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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 12/16/2024 10:05 AM

2 **TENBEARS SOUTER,**



Ramon J. Maestas
Chief Clerk

3 Plaintiff-Appellant,

4 v.

No. A-1-CA-41272

5 **NEW MEXICO DEPARTMENT**
6 **OF WORKFORCE SOLUTIONS,**

7 Defendant-Appellee.

8 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**
9 **Francis J. Mathew, District Court Judge**

10 Mescall Law Firm, P.C.

11 Thomas J. Mescall

12 Phillip Patrick Baca

13 Albuquerque, NM

14 for Appellant

15 Richard L. Branch

16 Albuquerque, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **ATTREP, Chief Judge.**

20 {1} Plaintiff appeals from the district court's order denying Plaintiff's verified
21 petition for writ of mandamus, injunction, and complaint for declaratory judgment.

22 [RP 100] We previously entered a notice of proposed disposition, proposing to
23 affirm. Plaintiff filed a memorandum in opposition to that notice and Defendant filed

1 a memorandum in support, which we have duly considered. Unpersuaded by
2 Plaintiff's memorandum in opposition, we affirm.

3 {2} In our proposed disposition, we proposed affirmance based on Plaintiff's
4 failure to file an administrative appeal with Defendant consistent with 11.3.500.8(A)
5 NMAC. [CN 3-4] In his memorandum, Plaintiff continues to assert that he could not
6 have filed an appeal with Defendant because NMSA 1978, Section 51-1-8(B) (2013)
7 only provides for an appeal of a determination by a claims examiner as to whether a
8 claimant is eligible for benefits or whether the claimant should be disqualified from
9 receiving benefits. [MIO 4; DS 4] However, Plaintiff does not address this Court's
10 reliance on 11.3.500.8(A) NMAC. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10,
11 107 N.M. 421, 759 P.2d 1003 (stating that "[a] party responding to a summary
12 calendar notice must come forward and specifically point out errors of law and fact,"
13 and the repetition of earlier arguments does not fulfill this requirement), *superseded*
14 *by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297
15 P.3d 374. Regulation 11.3.500.8(A) NMAC contains no limitations and provides
16 that "[a]ny interested party aggrieved by a determination of the department may file
17 an appeal to the appeal tribunal within fifteen days from the date of transmission of
18 the determination." *See also* § 51-1-8(A) ("Claims for benefits shall be made in
19 accordance with such regulations as the secretary may prescribe.").

1 {3} Plaintiff also asserts that the September 1, 2020, letter did not notify him of
2 any fraud determinations, which appears inconsistent with both the docketing
3 statement and the record proper. [MIO 5] Plaintiff’s docketing statement asserted
4 that Section 51-1-8, Rule 1-075 NMRA, and Rule 1-077 NMRA did not provide a
5 mechanism for “an administrative appeal for beneficiaries who have been denied
6 benefits based on fraud.” [DS 4] Plaintiff’s briefing below indicated that Defendant
7 was bound by a factual finding from Plaintiff’s separate Inspection of Public Records
8 Act case against Defendant that stated: “On September 1, 2020, [Defendant] sent
9 [Plaintiff] a letter stating that [Plaintiff] had committed fraud and would have to
10 repay [Defendant] \$21,828.25 before he could be eligible for unemployment
11 insurance.” [RP 58-59]

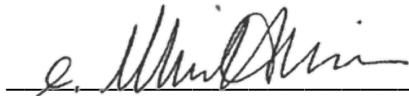
12 {4} Consequently, we conclude that the September 1, 2020, letter was a
13 determination made by Defendant that needed to be appealed to the appeal tribunal
14 within fifteen days of September 1, 2020, pursuant to 11.3.500.8(A) NMAC. *See*
15 *State v. Calanche*, 1978-NMCA-007, ¶ 10, 91 N.M. 390, 574 P.2d 1018 (holding
16 that factual recitations in the docketing statement are accepted as true unless the
17 record on appeal shows otherwise). As we noted in the proposed disposition,
18 Plaintiff did not file an appeal.

19 {5} Accordingly, and for the reasons stated herein and in our notice of proposed
20 disposition, we affirm.

1 {6} IT IS SO ORDERED.

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3 _____
JENNIFER L. ATTREP, Chief Judge

4 WE CONCUR:

5 
6 _____
J. MILES HANISEE, Judge

7 
8 _____
JANE B. YOHALEM, Judge