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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOSE MANUEL LOPEZ,

Plaintiff and Appellant,

v.

EMPLOYMENT DEVELOPMENT  
DEPARTMENT et al.,

Defendants and Respondents.

G052101

(Super. Ct. No. 30-2013-00682703)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed.

Jose Manuel Lopez, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Leslie P. McElroy, Tara L. Newman and Nicole J. Kau, Deputy Attorneys General, for Defendants and Respondents.

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Jose Manuel Lopez appeals from the trial court’s denial of his petition for a writ of administrative mandamus. His key contention is that after receiving all of the benefits to which he was entitled, he appealed the denial of further benefits based on an unemployment extension program which no longer applied in California. We find no error with respect to the court’s decision on this or any other point, and accordingly, we affirm the judgment.

## I FACTS

### A. *Lopez’s Briefs*

Before we begin, a word about Lopez’s briefs is necessary. Lopez represents himself in this matter, but that does not entitle him to deference or special treatment. “When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation].” (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638–639, fn. omitted; see also *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.)

The statement of facts reads like argument and fails to provide a chronology or specific record citations, and utterly fails to discuss the procedural history, which is critical to a case like this one. It is the appellant’s duty to fairly summarize all of the facts in the light most favorable to the judgment. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) This duty increases with the complexity of the record.<sup>1</sup> (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 290.) Lopez has utterly failed in this duty. We draw the facts set forth below from the record, and we

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<sup>1</sup> The record in this case includes a clerk’s transcript exceeding 2000 pages.

view the evidence in the light most favorable to the prevailing party, resolving all conflicts in their favor. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 787.)

Lopez's legal arguments, unfortunately, fare little better. They are borderline incoherent at points,<sup>2</sup> including long quotations from statutes but little application of the laws to the facts. At other times, Lopez simply paraphrases well-known legal maxims, often conflicting with each other, without discussing which is applicable to the case at hand. While we shall do our best to parse Lopez's claims, any arguments that we might simply not understand, due to the language or structure of his briefs, are deemed waived. Our scope of review is limited to issues that have been adequately raised and are supported by analysis. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) "An appellate court is not required to examine undeveloped claims, nor to make arguments for parties. [Citation.]" (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.)

### *B. Relevant Facts and Procedural History*

In May 2011, Lopez filed a California Unemployment Insurance Claim (the parent claim). The claim allowed a weekly benefit of \$271 and a maximum benefit of \$6,703. (Unemp. Ins. Code, § 1281, subdivision (b).)<sup>3</sup> The amount of his weekly benefit, pursuant to statute, was determined on the basis of his highest quarterly earnings during a one-year period referred to as the "base period." The base period was

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<sup>2</sup> A portion of a representative paragraph: "The trial court erred in finding that the plaintiff was not entitled to the conclusion of the state and federal laws. By granting the respondents a strong presumption. While at all times in the herein mentioned for this record, the respondent's [*sic*] had bottom line legal authority over the appellant's federal property. As there is no substantial evidence to support that finding."

<sup>3</sup> Subsequent statutory references are to the Unemployment Insurance Code, unless otherwise noted.

determined by the week for which he first filed a claim for benefits. (§§ 1275, subd. (a), 1280, subd. (c).)

Lopez received all benefits payable on the parent claim, and eventually filed for Emergency Unemployment Compensation (EUC). Over time, claims were processed for federally authorized extensions, known as Tier I through Tier IV. He received a total of \$13,996 under these extensions, in excess of 200 percent of the parent claim. Lopez's Tier IV benefit was exhausted in February 2013. He sought additional EUC authorized by the Federal-State Extended Duration Benefits Program (Fed-Ed). Those benefits were not available until he had exhausted all four tiers of extensions. He was denied Fed-Ed benefits because as of April 29, 2012, the level of unemployment in California, as determined by the United States Department of Labor, no longer met the requirements of section 4003, subdivisions (c) and (g).<sup>4</sup> Thus, by the time he would have been eligible, the benefits were no longer available. Employment Development Department (EDD) notified Lopez that he was ineligible for further benefits.

In April 2013, Lopez sought review of this decision in a hearing before an administrative law judge.<sup>5</sup> The administrative law judge's decision reviewed the history of Lopez's claim, concluding he had received the maximum benefits on his parent claim and the Tier I through IV extensions. With respect to Fed-Ed benefits, the decision stated: "Claims for Fed-Ed benefits may not be established, and benefits may not be paid, as of the third week after the first week the State of California cannot satisfy the requirements of either section 4003 (c) or (g) of Unemployment Insurance Code. [Citations.] Based on statistics maintained by the U.S. Department of Labor, California no longer met the requirements of either code sections 4003 (c) or (g) as of April 29,

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<sup>4</sup> Those sections set forth the criteria for continuing Fed-Ed benefits based on various criteria relating to California's unemployment rate.

<sup>5</sup> The administrative record was not included in the record on appeal; only the administrative law judge's decision is available.

2012. As a result, no Fed-Ed benefits are payable for any week beginning on or after May 13, 2012. The claimant's [Tier IV] extended claim benefits was exhausted with the week ending February 16, 2013, and therefore he had no eligibility to the Fed-Ed extension."

Lopez appealed this decision to the California Unemployment Insurance Appeals Board (CUIAB or the agency). With some minor corrections to the statement of decision, the CUIAB affirmed the administrative law judge's decision.

In December 2013, Lopez, representing himself, filed a petition for writ of administrative mandamus, naming EDD as respondent.<sup>6</sup> The writ petition alleged Lopez was entitled to benefits under Fed-Ed "without having that specific potential qualifying unemployment law changing through out [sic] any course in time of the petitioner's entire unemployment claim and/or suffering any difference in any method to be imposed, applied, used for the petitioner."

The matter was heard in March 2015, after which the trial court issued an order denying Lopez's writ petition. The order stated Lopez had "not established any error on the part of the EDD or CUIAB in reaching the decision that [he] has received every last penny of unemployment benefits he was entitled to." Lopez now appeals.

## II

### DISCUSSION

#### *A. Standard of Review*

In a petition for administrative mandamus, the trial court reviews the agency's final decision based on the administrative record. (*Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 447.) The court reviews the record to determine whether the agency "proceeded without, or in excess of, jurisdiction; whether there was a fair trial;

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<sup>6</sup> CUIAB eventually intervened in the case as the proper respondent.

and whether there was any prejudicial abuse of discretion.” (Code Civ. Proc., § 1094.5, subd. (b).) “Abuse of discretion is established if the [CUIAB] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (*Ibid.*) Where the agency’s decision impacts a petitioner’s fundamental rights, the court exercises its independent judgment. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143.) The court begins with a presumption of correctness of the agency’s ruling, but the “court is free to substitute its own findings after first giving due respect to the agency’s findings.” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817–818.)

On appeal,<sup>7</sup> we “review challenges to the court’s factual findings to determine whether the findings are supported by substantial evidence. [Citation.] Pure questions of law . . . ‘are given a de novo review, the latter being examined to determine whether the administrative agency abused its discretion.’ [Citations.]” (*Pirouzian v. Superior Court, supra*, 1 Cal.App.5th at p. 447.)

#### *B. Failure to Demonstrate Error*

Lopez has the burden to demonstrate error. As in any appeal, “[t]he burden of affirmatively demonstrating error is on the appellant. This is a general principle of appellate practice as well as an ingredient of the constitutional doctrine of reversible error.” (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) The order of the “‘lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.’” (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 718.) Simply put, he has failed to do so.

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<sup>7</sup> Lopez seems, at various points in his briefs, to think we are reviewing EDD’s decision, not the trial court’s. He is incorrect. First, that is not our role on review from denial of a writ of administrative mandate. Second, due to his failure to provide the record from the administrative proceedings, we could not perform such a review even if it were appropriate.

As the trial court noted, Lopez had the burden to prove CUIAB “proceeded without jurisdiction, failed to provide a fair trial, or committed a prejudicial abuse of discretion.” The court concluded Lopez had, under the independent standard of review, failed to demonstrate an unfair hearing or an abuse of discretion on the agency’s part. Those factual conclusions are supported by substantial evidence. The agency presented evidence Lopez had received 25 weeks of benefits on his parent claim, plus a total of 53 weeks of federal extended benefits for a total of 78 weeks. The court concluded this was what the relevant laws and regulations provided.

Lopez’s main (and really his only concrete, discernable) argument, both here and in the trial court, was that he was wrongfully denied Fed-Ed benefits.<sup>8</sup> He contends “California was eligible at all times to the FED ED amount in question for the appellant’s individual situation, based upon its Total Unemployment Rate . . . and not its Insured Unemployment Rate.” He goes on to state this violates state and federal law, but fails to cite any pertinent legal authority supporting his position. He simply asserts there was no substantial evidence to support the finding. Rather than providing authority, Lopez offers his own computations to support his claim, ignoring the statutory mandate for such determinations to be made by the U.S. Department of Labor. As the court noted, “petitioner should have taken up [this issue] with the Secretary of Labor and/or the Governor – but was well beyond anything respondents could have altered. It is petitioner’s burden to show that he qualifies for Fed-ED benefits [citation], and since only the Secretary of Labor can certify a state’s eligibility for Fed-ED benefits [citation],

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<sup>8</sup> At various points in his briefs, Lopez throws in a veritable kitchen sink of arguments, from contending the agency had no jurisdiction, failed to provide him a fair hearing, and gave him defective notice, among other things. None of these are supported by relevant legal authority, nor are they under their own headings in the table of contents, as required by the rules of court. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; Cal. Rules of Court, Rule 8.204(a)(1)(B).) Accordingly, we disregard them.

there was nothing the [administrative law judge], the EDD or the CUIAB could have done consistent with state law.”

We agree. Under the notice from the Department of Labor, California was no longer on the Fed-Ed program because it did not qualify (§ 4004) and benefits had not been extended (§ 4003, subd. (e)). While Lopez’s own computations and documents from various Web sites he presented to the trial court purported to show that California should have met the Fed-Ed triggers, the court rejected this evidence as unauthenticated. This was not error. To the extent Lopez purports to argue the Fed-Ed program, once triggered at any time during the duration of his unemployment claim, could not be discontinued as to him, this argument is simply unsupported by law.

Taken as a whole, there was substantial evidence to support the trial court’s conclusion that Lopez was entitled to no further benefits. Accordingly, the court did not err in denying his petition.

### III

#### DISPOSITION

The judgment is affirmed. In the interests of justice, each party shall bear its own costs on appeal.

MOORE, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.