

IN THE UTAH COURT OF APPEALS

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Matthew P. Hodgson,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20050270-CA
v.	)	
	)	F I L E D
	)	(July 8, 2005)
Department of Workforce	)	
Services, Workforce Appeals	)	2005 UT App 317
Board,	)	
	)	
Respondent.	)	

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Original Proceeding in this Court

Attorneys: Thomas E. Lowe, Salt Lake City, for Petitioner  
Michael R. Medley, Salt Lake City, for Respondent

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Before Judges Davis, Jackson, and Orme.

PER CURIAM:

Matthew Hodgson petitions for review of the Workforce Appeals Board's (Board) decision finding him ineligible for unemployment benefits and assessing repayment and civil penalties. This is before the court on its own motion for summary disposition.

At a hearing before the Administrative Law Judge (ALJ), Hodgson testified that he was self-employed and working from mid-December 2003 until May 22, 2004, when his unemployment benefits ran out. He testified that he was working part-time and had weeks with no work, but he could not specify which weeks. He also stated that for production weeks, he worked forty to fifty hours a week. Although he admitted working during the time he was receiving unemployment benefits, in his weekly claims filings for benefits he checked that he did not work and earned no income. He testified that he did not report that he worked because he "just didn't think it applied to me." He also acknowledged, however, receiving the unemployment guidebook which provides that all work and earnings, including self-employment, must be reported.

Hodgson also stated that he did not report the earnings from his work because he was told he had to report only individual income, and the money from his service contract was paid to a limited liability company owned and operated by him. He did not draw any money from the company during the time he was receiving benefits. However, he testified that "obviously, it's (the money) supposed to be there to help us if we need . . . the money," and he had since drawn almost all of it out for living expenses.

Hodgson argues that he was unemployed within the meaning of Utah Code section 35A-4-207(1), and if he was employed, he should not be liable for the fraud penalty because he made a mistake. He argues there is insufficient evidence to support the findings that he was employed and that he committed fraud. This court 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). This court will not disturb the Board's conclusion regarding application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Emp. Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990).

First, Hodgson's argument that he was not employed has been waived. Hodgson's appeal to the Board sought relief only from the civil penalty assessed and did not challenge the finding that he was employed during the time he received benefits. Matters not raised in the agency proceeding generally will not be considered on review. See Esquivel v. Labor Comm'n, 2000 UT 66, ¶34, 7 P.3d 777.

Second, the Board did not err in assessing a civil penalty for fraud. Claimants who file for benefits based on false information and receive benefits to which they are not entitled are required to repay the benefit amounts received. See Utah Code Ann. § 35A-4-405(5)(a), (c) (2001). The claimant "shall repay" the amount of benefits actually received, plus a civil penalty equal to the benefits received "by direct reason of his fraud." Id. § 35A-4-405(5)(c). Where the elements of fraud are established, the assessment of the civil penalty is required. See id.; see also Diprizio v. Industrial Comm'n, 572 P.2d 679, 680-81 (Utah 1977).

A fraud penalty will not be assessed if the overpayment was the result of inadvertent error. Rather, under department rules, fraud requires "a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits." Utah Admin. Code R994-405-501. Fraud in this context does not require proof of intent to defraud. See id. To establish fraud, the Department of Workforce Services (Department) must show

materiality, knowledge, and willfulness. See id. R994-405-502. Materiality is established when a claimant makes a misrepresentation for the purpose of obtaining any benefit payment to which the claimant is not entitled. See id. Knowledge is established when the claimant knew or should have known that the information submitted to the department was incorrect, or that he failed to provide required information. See id. Willfulness is established when "a claimant files claims or other documents containing false statements, responses or deliberate omissions." Id.

The Board had substantial evidence on which to base the findings of fraud. The elements of materiality, knowledge, and willfulness were all established. Hodgson misrepresented information or omitted information on his weekly claims by failing to report his work or earnings. Materiality was established because Hodgson actually obtained benefits to which he was not entitled based on the misrepresentations. Knowledge was established because Hodgson had received and read the Department's benefit information guide, and thus knew or should have known that part-time work and self-employment was reportable. Although Hodgson asserted that he misunderstood instructions from an employee regarding earnings, that does not explain why he failed to report the work, if not the earnings. Willfulness was established by Hodgson's filed claims containing false information. Because the elements of fraud were established by substantial evidence, the Board did not err in assessing the civil penalty. In fact, the Board had no discretion to reduce or forgive the penalty. See Utah Code Ann. § 35A-4-405(5)(c).

Accordingly, the determination of ineligibility and the assessment of an overpayment and a civil penalty are affirmed.

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James Z. Davis, Judge

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Norman H. Jackson, Judge

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Gregory K. Orme, Judge