

IN THE UTAH COURT OF APPEALS

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Pedro Rufino,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20100253-CA
v.)	
)	F I L E D
Department of Workforce)	(December 23, 2010)
Services, Workforce Appeals)	
Board,)	2010 UT App 377
)	
Respondent.)	

Original Proceeding in this Court

Attorneys: Pedro Rufino, Midvale, Petitioner Pro Se
Geoffrey T. Landward, Salt Lake City, for Respondent

Before Judges Thorne, Voros, and Christiansen.

PER CURIAM:

Pedro Rufino seeks review of the Workforce Appeals Board's (the Board) decision denying him benefits and assessing a repayment and a statutory penalty against him for fraudulently obtaining unemployment benefits. 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." Hurley v. Board of Review of Indus. Comm'n, 767 P.2d 524, 526-27 (Utah 1988). Further, we defer to the Board's determinations concerning the credibility of witnesses and conflicting evidence because the Board is in the best position to judge that evidence. See Questar Pipeline Co. v. Utah State Tax Comm'n, 850 P.2d 1175, 1178 (Utah 1993); Grace Drilling v. Board of Review, 776 P.2d 63, 68 (Utah Ct. App. 1989). Moreover, "we will not disturb the Board's application of law to its factual findings unless its determination exceeds the bounds of reasonableness and rationality." Johnson v. Department of Emp't 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" under the Employment Security Act. Utah Code Ann. § 35A-4-405(5)(a) (Supp. 2010). As a result, if a claimant obtained unemployment benefits to which he was not entitled, based upon false information, the claimant must repay any amounts received. See id. § 35A-4-405(5)(a), (c). Further, the claimant must pay, as a civil penalty, an amount equal to the amounts received as a result of the fraud. See id. § 35A-4-405(5)(c).

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 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." Id. R994-406-401(1)(a)(i)(A). Knowledge is established when 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, "[w]illfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions." Id. R994-406-401(1)(c).

Here, the evidence supports the Board's findings. Rufino admits that he received the "Claimant Guide: Unemployment Insurance Benefits." The guide instructs claimants that they must report all work and earnings, including earnings from part-time work. During Rufino's weekly call to report his status to the Department, he reported on several occasions that he had not worked, despite working at a part-time job. Because these statements were false and were made for the purpose of obtaining benefits for which Rufino was not eligible, they support findings of materiality and willfulness. Further, because Rufino knew or should have known that his statements were false, the statements also support a finding of knowledge.

Rufino asserts that an employee of the Department instructed him that he did not need to report his part-time work because the full-time job, which he lost, and the part-time job, which he retained, were treated differently. However, the employee testified before the Administrative Law Judge (ALJ) that he would never have given such an instruction to a claimant because it directly conflicts with the law and the information in the Claimant Guide. Accordingly, the ALJ found that Rufino's testimony in this regard was not credible. Because the ALJ was

in the best position to judge the conflicting testimony presented by the witnesses, we must defer to the ALJ's determination of credibility. See generally Questar Pipeline Co., 850 P.2d at 1178. Therefore, because the evidence supported the ALJ's findings, which were adopted by the Board, and the Board's application of the law to those findings was reasonable and rational, we must affirm. See generally Johnson, 782 P.2d at 968.

Affirmed.

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge

Michele M. Christiansen, Judge