

IN THE UTAH COURT OF APPEALS

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Alan D. Moore,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20070866-CA
v.	)	
	)	
Department of Workforce	)	F I L E D
Services, Workforce Appeals	)	(January 25, 2008)
Board,	)	
	)	2008 UT App 26
Respondent.	)	

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Original Proceeding in this Court

Attorneys: Alan D. Moore, Herriman, Petitioner Pro Se  
            Suzan Pixton, Salt Lake City, for Respondent

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Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Alan D. Moore petitions for review of the Workforce Appeals Board's (Board) decision affirming an assessment of an overpayment penalty against him. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Moore asserts that the Board erred in assessing a fraud penalty because he did not know that he was required to report work for two weeks in September 2006. He contends that he had not received the claimant benefits guide that explained his reporting obligations. Moore is essentially challenging the sufficiency of the evidence supporting the Board's determination. 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).

Claimants for unemployment benefits who file based on false information, and thus receive benefits to which they are not entitled, are required to repay the amounts received. See Utah Code Ann. § 35A-4-405(5)(c) (2005). In addition to repaying the amounts received, the claimant must pay a civil penalty equal to

the benefits received "by direct reason of his fraud." Id. § 35A-4-405(5)(c)(ii). The Board has no discretion to reduce or waive the fraud penalty once fraud is shown. See id.; Utah Admin. Code R994-406-403.

Under department rules, fraud requires "a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits." Utah Admin. Code R994-406-401(2). To establish fraud, the department must show materiality, knowledge, and willfulness. See id. R994-406-401(1). Materiality is established when a claimant makes a misrepresentation for the purpose of obtaining any benefit 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 to support the finding of fraud. Contrary to what Moore asserts on appeal, he acknowledged that he received the claimant guide, both at the administrative hearing and when submitting his weekly claim for benefits shortly after the claim was opened. Accordingly, Moore knew or should have known that he had to report his work for the two weeks at issue. Moore admits he did not provide correct information on his claims for the weeks at issue and acknowledges that he received benefits to which he was not entitled. Because the Board's decision is supported by substantial evidence, it did not err in assessing the overpayment penalty.

Affirmed.

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Pamela T. Greenwood,  
Presiding Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge