

IN THE UTAH COURT OF APPEALS

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Christine M. Ashdown,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20100328-CA
v.	)	
	)	
Department of Workforce	)	F I L E D
Services, Workforce Appeals	)	(July 29, 2010)
Board,	)	
	)	2010 UT App 206
Respondent.	)	

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Original Proceeding in this Court

Attorneys: Russell T. Monahan, Salt Lake City, for Petitioner  
            Jaceson R. Maughan, Salt Lake City, for Respondent

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Before Judges Thorne, Voros, and Christiansen.

PER CURIAM:

Christine M. Ashdown seeks review of the Workforce Appeals Board's (the Board) April 1, 2010 decision. We affirm.

An agency's findings of fact are accorded substantial deference and will not be overturned if based on substantial evidence, even if another conclusion from the evidence is permissible. See Hurley v. Board of Review of Indus. Comm'n, 767 P.2d 524, 526-27 (Utah 1988). This court will not disturb the Board's application of law to its factual findings unless its determination exceeds the bounds of reasonableness and rationality. See Johnson v. Department of Employment Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989).

A claimant for unemployment benefits is ineligible to receive benefits for any particular week in which the claimant "made a false statement or representation or knowingly failed to report a material fact to obtain any benefit." Utah Code Ann. § 35A-4-405(5)(a) (Supp. 2009). If a claimant obtains unemployment benefits to which he or she is unentitled by providing false information, the claimant must repay any amounts received. See id. § 35A-4-405(5). Furthermore, the claimant must pay, as a civil penalty, an amount equal to the amount

received as a result of the fraud. See id. § 35A-4-405(5)(c). Upon a finding of fraud, the Board does not have discretion to reduce or waive the statutory penalty. See id.

The Department of Workforce Services' (the Department) rules state that "[f]raud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits." Utah Admin. Code R994-406-401(2). Thus, in order to establish fraud, the Department must establish the materiality of the statement, knowledge, and willfulness. See id. R994-406-401(1). Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining any benefit payment to which the claimant is not entitled. See id. R994-406-401(1)(a)(i)(A). Knowledge is established if the claimant knew, or should have known, that the information submitted to the Department was incorrect or that the claimant failed to provide required information. See id. R994-406-401(1)(b). Finally, willfulness is established when a claimant files claims or other documents containing false statements, responses, or deliberate omissions. See id. R994-406-401(1)(c).

Ashdown asserts that the Board erred by determining that she fraudulently obtained benefits because the Board utilized an improper definition of gross earnings. Specifically, Ashdown asserts that Utah Code section 35A-4-208(5)(a) excludes from the definition of wages health insurance payments paid by the employer. See Utah Code Ann. § 35A-4-208(5)(a). While section 35A-4-208(5)(a) does exclude payments paid by the employer, the record clearly demonstrates that the Board based its findings on the fact that Ashdown failed to report her own pre-tax deductions from her earnings for her health insurance and 401(k) contributions.

Ashdown initially filed for unemployment insurance benefits on May 23, 2010. The Claimant Guide clearly specifies that "[w]hile claiming benefits it is your obligation to accurately report your gross earnings before taxes or any other deductions." Ashdown received a copy of the Claimant Guide and she was required to read it. Instead of reporting her gross earnings before taxes or any other deductions were withdrawn, Ashdown reported her net earnings after her 401(k) and health insurance contributions were deducted from her earnings. The Board found that Ashdown's earnings that had been deducted for 401(k) and health insurance contributions should have been reported.

The Board also determined that as a result of incorrectly reporting her wages, Ashdown received benefits to which she was not entitled. Having received the Claimant Guide, Ashdown knew, or should have known, to report her gross wages before

deductions. By reporting her net earnings after deductions, Ashdown filed claims containing false statements and failed to set forth material facts as required. The Board properly determined that the necessary elements of fraud were established.

Accordingly, the Board's April 1, 2010 decision is affirmed.

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge

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Michele M. Christiansen, Judge