

IN THE UTAH COURT OF APPEALS

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Robert D. McDonald,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20060400-CA
v.)	
)	
Department of Workforce)	F I L E D
Services, Workforce Appeals)	(July 28, 2006)
Board,)	
)	2006 UT App 317
Respondent.)	

Original Proceeding in this Court

Attorneys: Robert D. McDonald, West Valley City, Petitioner Pro
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 Suzan Pixton, Salt Lake City, for Respondent

Before Judges Greenwood, Davis, and Orme.

PER CURIAM:

Robert D. McDonald seeks judicial review of the decision of the Workforce Appeals Board disqualifying him from unemployment benefits and assessing an overpayment and statutory 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) (2005). In order to find a fraudulent overpayment and assess statutory penalties, the evidence must establish materiality, knowledge, and willfulness. See Utah Admin. Code R994-406-401 (2006). Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining benefit payments in any amount. See id. Knowledge is established when a claimant submits information he knows or should know is not correct. See id. Finally, willfulness is established when a claimant files claims containing false

statements, responses, or deliberate omissions. See id. The Board adopted the findings and conclusions of the Administrative Law Judge (ALJ) and concluded that the elements of fraudulent overpayment were established by the evidence.

"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). We defer to the agency because "it stands in a superior position from which to evaluate and weigh the evidence and assess the credibility and accuracy of witnesses' recollections." Harken v. Board of Oil, Gas, & Mining, 920 P.2d 1176, 1180 (Utah 1996).

It is undisputed that McDonald failed to report his work or earnings from his employer Mr. Mac for the weeks in question, and as a result, he received a waiting week credit and benefits to which he was not entitled. This established the element of materiality. The Board also concluded that McDonald knew or should have known that the information he reported was inaccurate since the Teleclaim question asked if he had worked during the week in question and did not distinguish between full- and part-time work. A March 15, 2005 letter advised him of the basis for the initial reduction in his benefit amount, i.e., Social Security or retirement benefits. The letter made clear that his benefits were not reduced due to his part-time work. The claimant guide also clarified the reporting requirements. Finally, the Board found that the element of willfulness was established by filing a false claim. See Mineer v. Board of Review, 572 P.2d 1364, 1366 (Utah 1977) ("The intention to defraud is shown by the claims themselves which contain false statements and fail to set forth material facts."). The Board's findings are amply supported by the record evidence.

In his appeal to the Board, McDonald claimed for the first time that the ALJ was not independent and impartial. Although the Board instructed McDonald to state the substantive grounds for his disagreement with the ALJ's decision, he declined to do so, incorrectly asserting that he was entitled to a further hearing. McDonald now reasserts the claim that the ALJ was not fair and impartial because he was employed by the Labor Commission. In fact, the ALJ is employed by the Department of Workforce Services, which is not a part of the Labor Commission. The appeal of the departmental decision was reviewed in a formal adjudicative hearing conducted by an ALJ appointed to adjudicate appeals. McDonald incorrectly asserts that he was not asked any questions. The transcript reflects that the ALJ reviewed the

exhibits, asked McDonald a number of questions, and allowed him to make statements regarding any additional information. McDonald did not object to the proceeding. Finally, McDonald has not demonstrated any factual basis for his assertion that the ALJ was biased or prejudiced.

We affirm the Board's decision.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

Gregory K. Orme, Judge