

IN THE UTAH COURT OF APPEALS

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Lance Mendenhall,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20080041-CA	
v.)		
)		
Department of Workforce)	F I L E D	
Services,)	(March 27, 2008)	
)		
Respondent.)	<table border="1"><tr><td>2008 UT App 109</td></tr></table>	2008 UT App 109
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Original Proceeding in this Court

Attorneys: Lance Mendenhall, Pleasant Grove, Petitioner Pro Se
Suzan Pixton, Salt Lake City, for Respondent

Before Judges Greenwood, Thorne, and Billings.

PER CURIAM:

Petitioner Lance Mendenhall seeks judicial review of a decision of the Workforce Appeals Board (the Board) assessing a fraud overpayment and penalty pursuant to Utah Code sections 35A-4-405(5) and -406(4). The Board's decision denied unemployment benefits to Mendenhall for the weeks ending January 14 through March 4, 2006, on grounds that he worked and earned wages that he did not report and assessed an overpayment of \$1771 and a penalty of \$1771.

Mendenhall did not report work or earnings from employment with the Utah National Guard. However, the Utah National Guard reported earnings for all but two weeks during the period for which Mendenhall filed claims. Mendenhall testified at the hearing before an Administrative Law Judge (ALJ) that he did not report the work or earnings because the Utah National Guard was withholding his wages to satisfy a debt obligation. He conceded responsibility to repay the benefits, but asked that the statutory penalty be waived. The ALJ set aside the fraud overpayment and established an overpayment that did not include the statutory penalty. The ALJ found that the element of willfulness was not established because Mendenhall mistakenly

believed that his pay was not reportable. The Board reinstated both the fraud overpayment and penalty. The Board concluded that the willfulness element of fraud is shown by false filings themselves and Mendenhall admitted that he failed to report work and earnings that he should have reported.

The Utah Supreme Court concluded in Diprizio v. Industrial Comm'n, 572 P.2d 679 (1977), that neither the Department of Workforce Services nor the court could alter the application of penalties under the provisions currently contained in Utah Code section 35A-4-405. See id. at 680. Thus, the supreme court held that where a claimant admitted that he failed to report work and earnings he should have reported, the Department was required to apply the statutory penalty. See id. at 680-81. Similarly, in Mineer v. Board of Review, 572 P.2d 1364 (1977), the Utah Supreme Court stated:

The intention to defraud is shown by the claims themselves which contain false statements and fail to set forth material facts required by statute. The filing of such claims evidences a purpose or willingness to present a false claim in order to obtain unlawful benefits and hence are manifestations of intent to defraud.

Id. at 1366.

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). 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 Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990). In this case, there was substantial evidence supporting the Board's decision. Mendenhall testified that he did not report the work or earnings because the Utah National Guard was withholding his wages to satisfy a previous obligation. However, even if Mendenhall did not actually receive his earnings because they were applied by the National Guard to debt repayment, this does not explain why he failed to report that he worked. Willfulness was established because Mendenhall filed claims containing false information. Mendenhall sought only to have the statutory penalty set aside; however, neither the Board nor this court has

the authority to set aside the penalty. Accordingly, we affirm the decision of the Board.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Judith M. Billings, Judge