

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Steven Higgs,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20100684-CA	
v.)		
)		
Department of Workforce)	F I L E D	
Services,)	(November 12, 2010)	
)		
Respondent.)	<table border="1"><tr><td>2010 UT App 318</td></tr></table>	2010 UT App 318
2010 UT App 318			

Original Proceeding in this Court

Attorneys: Steven Higgs, Layton, Petitioner Pro Se
 Jaceson R. Maughan, Salt Lake City, for Respondent

Before Judges Davis, McHugh, and Voros.

PER CURIAM:

Petitioner Steven Higgs seeks judicial review of a decision of the Workforce Appeals Board (the Board) assessing a fraud overpayment and statutory penalty in the combined amount of \$938 pursuant to Utah Code sections 35A-4-405(5) and 35A-4-406(4). See Utah Code Ann. § 35A-4-405(5) (Supp. 2009); id. § 35A-4-406(4) (2005). This case is before us on a sua sponte motion for summary disposition.

We will reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Emp't Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990).

It is undisputed that during the benefit week ending February 27, 2010, Higgs was on vacation with his wife in the U.S. Virgin Islands. Higgs does not dispute the finding that this location was out of the country. Higgs also does not dispute that he filed a benefits claim over the internet

representing that he was available for full-time work during the week of February 27, 2010. Finally, Higgs does not dispute that he should be required to repay benefits in the amount of \$469 that he received for the week in question. However, Higgs challenges the characterization of the overpayment as a fraud overpayment and the assessment of the statutory penalty in an equal amount to the benefits received. Higgs claims that he did not understand the reporting requirements and did not have the subjective intent to defraud. Although he claims that he was available for full-time work while on vacation because he would have returned if he received a job offer, he concedes that he should not have filed a claim for this week and that he received benefits to which he was not entitled for the benefit week ending on February 27, 2010.

It is not necessary to demonstrate a subjective intent to defraud in order to assess a fraud overpayment and statutory penalty. "The intent to defraud is shown by the claims themselves which contain false statements and fail to set forth material facts required by statute." Mineer v. Board of Review, 572 P.2d 1364, 1366 (Utah 1977). Higgs agrees that he received benefits to which he was not entitled as a result of filing a claim that falsely stated he was available for full-time work during the week ending on February 27, 2010. He argues that he did not know that he was incorrect in filing a claim for benefits during the week he was on vacation. However, Higgs acknowledged in his initial benefits claim that he had received the Claimant Guide. The Claimant Guide states that a claimant who intends to leave the country must advise the Department of Workforce Services because this may affect benefits availability. Had he contacted the Department, he would have been advised that he was not eligible for benefits for that week.

The three elements of fraud--materiality, knowledge, and willfulness--must "be proved to establish an intentional misrepresentation sufficient to constitute fraud." Utah Admin. Code R994-406-401. Materiality is satisfied because Higgs made false statements regarding his availability for work that resulted in his receipt of benefits to which he was not entitled. See id. R994-406-401(1)(a). The element of knowledge is satisfied because Higgs either knew, or should have known, that he incorrectly reported he was available for work. See id. R994-406-401(1)(b). It is not necessary that a claimant know he will receive benefits as a result of false statements on a claim, only that he knows he has made false statements. See id. Finally, the element of willfulness is satisfied because the intention to defraud is shown by filing a claim containing false

statements. See id. R994-406-401(1)(c). Accordingly, we affirm the Board's decision.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

J. Frederic Voros Jr., Judge