |
| Jen Sarafina | j-sarafina@detr.nv.gov |
| Andrew Wiersema | arwiersema@detr.nv.gov |