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**DISTRICT COURT**  
\_\_\_\_\_, **NEVADA**

\_\_\_\_\_,'

Petitioner,

v.

EMPLOYMENT SECURITY DIVISION,  
STATE OF NEVADA, EMPLOYMENT  
SECURITY DIVISION BOARD OF  
REVIW, and LYNDA PARVEN, as  
Administrator of the EMPLOYMENT  
SECURITY DIVISION,

Respondents.

Case No.  
Dept.

**OPENING BRIEF**

\_\_\_\_\_  
Petitioner, Pro Se

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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19 *Father & Sons v. Transp. Servs. Auth.*, 124 Nev. 254, 182 P.3d 100 (2008).....8

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21 *State, Emp. Sec. Dep’t v. Weber*, 100 Nev. 121, 676 P.2d 1318 (1984).....8

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1 **I. JURISDICTIONAL STATEMENT**

2 NRS 612.530(1) allows Petitioner to file a petition for judicial review in  
3 this Court “[w]ithin 11 days after the decision of the Board of Review becomes  
4 final. . . .” The special provision of NRS Chapter 612 govern this petition, along  
5 with the general provision of NRS Chapter 233B. NRS 233B.039(3)(a).  
6

7 **II. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

8 Is Respondents’ Decision Arbitrary and Capricious or Supported by  
9 Substantial Evidence?

10 Is Respondents’ Decision Contrary to Law?

11 **III. STATEMENT OF THE CASE**

12 Nature of the Case

13  
14 Petitioner applied for Pandemic Unemployment Assistance [“PUA”] and  
15 Respondents, EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA,  
16 BOARD OF REVIEW, and LYNDIA PARVEN [“Division”] denied the  
17 application. Petitioner asks this Court to determine whether this denial is  
18 supported by substantial evidence and complied with federal law.  
19

20 Course of Proceedings

21 Petitioner filed a PUA claim under the CARES Act of 2020. 15 U.S.C.  
22 §§9021 to 9032. Congress created PUA specifically for idled workers like  
23 Petitioner who did not have traditional W-2 wages, who generally were self-  
24

1 employed, and who were not usually covered by regular unemployment benefits.  
2 15 U.S.C. §9021(a)(3)(A)(i). Weekly benefits are calculated using self-  
3 employment wages instead of a W-2 statements. 15 U.S.C. §9021(d)(1)(A)(i). A  
4 critical component of PUA is getting this money to idled workers without the usual  
5 seven day waiting period (15 U.S.C. §9021(e)) and allowing self certification that  
6 the lack of work is related to COVID-19. *Id.* at 9021(a)(3)(A)(ii).

8 Petitioner applied for PUA on \_\_\_\_\_ [Record on Appeal  
9 (“ROA”) at \_\_\_\_\_], and received a denial on \_\_\_\_\_.  
10 Petitioner appealed this denial on \_\_\_\_\_. ROA at  
11 \_\_\_\_\_. A hearing was held on \_\_\_\_\_ by the Division’s  
12 Appeals Tribunal. ROA at \_\_\_\_\_.

14 Disposition Below

15 The Appeals Tribunal denied PUA benefits and issued a decision on  
16 \_\_\_\_\_. ROA \_\_\_\_\_. The Appeals Tribunal based the  
17 denial on:

23 ROA at \_\_\_\_\_.

1 Petitioner appealed the Appeals Tribunal's decision to the Division's Board  
2 of Review on \_\_\_\_\_. ROA at \_\_\_\_\_. The Board of Review  
3 affirmed the Appeals Tribunal and adopted this decision on \_\_\_\_\_.  
4 ROA at \_\_\_\_\_. Petitioner filed a timely petition for judicial review on  
5 \_\_\_\_\_.  
6 \_\_\_\_\_ ROA at \_\_\_\_\_.

7 **IV. STATEMENT OF FACTS**

8 Petitioner was employed as a \_\_\_\_\_  
9 \_\_\_\_\_  
10 from \_\_\_\_\_ to \_\_\_\_\_ (dates). On or about March 17, 2020,  
11 Petitioner could not work anymore because:

- 12 \_\_\_\_\_ Petitioner had or experienced symptoms of COVID 19;  
13 \_\_\_\_\_ a member of Petitioner's household had COVID 19;  
14 \_\_\_\_\_ Petitioner was caring for a member of their household who had  
15 COVID 19;  
16 \_\_\_\_\_ Petitioner was primary caregiver of children who could not go to  
17 school or daycare because of the COVID 19 shutdown that prevented Petitioner  
18 from working;  
19 \_\_\_\_\_ a COVID 19 quarantine prevented Petitioner from working;  
20 \_\_\_\_\_ a health care provider advised Petitioner to self quarantine due to  
21 COVID 19 concerns;  
22  
23  
24

1 \_\_\_\_\_ a job offer was rescinded or the place of employment is unreachable  
2 because of COVID 19;

3 \_\_\_\_\_ a member of Petitioners household died because of COVID 19 and  
4 Petitioner is now the major supporter of the household;

5 \_\_\_\_\_ Petitioner had to quit their job because of contracting COVID 19;

6 \_\_\_\_\_ Petitioner’s place of employment closed as a result of COVID 19;

7 \_\_\_\_\_ Petitioner experienced a significant diminution in business because of  
8 COVID 19 or some other reason approved by the Department of Labor.  
9

10 ROA at \_\_\_\_\_.

11 Petitioner then applied for PUA and the Division denied the application.  
12

13 ROA at \_\_\_\_\_. This petition for judicial review followed. *Id.*

14 **V. ARGUMENT**

15 Standard for Review

16 Congress allows any person to “appeal any determination or  
17 redetermination regarding the rights to pandemic unemployment assistance. . . .”

18 15 U.S.C. §9021(c)(5)(A). The Division must hold a hearing that “shall be  
19 conducted in the same manner and to the same extent as the applicable State  
20 would conduct appeals of determinations or redeterminations regarding rights to  
21 regular compensation under State law.” *Id.* at §9021(c)(5)(B)(ii).  
22  
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1           When reviewing an administrative unemployment compensation decision,  
2 the district court examines the evidence in the administrative record to ascertain  
3 whether the decision is supported by substantial evidence, or whether the Board  
4 acted arbitrarily or capriciously, thereby abusing its discretion. *Clark County*  
5 *School District v. Bundley*, 122 Nev. 1440, 1444, 148 P. 3d 750, 754 (2006);  
6 *Employment Security Dept. v. Weber*, 100 Nev. 121, 676 P.2d 1318 (1984).  
7 Substantial evidence is that quantity and quality of evidence “which a reasonable  
8 person could accept as adequate to support a conclusion.” *Bundley*, 122 Nev. at  
9 1444; *Employment Security Dept. v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729  
10 P.2d 497 (1986). "Substantial evidence is more than a mere scintilla but less than  
11 a preponderance." *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir.  
12 2005)(internal quotes and citation omitted).

13  
14  
15           This Court must reverse any decision of the Division that lacks substantial  
16 evidence. *State, Emp. Sec. Dep't v. Weber*, 100 Nev. 121, 124-25, 676 P.2d 1318,  
17 1320 (1984); *Lellis v. Archie*, 89 Nev. 550, 554, 516 P.2d 469, 471 (1973). This  
18 Court may also “set aside the agency’s final decision . . . because it is, among  
19 other things, affected by error of law. . . .” *Father & Sons v. Transp. Servs. Auth.*,  
20 124 Nev. 254, 259, 182 P.3d 100, 104 (2008). This Court reviews errors of law *de*  
21 *novo*. *Bundley*, 122 Nev. at 1445, 148 P.3d at 754.  
22  
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1 PUA Under the CARES Act

2 Under the CARES Act, idled workers can self-certify that they are entitled  
3 to PUA based on not being able to work because of the COVID-19 Pandemic and  
4 the State of Emergency.<sup>1</sup> 15 U.S.C. §9021(a)(3)(A)(ii). PUA is also not available  
5 without a “sufficient work history” or the claimant must have worked “at some  
6 point from the start of the applicable tax year to the date of filing.” Department of  
7 Labor Unemployment Insurance Program Letter 16-20, Change 4, Attachment I at  
8 I-4 and I-5 (January 8, 2021). Being able to telework or receiving sick or vacation  
9 benefits will also provide a sufficient basis to deny PUA. However, being fired  
10 for misconduct or even fraud is not a basis to deny PUA as long as the claimant  
11 has a COVID 19 related reason for being unemployed. UIPL 16-20, Change 1,  
12 Attachment I at I-8 and I-9.

15 The uncontroverted evidence establishes that Petitioner had a COVID 19  
16 related reason for not working, had a sufficient work history with wages in 2019  
17 and/or 2020, could not telework, and did not get any severance package from  
18 Petitioner’s former employment. ROA at \_\_\_\_\_.

22 \_\_\_\_\_  
23 <sup>1</sup> In addition, PUA is not available to those idled workers who can telework or have  
24 received severance, sick or vacation benefits from their employer. 15 U.S.C.  
§9021(a)(3)(B)(i) and (ii).

1 Specifically, Petitioner could not work because:  
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11 ROA at \_\_\_\_\_. Under 15 U.S.C. §9021(a)(3)(A)(ii)(I),  
12  
13 Petitioner is eligible for PUA and the Division’s denial lacks substantial evidence,  
14 is arbitrary or capricious, and/or is wrong as a matter of law.

15 **VI. CONCLUSION**

16 Based on the foregoing, Petitioner asks this Court to reverse the Appeals  
17 Tribunal and award Petitioner PUA benefits.  
18  
19

20 Dated: \_\_\_\_\_  
21  
22

23 \_\_\_\_\_  
24 Petitioner, Pro Se

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on \_\_\_\_\_ (date), I served the Opening

3 Brief by mailing a copy, postage prepaid, to the following:

4  
5 LYNDA PARVEN  
6 Employment Security Division  
7 500 East Third Street  
8 Carson City, Nevada 89713

9 DATED: \_\_\_\_\_

10 \_\_\_\_\_  
11 Petitioner, Pro Se