

IN THE UTAH COURT OF APPEALS

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Kirk D. Lowry,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20100438-CA
v.	)	
	)	
Department of Workforce	)	F I L E D
Services, Workforce Appeals	)	(September 30, 2010)
Board,	)	
	)	2010 UT App 267
Respondent.	)	

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Original Proceeding in this Court

Attorneys: Kirk D. Lowry, Tucson, Arizona, Petitioner Pro Se  
            Jaceson R. Maughan, Salt Lake City, for Respondent

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Before Judges Davis, Voros, and Roth.

PER CURIAM:

Kirk D. Lowry seeks review of the Workforce Appeals Board's (the Board) May 10, 2010 decision.

Lowry asserts that the Board erred by determining that he was liable for a fault overpayment. An agency's findings of fact are accorded substantial deference and will not be overturned if based on substantial evidence, even if another conclusion from the evidence is permissible. See Hurley v. Board of Review of Indus. Comm'n, 767 P.2d 524, 526-27 (Utah 1988). This court will not disturb the Board's application of law to its factual findings unless its determination exceeds the bounds of reasonableness and rationality. See Johnson v. Department of Emp't Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989).

An unemployed individual is eligible to receive benefits for any week if the individual is able to work and is available for work during each and every week for which the individual makes a claim for benefits. See Utah Code Ann. § 35A-4-403(1)(c) (2010). It is not the intent of the Utah Employment Security Act to subsidize activities which interfere with immediate re-employment. See Utah Admin. Code R994-403-112c(2). As a precursor to qualify for benefits, a claimant must be available

for full-time work. See id. R994-403-112c(1). In order to meet this availability requirement, a claimant must be ready and willing to immediately accept full-time employment. See id. R994-403-112c(2).

The Board determined that there was substantial evidence that Lowry temporarily restricted his availability for work because he did not inform Wal-Mart that he was ready and willing to accept full-time employment. Thus, Lowry obtained benefits to which he was not entitled. Because the record supports the Board's determination that Lowry had indicated that he was unavailable for full-time work, we cannot say that the Board erred in determining that Lowry obtained benefits to which he was not entitled.

Lowry next asserts that the Board erred in determining that he was required to repay the benefits. If a claimant is at fault in the creation of an overpayment of benefits, the claimant must repay the benefits. See Utah Code Ann. § 35A-4-405. Fault is established by demonstrating materiality, control, and knowledge in the creation of the overpayment of benefits. See Utah Admin. Code R994-406-301. Materiality is demonstrated if benefits were paid to the claimant to which he or she was not entitled. See id. If benefits were paid to the claimant based on incorrect information, or the absence of information, the element of control is established. See id. Knowledge is established where the claimant received sufficient notice to report information truthfully and that he or she must be available for full-time work. See id. If the claimant misunderstands or fails to clarify any confusion regarding eligibility for benefits, the claimant will be at fault for any resulting overpayment. See id.

The record contains substantial evidence supporting the Board's determination that Lowry received benefits to which he was not entitled because he restricted his work availability between November 8, 2009, and December 19, 2009. Thus, the Board did not err by determining that materiality had been shown. There was also substantial evidence that Lowry could have sought clarification or consulted the claimant guide regarding his misunderstanding as to how many hours he could work. Thus, the Board did not err by determining that the overpayment was within Lowry's control. Finally, the record contains substantial evidence supporting the Board's determination that Lowry had knowledge pertaining to the overpayment as he received sufficient notice that he must be available for full-time work. Because the record contains substantial evidence supporting the Board's determination that Lowry was at fault for overpayment, we are

required to affirm the Board's decision. See Hurley v. Board of Review of Indus. Comm'n, 767 P.2d 524, 526-27 (Utah 1988).

Accordingly, the Board's May 10, 2010 decision is affirmed.

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James Z. Davis,  
Presiding Judge

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J. Frederic Voros Jr., Judge

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Stephen L. Roth, Judge