

IN THE UTAH COURT OF APPEALS

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Steve P. Greene,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20060738-CA
v.)	
)	
Department of Workforce)	F I L E D
Services, Workforce Appeals)	(October 26, 2006)
Board,)	
)	2006 UT App 439
Respondent.)	

Original Proceeding in this Court

Attorneys: Steve P. Greene, Preston, Idaho, Petitioner Pro Se
Suzan Pixton, Salt Lake City, for Respondent

Before Judges Bench, Billings, and McHugh.

PER CURIAM:

Steve P. Greene petitions for review of the Workforce Appeals Board's (the Board) final decision issued June 29, 2006. This case is before the court on its sua sponte motion for summary disposition based upon lack of jurisdiction, and the Board's motion for summary disposition based upon lack of a substantial question for review.

A petition for review of an agency's final order must be filed "within 30 days after the date of the written decision or order." Utah R. App. P. 14(a). The Board issued its final order denying Greene's motion for reconsideration on July 18, 2006. Greene filed his petition for review on August 10, 2006. Thus, Greene timely filed his petition for review, and this court has jurisdiction to review his petition.¹

¹Greene's docketing statement listed the date of the final agency order from which he sought review as June 29, 2006. However, this was the date the Board issued its original decision and not the date the Board denied Greene's request for
(continued...)

Greene argues generally that the Board unreasonably determined that he is liable to repay benefits received in the amount of \$364 for a fault overpayment.² Specifically, he argues that the evidence did not establish each element required to show a fault overpayment. "We will not disturb [an agency's] application of law to its factual findings unless its determination exceeds the bounds of reasonableness and rationality." Johnson v. Department of Employment Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989).

Utah Code section 35A-4-406(4)(b) provides:

If any person, by reason of his own fault, has received any sum as benefits under this chapter to which under a redetermination or decision pursuant to this section he has been found not entitled, he shall repay the sum, or shall, in the discretion of the division, have the sum deducted from any future benefits payable to him, or both.

Utah Code Ann. § 35A-4-406(4)(b) (2005). In addition,

fault is established if the following three elements are present: (a) materiality-- "benefits were paid to which the claimant was not entitled"; (b) control--"benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided"; and (c) knowledge--"the claimant had sufficient notice that the information might be reportable."

Salzl v. Department of Workforce Servs., 2005 UT App 399, ¶21, 122 P.3d 691 (quoting Utah Admin. Code R994-406-403(1)).

The Board reasonably concluded that a fault overpayment was established. On two occasions Greene filed a claim for unemployment compensation benefits, but did not report holiday

¹(...continued)
reconsideration, from which Greene actually appeals.

²It does not appear that Greene challenges the amount itself as erroneous, only the Board's conclusion that he received a fault overpayment that he was liable to repay.

pay he received from his employer. The result was that Greene received monetary benefits to which he was not entitled. Therefore, materiality is established. Control is established because Greene was paid benefits based on "incorrect information or an absence of information which the claimant reasonably could have provided." Utah Admin. Code R994-406-403(1)(b). Greene simply did not report the holiday benefits paid to him on the occasions in question. "When a claimant has knowledge that certain information may affect his claim, but makes his own determination that the information is not material or if he ignores it, he is at fault." Id. R994-406-403(2). Finally, Greene was informed, through his claimant guide booklet, that he had to report holiday pay. Thus, knowledge is established.

Accordingly, the Board's findings are supported by substantial evidence, and its application of law to the facts of this case is reasonable and rational. See Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990). The Board's decision is affirmed.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge