

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 24-0480

AUSTIN LAKE,

Petitioner and Appellant,

v.

MONTANA DEPARTMENT OF LABOR
AND INDUSTRY,

Respondent and Appellee.

ANSWER BRIEF

On Appeal from the Montana Twentieth Judicial District Court,
Sanders County, The Honorable Molly Owen, Presiding

APPEARANCES:

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PETITIONER AND
APPELLANT

ATTORNEY FOR RESPONDENT
AND APPELLEE

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Statement of Issues

The issues before this Court are:

1. Whether the District Court erred by affirming the Unemployment Insurance Appeals Board decision that: (a) Austin Lake's claim effective date should not be backdated to include the period of January 1, 2023, to February 25, 2023, because he did not show good cause to do so pursuant to Mont. Code Ann. § 39-51-2104(1)(a) and Admin. R. Mont. 24.11.441(5)¹ and (b) Document No. 230 should not be admitted into the record pursuant to Admin. R. Mont. 24.7.312.
2. Whether this Court can consider Austin Lake's newly raised arguments.

Statement of the Case

Austin Lake (Lake) appeals a District Court Order affirming that the Unemployment Insurance Appeal's Board's (Board) findings were supported by substantial evidence and determining there was no evidence of fraud, and the Board's conclusions of law were correct. (S. Ct. Doc. 5 at D.C. Doc. 13 at 4-9.) Lake filed a Petition for Judicial Review of the Board's decision denying admission of Document 230 and affirming the Hearing Officer's decision that Lake

¹ On July 1, 2024, all administrative rules under Title 24 Chapter 11 were repealed and replaced by Title 24 Chapter 40. On April 13, 2024, Title 24 Chapter 7 was amended. The administrative rules cited herein are those in effect during the relevant dates listed herein.

lacked good cause to backdate his claim. (S. Ct. Doc. 5 at D.C. Doc. 2.) After the District Court issued its Order, the Department filed Notice of Entry of Judgment and Lake sought this Court's review. (S. Ct. Doc. 1 and 5 at D.C. Doc. 13 and 14.)

Statement of Relevant Facts

Lake received a copy of the Claimant Handbook (Handbook) in August 2022², which he read and understood. (S. Ct. Doc. 9 at DLI-0031 and -0032, Findings of Fact Nos. 1-3, DLI-0042 thru -0045, and Office of Administrative Hearings (OAH) Audio Recording 2 at 20:08 to 21:48.) In April 2023, Lake reopened his Unemployment Insurance (UI) claim, and a UI claims representative backdated the claim effective date to mid-March. (S. Ct. Doc. 9 at DLI-0032 Findings of Fact 4.) Lake requested the Department further backdate his claim from January 1st through mid-March. (*Id.* at Findings of Fact No. 5, DLI-0042, and DLI-0046.) The Department ultimately backdated Lake's claim from February 26 through mid-March (Period 1) but did not backdate it for January 1 through February 25 (Period 2) because he did not show good cause as required under Admin. R. Mont. 24.11.441 and 24.11.204(19). (S. Ct. Doc. 9 at DLI-0032 Findings of Fact Nos. 7-9, and 11 DLI-0039 thru -0040, DLI-0047 thru DLI-0051.) Lake appealed to the OAH. (Docket 9 at DLI-0041).

² Lake opened a UI claim in August 2022 which was closed for inactivity shortly thereafter. (*Id.*)

The Hearing Officer found Lake's testimony unpersuasive, concluding his reasons were not evidence of compelling circumstances, nor did he demonstrate reasonable diligence in trying to overcome them. (S. Ct. Doc. 9 at DLI-0032 to -0033, OAH Audio Recording 2 at 19:10 to 19:26.) The preponderance of the evidence showed Lake did not attempt to contact the Unemployment Insurance Division (UID) until late February 2023. (*Id.* and OAH Audio Recording 2 at 15:12 to 15:30.) The Hearing Officer affirmed the UID decision; Lake had no good cause for the Department to backdate his claim to Period 2. (*Id.*)

Lake appealed the Hearing Officer's decision to the Board, submitting new evidence³ including Document 230, an unsigned third page of a document from The Hartford regarding insurance. (S. Ct. Doc 5 at D.C. Doc 10 at Ex. 2 and S. Ct. Doc. 9 at DLI-007 and -0018.) The Board did not admit it as Lake failed to meet the requirements of Admin. R. Mont. 24.7.312. (S. Ct. Doc. 9 at DLI-0007.) The Board found the reasons Lake did not open his claim in January were insufficient to overturn the Hearing Officer's decision; based on the evidence in the record and the parties' arguments, Lake lacked good cause to backdate his claim for Period 2.

³ The Board admitted Lake's written arguments which are not part of Lake's later appeals. (S. Ct. Doc. 9 at DLI-0006 thru -0007.) Lake also submitted Document 231, but his Petition only addressed Document 230. (S. Ct. Doc. 5 at D.C. Doc. 2 at 2 and D.C. Doc. 10 at Ex. 2.) Lake waived any argument regarding Document 231.

(S. Ct. Doc. 9 at DLI-0003 thru -0008.) The Board affirmed the lower decision. (*Id.*)

Lake filed a Petition for Judicial Review in district court. (S. Ct. Doc. 5 at D.C. Doc 2.) Lake asserted he had good cause both to backdate his claim and to admit Document 230. (*Id.* at 1-2 and S. Ct. Doc. 9 at DLI-0003 thru -0007.) Lake filed no opening or reply briefs.⁴ The District Court reviewed the Department's Response and the record, affirming the Board's decision not to admit Document 230, as it did not meet the requirements of Admin. R. Mont. 24.7.312 and was hearsay and irrelevant. (S. Ct. Doc. 5 at D.C. Doc. 10 at 4-9.) It also affirmed the Board's decision not to backdate the claim to Period 2 for lack of good cause pursuant to Admin. R. Mont. 24.11.441 and 24.11.204(19).

Lake timely appealed to this Court. His Opening Brief ignores the District Court's Order and issues before it, instead raising new issues not briefed or decided below and outside the scope of his appeal from the Board. (S. Ct. Doc. 7 at 2-3.)

⁴ Lake filed a brief "[i]n reply to Respondents [sic] 'notice of appearance' and 52 pages of documents taken from the file and submitted to the Court." (S. Ct. Doc. 5 at D.C. Doc. 8 at 1.) However, as this brief was in response to the Department's legal counsel's Notice of Appearance and prior to the district court issuing a briefing schedule, it should not be construed as an Opening or Reply brief as to the issue before the district court. (S. Ct. Doc. 5 at D.C. Doc. 5, 8, and 9.)

Standard of Review

When reviewing the finality of a Board decision regarding unemployment benefits, this Court “must apply a statutory standard of review.” *Crouse v. State*, 2017 MT 254, ¶ 15, 389 Mont. 90, 403 P.3d 1260. The statutory standard of review is set out in Mont. Code Ann. § 39-51-2410(5): “the findings of the board as to the facts, if supported by evidence and in the absence of fraud, are conclusive and the jurisdiction of the court is confined to questions of law.”

The findings of fact must be supported by substantial evidence which is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” and is “more than a scintilla, but less than a preponderance of the evidence.” *Johnson v. W. Transp. LLC*, 2011 MT 13, ¶¶ 16-17, 359 Mont. 145, 248 P.3d 1094, citing *Ward v. Johnson*, 242 Mont. 225, 228, 790 P.2d 483, 485 (1990), *Noone v. Reeder*, 151 Mont. 248, 252, 441 P.2d 309, 311-12 (1968). Even where substantial or a preponderance of the evidence exists to the contrary, if the findings are supported by substantial evidence, they are conclusive. *Johnson*, ¶¶ 16-17. The Court does not determine whether it would have arrived at the same conclusion with the same evidence. *Ward*, 242 Mont. at 228, 790 P.2d at 485. Nor does it balance conflicting evidence regarding the findings, determine which is the more substantial evidence, or consider where the preponderance of evidence lies; as that would substitute the Court’s view of the evidence, effectively nullifying the

conclusive character of the Board's findings of fact as provided by statute. *Noone*, 151 Mont. at 252, 411 P.2d at 312.

District courts review Board decisions on conclusions of law for correctness. *Crouse* at ¶ 16, citing *Sayler v. Mont. Dep't of Labor & Indus.*, 2014 MT 255A, ¶ 13, 376 Mont. 369, 336 P.3d 358. This Court applies the same standard when reviewing the district court's decision. *Id.* citing *Gary & Leo's Fresh Foods, Inc. v. Mont. Dep't of Labor & Indus.*, 2012 MT 219, ¶ 12, 366 Mont. 313, 286 P.3d 1218 and *Steer, Inc. v. Department of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990).

The Court's review of constitutional issues is plenary, and it examines a district court's interpretation of law for correctness. *State v. Sedler*, 2020 MT 248, ¶ 5, 401 Mont. 437, 473 P.3d 406, citing to *State v. Egdorf*, 2003 MT 264, ¶ 12, 317 Mont. 436, 77 P.3d 517; *State v. Bedwell*, 1999 MT 206, ¶ 4, 295 Mont. 476, 985 P.2d 150; *In re S.L.M.*, 287 Mont. 23, 32, 951 P.2d 1365, 1370 (1997).

Summary of Argument

This Court should affirm the District Court's decision. Lake failed to raise argument against the District Court's decision, abandoning all such arguments. The Board's findings were supported by substantial evidence, and the District Court's conclusions are correct. This Court should dismiss Lake's irrelevant or

newly raised arguments and allegations as they are outside the scope of judicial review and the lower court had no opportunity to consider them.

Argument

I. Lake has conceded the District Court's Order was correct by failing to make any arguments challenging it.

The District Court Order should be affirmed. The Court, based on a review of the complete record, issued a well-reasoned and thorough decision setting forth the bases for affirming the decision of the Board. Lake has set forth no argument challenging any portion of the Order, instead focusing on new issues not previously raised.

This Court should decline to consider any argument Lake may subsequently raise regarding the district court's decision and should instead affirm. (See *Ford v. State*, 2005 MT 151, ¶ 35, 327 Mont. 378, 114 P.3d 244 finding that “we have no occasion to review the District Court's decision” when the appellant abandoned certain contentions on appeal; *Skinner v. Allstate Ins. Co.*, 2005 MT 323, ¶ 9, 329 Mont. 511, 127 P.3d 359 noting that a party did not brief certain issues on appeal and “[t]hose issues, therefore, have been abandoned on appeal, and we do not address them.”) This Court has held, repeatedly, it “will not consider unsupported issues or arguments” nor is it the Court's obligation to conduct legal research for appellant, guess his precise position, or develop legal analysis to support his position. *In Re Marriage of Snow*, 2002 MT 143, ¶ 28, 310 Mont. 260, 49 P.3d

610, citing to *In re Custody of Krause*, 2001 MT 37, ¶ 32, 304 Mont. 202, 19 P.3d 811 and *In re Estate of Bayers*, 1999 MT 154, ¶ 19, 295 Mont. 89, 983 P.2d 339 (citations omitted).)

Lake's Opening Brief does not address the District Court's Order; he does not provide any argument as to the issues the District Court ruled upon, nor provides any legal authority or reasoning this Court should not affirm said Order. While his Petition requested the district court overturn the decision to backdate his claim, he did not raise the argument again. (S. Ct. Doc. 5 at D.C. Doc. 2 at 1-2.) His Petition did not address the rejection of Document 230. (*Id.* at 1-3.) Because Lake did not raise these issues or arguments in this appeal nor argue them before the district court, he has abandoned them.

Because it is correct and because it was not the subject of argument by Lake, the decisions below should be affirmed.

II. This Court should find Lake's argument regarding separation of employment irrelevant and should not consider newly-raised arguments.⁵

Lake's brief does not address the District Court's decision,⁶ newly arguing instead his separation of employment and constitutional and statutory violations. These new arguments are irrelevant to whether the Board should have admitted Document 230 or backdated his claim's effective date. (S. Ct. Doc. 9 at DLI-0003, DLI-0031, DLI-0039, DLI-0047, and DLI-0050.)

'It is axiomatic that an appellate court will generally not review any issue not raised in the court below.' The rule applies to both substantive and procedural matters. It is based on the principle that it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider. The principle that we will not consider issues which were not raised in the forum which is alleged to have erred applies in the context of unemployment insurance hearings as well.

Wheelsmith Fabrication, Inc. v. Montana Dep't of Labor & Indus., 2000 MT 27, ¶¶ 11-12, 298 Mont. 187, 993 P.2d 713. (Internal citations omitted.) This Court should not consider any argument or issue regarding a constitutional challenge or

⁵ Lake has failed to comply with the briefing requirements of Mont. R. App. P. 12(1)(a)-(i), and this Court has the authority to dismiss Lake's appeal or decline to address the merits of his arguments on appeal for this reason. *In re Marriage of Snow*, 2002 MT 143, 310 Mont. 260, 49 P.3d 610; see also, *Harland v. Anderson Ranch Co.*, 2004 MT 132, ¶ 33, 321 Mont. 338, 92 P.3d 1160.

⁶ "We will not address the merits of an issue presented for the first time in a reply brief on appeal." *Denend v. Bradford Roofing and Insulation*, 218 Mont. 505, 509-10, 710 P.2d 61, 64 (1985), citing to *Loney v. Milodragovich, Dale & Dye, P.C.*, 273 Mont. 506, 512, 905 P.2d 158, 162 (1995). *Pengra v. State*, 2000 MT 291, ¶ 13, 302 Mont. 276, 14 P.3d 499.

alleged statutory violations by Lake's employer or the Department.⁷ (S. Ct. Doc 5 at D.C. Doc. 2 and S. Ct. Doc 7 at 2.) This Court does not consider new arguments at the appellate level nor changes in legal theory. *State v. Ferguson*, 2005 MT 343, ¶ 38, 330 Mont. 103, 126 P.3d 463. If new arguments should be considered, this Court should remand the matter to the district court to do so.

Lake references, in his Opening Brief, documents he sent to the Attorney General on September 25, 2024, which are not included in the administrative record, which he asserts as "evidence that [he] has fulfilled the burden of proof." (S. Ct. Doc. 11 at 1 and 3.) He also claims this list includes violations of his constitutional rights. (*Id.*) However, this Court should not consider such assertions or, should Lake subsequently file such documents, admit them. First, the Attorney General declined to intervene, and Lake provides no evidence or actual argument; instead, alleging and listing statutes and constitutional articles. (S. Ct. Doc. 7 at 2-3.) Second, the statute governing judicial review, § 39-51-2410(5), does not allow courts to consider new evidence relative to appeal.

Additionally, this Court should not consider issues or arguments regarding his former employer; it was not a party to this appeal⁸, nor was it before the

⁷ The Department denies violating any Constitutional provisions or state statutes which Lake alleges.

⁸ The District Court dismissed Lake's employer via its Order, which Lake did not challenge in this appeal.

District Court or at any administrative level. (S. Ct. Doc 5 at D.C. Doc. 2, S. Ct. Doc. 9 at DLI-0003, DLI-0019, DLI-0031, and DLI-0035.)

Conclusion

This Court should affirm the District Court's decision both because (1) Lake abandoned any argument regarding the issues of the rejection of Document 230 and the denial to backdate his claim effective date and (2) the District Court's decision is without error. The evidence in the record supports the Board's findings of fact, there was no evidence of fraud as to the findings, and the District Court's conclusions of law were correct. Lake's assertions of statutory or constitutional violations are irrelevant and without merit, and this Court should dismiss them as newly raised arguments. This Court should affirm the District Court's decision.

Respectfully submitted this 3rd day of December 2024.



Alecia Sharp
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Certificate of Compliance

Pursuant to Mont. R. App. P. 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this answer brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows does not exceed 10,000 words (exactly 2605), not averaging more than 280 words per page, excluding the certificate of compliance



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CERTIFICATE OF SERVICE

I, Aleea Kay Sharp, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-03-2024:

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