IN THE UTAH COURT OF APPEALS

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Robert H. Nigohosian, Petitioner, v. Workforce Appeals Board, Department of Workforce Services, and Salt Lake Community College, Respondents.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080945-CA F I L E D (September 3, 2009) 2009 UT App 242

Original Proceeding in this Court

Attorneys: Joseph E. Hatch, Murray, for Petitioner
Suzan Pixton, Salt Lake City, for Respondent Workforce Appeals Board, Department of Workforce Services

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Before Judges Greenwood, Bench, and Davis.

DAVIS, Judge:

Petitioner Robert H. Nigohosian seeks review of the determination of the Workforce Appeals Board (the Board) denying his request for reconsideration.[1] We affirm.

Agency rules grant the Board discretion to reconsider its prior ruling:

> After a determination or decision has become final, the Department [of Workforce Services] may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new

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[1]Nigohosian does not attack any of the findings or conclusions supporting the Board's denial of benefits. Instead, his appeal is strictly limited to whether the Board abused its discretion by denying his motion to reconsider the denial of benefits.

> decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts.

Utah Admin. Code R994-508-401(2) (emphasis added); see also Utah Code Ann. § 35A-4-406(2)(b) (2005) ("Upon its own initiative or upon application of any party affected, the division may on the basis of change in conditions or because of a mistake as to facts, review a decision allowing or disallowing in whole or in part a claim for benefits." (emphasis added)). However, "[t]he Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. . . . The Department may decline to take jurisdiction if the redetermination would have little or no effect." Utah Admin. Code R994-508-401(3).

We do not agree with Nigohosian that it was an abuse of the Board's discretion to deny his motion to reconsider his claim for benefits based solely upon the recommendation of a faculty hearing committee (the hearing committee) of Salt Lake Community College (SLCC), where he had previously worked. We are convinced that considering the recommendation would have had little or no effect on the Board's benefits determination. See generally id. R994-508-401(2)(b) ("A mistake as to facts is limited to material information which was the basis for the decision.").

The hearing committee first determined that the concurrent enrollment visit-report forms were "vague and ambiguous."[2] Although the Board disagreed, its ultimate determination was not based simply on the form elements that Nigohosian argues were confusing but, instead, on the language Nigohosian supplied specifically describing the subjects covered, teacher delivery style, and other observations for a class that he never attended: "[Nigohosian] prepared a form that, on its face, clearly indicated he visited the class. . . . [Nigohosian] knew, or should have known, that the forms he presented were deceptive." Moreover, the hearing committee acknowledged that "there may have been some misrepresentation on one portion of the two forms in question" and agreed that such a misrepresentation, "whether innocent or intentional, . . . may have certainly merited some sort of sanctions."

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[2]Interestingly, the hearing committee also noted, "Nigohosian has been overseeing concurrent enrollment classes for at least a few years, and we saw no evidence that anything has been problematic before." Apparently the alleged confusion surfaced only after several years.

The hearing committee next decided that SLCC had not sufficiently demonstrated that Nigohosian intentionally tried to receive pay for work not performed. The hearing committee expressed its concern that the dismissal decision was "made on a 'he said[/]she said' basis," without sufficient evidence to support the findings." It is unclear precisely what information was before the hearing committee, but the information before the Board was sufficient to support the findings underlying the decision to deny benefits.[3] And Nigohosian specifically states that he is not arguing that the Board's findings are not supported by sufficient evidence.

The hearing committee also decided that the sanction of dismissal was "extreme" and "unconscionably over reactive," largely based on Nigohosian's tenure status, his fourteen years of employment at SLCC, and his large workload. The hearing committee accordingly recommended that SLCC "reconsider" the dismissal. But the question before the Board was different: The Board was required to determine whether the elements of culpability, knowledge, and control were satisfied, showing that there was just cause for discharge. See id. R994-405-202. It is clear that the Board was aware of Nigohosian's lengthy employment and nonetheless determined that his actions were "so serious that continuing the employment relationship would jeopardize the employer's rightful interest," see id. R994-405-202(1). And Nigohosian acknowledges that "[t]he Board has the authority and the responsibility to weigh all relevant evidence and come to its independent conclusions supported by the evidence."

Although arguing that the Board should have considered the hearing committee's recommendation, Nigohosian makes no argument as to any effect the recommendation would have had on the Board's benefits decision. Nor does Nigohosian cite to authority suggesting that the Board is required to give any consideration whatsoever to the conclusions of a group of his colleagues, particularly when those conclusions may have been based on different or less evidence than was before the Board and where they answered different questions than those before the Board.

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[3]The findings supporting the benefits decision were originally made by an administrative law judge, but they were later adopted by the Board.

We therefore cannot say that the Board abused its discretion in denying Nigohosian's motion for reconsideration.

Affirmed.[4]

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James Z. Davis, Judge

WE CONCUR:

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Pamela T. Greenwood,
Presiding Judge

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Russell W. Bench, Judge

[4]Nigohosian contests the terseness of the Board's denial of his motion to reconsider, which denial did not elaborate on the reasoning behind the decision. But the authority cited by Nigohosian does not support his argument that the Board was obligated to make factual findings in this situation. See Adams v. Board of Review of Indus. Comm'n, 821 P.2d 1, 6-7 (Utah Ct. App. 1991).