

IN THE UTAH COURT OF APPEALS

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Richard Farnsworth,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20070655-CA
v.	)	
	)	
Department of Workforce	)	F I L E D
Services,	)	(October 18, 2007)
	)	
Respondent.	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 345</span>

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Original Proceeding in this Court

Attorneys: Richard Farnsworth, Draper, Petitioner Pro Se  
            Geoffrey T. Landward, Salt Lake City, for Respondent

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Before Judges Bench, Orme, and Thorne.

PER CURIAM:

Petitioner Richard Farnsworth seeks judicial review of a decision of the Workforce Appeals Board (the Board) assessing a fraud overpayment and penalty.

A claimant is disqualified from benefits "[f]or each week with respect to which the claimant made a false statement or representation or knowingly failed to report a material fact to obtain" benefits. Utah Code Ann. § 35A-4-405(5)(a) (Supp. 2007). "Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment." Id. § 35A-4-405(5)(c). In order to find a fraudulent overpayment and assess a statutory penalty, the evidence must establish the elements of materiality, knowledge, and willfulness. See Utah Admin. Code R994-406-401. "When reviewing the factual findings made by an administrative agency, an appellate court will generally reverse only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997).

Farnsworth challenges the Board's finding of willfulness. He believes that his former girlfriend obtained his personal

identification number (PIN) and filed claims on his case while he was incarcerated. He argues that the willfulness finding is not supported by substantial evidence because he did not personally file claims containing false statements, responses, or omissions. A majority of the Board disagreed, reasoning that Farnsworth "failed to properly safeguard his PIN, thereby allowing his girlfriend to access it and file claims," and that, "[c]onsequently, [he] is responsible for the information his girlfriend provided . . . in his name." The dissent opined that the majority imposed an unreasonable level of responsibility on Farnsworth, that he took all steps necessary to safeguard his PIN, and that his girlfriend committed the fraud.

The Claimant Guide Farnsworth received advises that no one other than the claimant should have access to his PIN and a claimant will "be held accountable for any payments made in error if other people use your PIN." See also Utah Admin. Code R994-406-401(1)(c) (stating that a claimant is liable for amounts paid if his PIN or Department-issued debit card is used by another person). Farnsworth testified that he knew he was responsible for safeguarding his PIN. He also testified that he kept all of his documents, including those containing his confidential PIN, in a file located in his apartment. He speculated that his girlfriend, who was also collecting unemployment benefits and was familiar with the process, obtained his PIN and continued to make claims during his incarceration without his knowledge. Before this court, the Board states that although it "agrees the endorsement signatures on the benefit checks indicate that persons other than the claimant cashed some of the checks," the facts and the evidence did not establish who cashed the checks. The Board also asserts that knowing the identity of that person is not crucial. However, we agree with the dissenting Board member that the willfulness element for a fraud overpayment has not been established. Farnsworth's conduct should not be considered willful because he took all of the steps necessary to secure his PIN by filing it away without any identifying information. As noted by the dissent, the girlfriend was "familiar enough with unemployment insurance benefits to properly identify the unlabeled number as the claimant's PIN," and it was apparently she who defrauded the Department of Workforce Services, not Farnsworth.

Because we conclude that the finding of willfulness is not supported by substantial evidence, the requirements for assessing both a fraud overpayment and a statutory penalty are not

satisfied. We therefore reverse the decision assessing an overpayment and statutory civil penalty.

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Russell W. Bench,  
Presiding Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge