

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
GABRIEL CHRISTOPHER QUAGLIO and)	CASE NO. 13-30136 HCD
LORETTA JO QUAGLIO,)	CHAPTER 13
)	
DEBTORS.)	
)	
)	
STATE OF INDIANA on the relation of the)	
INDIANA DEPARTMENT OF)	
WORKFORCE DEVELOPMENT,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 13-3014
)	
LORETTA JO QUAGLIO,)	
)	
DEFENDANT.)	

Appearances:

Maricel Elaine Villacampa Skiles, Esq., Office of the Indiana Attorney General, 302 West Washington Street, IGCS 5th Floor, Indianapolis, Indiana 46204; and

Loretta Jo Quaglio, pro se, 6181 W County Road 50 S, Logansport, Indiana 46947-6961.

MEMORANDUM OF DECISION

At South Bend, Indiana, on November 20, 2013.

Before the court is the Motion for Default Judgment filed by the plaintiff, State of Indiana on the relation of the Indiana Department of Workforce Development (“plaintiff” or “IDWD”), against the defendant Loretta Jo Quaglio, chapter 13 debtor (“defendant” or “Quaglio”). The defendant failed to respond to the plaintiff’s Motion or to the underlying Complaint To Determine Dischargeability of Debt, which charged that the defendant received unemployment compensation benefits to which she was not entitled, pursuant to Indiana Code § 22-4-13-1.1, and that her debt to the state of Indiana should be declared

nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7). For the reasons presented in this Memorandum of Decision, the court denies the Motion for Default Judgment.¹

BACKGROUND

Gabriel Christopher Quaglio and Loretta Jo Quaglio filed a chapter 13 petition on January 27, 2013. On Schedule F they listed IDWD as an unsecured creditor holding a claim in the amount of \$22,572.00. On May 9, 2013, the debtors' chapter 13 Plan was confirmed by special order. Under it, general unsecured claims, including the plaintiff's, would receive no payments.

The plaintiff timely filed its Complaint seeking to have the defendant's debt to IDWD declared nondischargeable under § 523(a)(2)(A), as a debt for money obtained by false pretenses, false representation, or actual fraud, and under § 523(a)(7), as a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit. The Complaint's Count I sought the repayment of regular unemployment compensation benefits in the amount of \$6,049.00 and a 25% civil penalty of \$1,512.25, for a total of \$7,561.25. Count II of the Complaint sought the repayment of emergency unemployment compensation benefits in the amount of \$1,396.00 plus a 50% penalty of \$698.00, for a total of \$2,094.00 in improper payments.

The plaintiff duly served the summons and Complaint upon the debtor-defendant and her bankruptcy attorney of record. *See* Fed. R. Bankr. P. 7004(b)(9), (g). The defendant did not file a response to the Complaint within thirty days of issuance of the summons, as the summons directed. *See* Fed. R. Bank. P. 7012(a). Once the deadline had passed, the plaintiff sought and was issued an entry of default against the defendant. Now before the court is IDWD's Motion for Default Judgment.

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

DISCUSSION

A judgment by default is considered an extreme sanction. *See, e.g., Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751, 781 (7th Cir. 2013); *Sun v. Board of Trustees of Univ. of IL*, 473 F.3d 799, 811 (7th Cir.) (calling it a “weapon of last resort, appropriate only when a party willfully disregards pending litigation”), *cert. denied*, 551 U.S. 1114 (2007) (citation omitted).

[I]n the context of bankruptcy, where a debtor has a presumptive right to a discharge, default motions should not be granted unless the movant demonstrates that its debt is nondischargeable as a matter of law.

In re Dade, 2012 WL 1556510 at *4 (Bankr. C.D. Ill. May 1, 2012) (citing cases). The movant in this case, IDWD, commenced its claim that the debt was nondischargeable with a Complaint. The Complaint sought to have the debt declared nondischargeable pursuant to § 523(a)(2)(A) and § 523(a)(7). However, the court finds that the Complaint’s § 523(a)(2)(A) claims against the defendant Loretta Jo Quaglio cannot succeed.

Under § 523(a)(2)(A), a plaintiff must establish that (1) this defendant obtained the plaintiff’s money through representations that the defendant either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) the defendant acted with an intent to deceive the plaintiff; and (3) the plaintiff justifiably relied on the defendant’s false representations to its detriment. *See, e.g., In re Davis*, 638 F.3d 549, 553 (7th Cir. 2011); *Ojeda v. Goldberg*, 599 F.3d 712, 716-17 (7th Cir. 2010); *In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994). The court finds that the plaintiff did not establish that this defendant, Quaglio, fraudulently obtained the plaintiff’s unemployment benefits.

The plaintiff’s Complaint alleged that Quaglio applied for regular unemployment benefits and was paid \$6,049.00 in benefits, but failed to disclose material facts which would have made her ineligible to receive those benefits. *See* R. 1, ¶¶ 11-13. It then alleged that Reynolds, not Quaglio, “either had not reported or under reported earnings on her weekly claims vouchers.” *Id.*, ¶ 12. It further charged that “Reynolds was employed by and received wages from Help at Home Inc. during the compensable weeks of August 15, 2009 to January 9, 2010.” *Id.*, ¶ 13. According to the Complaint, therefore, defendant Reynolds

(not Quaglio) allegedly was employed by Help at Home Inc., and either failed to report or underreported those earnings; however, Quaglio was alleged to have violated Indiana Code § 22-4-13-1.1.

The court must conjecture who the actual defendant is. Should the Complaint have named Reynolds rather than Quaglio as the defendant? Was Reynolds or Quaglio employed by Help at Home Inc.? What material facts did Quaglio fail to disclose if Reynolds allegedly was the one who “either had not reported or under reported earnings”? The court surmises that “Reynolds” was the defendant named in an earlier complaint filed by IDWD. It further assumes that the plaintiff regularly uses a standard form or template for its nondischargeability complaints, impersonally filling in the blanks as it accuses each defendant of fraud and demands a repayment and fine or penalty from the defendant. In this case, the court suspects, it failed to insert the correct name of this defendant throughout the template form.

The plaintiff’s sloppy identification of the defendant in various paragraphs of the Complaint, however, has left unclear who worked for Help at Home Inc., who earned money during which compensable weeks, who underreported or failed to report her earnings, and who, according to the plaintiff, should be charged with a nondischargeable debt under § 523(a)(2)(A) and further penalized under § 523(a)(7). The court further questions whether (if its assumption of the thoughtless, mechanical use of a template is correct) IDWD’s fill-in-the-blank complaints contained the correct dates and payment amounts for whichever defendant’s name was inserted. Nevertheless, it is clear that a complaint accusing “alternative defendants” of obtaining the plaintiff’s money through false representations cannot succeed.

In every case, the court reviews the documents attached to the Complaint for verification or elucidation of the underlying facts of the case. In this case, however, the court was required to scour Exhibit A in order to determine the actual identity of the defendant in the Complaint. Exhibit A is the Decision of Administrative Law Judge Michael Botkin (“ALJ”), who considered the Quaglio’s appeal. *See* R. 1, Ex. A. Quaglio had appealed the IDWD deputy’s determination that she knowingly failed to disclose amounts

earned or falsified any other fact pursuant to Indiana Code § 22-4-13-1.1. That state statute provides, in pertinent part:

Sec. 1.1. (a) . . . [I]f an individual knowingly:

(1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or

(2) fails to disclose or has falsified any fact;

that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits, the individual forfeits any wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for the period in which the failure to disclose or falsification occurs.

Ind. Code § 22-4-13-1.1(a). The ALJ's Decision affirmed the earlier determination, finding that Quaglio underreported her weekly gross earnings for 19 weeks and "received benefits to which she was not entitled for each week in an average weekly amount of about \$73." That Decision confirms for this court that the defendant herein was intended to be Quaglio, but it does not excuse the plaintiff's material allegations in its Complaint concerning Reynolds. *See Murray v. AT&T Mobility LLC*, 374 Fed. Appx. 667, 671 (7th Cir. 2010) ("[C]ourts are not required to scour the record for evidence to support a party's arguments.") (citations omitted)).

The court also notes that the plaintiff did not discover the error itself (by proof-reading its pleading or by reviewing it before submitting later documents, for example); it did not proffer an amended complaint. Nevertheless, when the court turned to the plaintiff's Motion for Default Judgment, it found that the name of Reynolds no longer appeared, the name of the defendant was written throughout the document in capital letters, and all allegations of "the undisputed facts" charged Quaglio, not Reynolds, with receipt of regular and emergency unemployment compensation benefits while she was employed by Help at Home Inc. Without amending the original pleading, the plaintiff sought a default judgment against Quaglio based upon those factual allegations originally charged against both Quaglio and Reynolds.

In addition, the court found that the Motion for Default Judgment mistakenly stated the amount of the debt:

The amount due and owing is Nine-Thousand Six-Hundred Fifty-Five and 25/100 Dollars (\$22,609.43). Affidavit of Indebtedness.

R. 8, ¶ 18. The attached Affidavit of Indebtedness states that the debt owed by Quaglio is \$9,655.25.

The mistaken numerical figure stating the debt is surprisingly careless, since the person inserting the information wrote out the words stating the proper amount of the debt, but then wrote out or failed to change the incorrect numerical amount immediately next to the spelled-out words. Even if the miswritten number could be excused as a typographical blunder, however, the misidentification of the defendant in the Complaint is not a “de minimis” or minor clerical error. If Quaglio was not employed by Help at Home Inc. at the same time she received unemployment compensation, and if she did not underreport or fail to report her earnings, she could not be held in violation of Indiana Code § 22-4-13-1.1. Moreover, without that state statutory violation, the plaintiff has no claim that this defendant, Quaglio, holds a nondischargeable obligation to the plaintiff in this bankruptcy proceeding. The ALJ’s decision, attached to the Complaint, shines light on the errors of the Complaint, but it is simply not sufficient to excuse the unacceptable Complaint. It is not the job of a court to rewrite a pleading or to excuse the careless deficiencies of a plaintiff. *See Smart v. Local 702 Int’l Broth. of Elec. Workers*, 562 F.3d 798, 811 (7th Cir. 2009) (“[T]he court is not required to rewrite a deficient pleading.”). The court’s loss of confidence in the integrity of the plaintiff’s submissions to this court further causes the court to deny the Motion for Default Judgment and to dismiss the Complaint.

There is another reason, a substantive one, for which the plaintiff’s Complaint must be denied. As was stated above, § 523(a)(2)(A) requires a plaintiff to establish that the defendant obtained the plaintiff’s money through knowingly false representations or willful misrepresentations *and* that the defendant acted with the intent to deceive the plaintiff. However, the Complaint contains no allegation of the defendant’s

intent to deceive the plaintiff, and the Motion for Default Judgment contained only a single cursory allegation of deception:

In summary, the Defendant, LORETTA QUAGLIO, obtained unemployment benefits from the Department by certifying that she was unemployed and eligible to receive benefits. QUAGLIO knew that her representations were false because she was employed at the same time she was receiving unemployment benefits. QUAGLIO deceived the Department, and the Department relied on QUAGLIO's deceptions to its detriment, i.e., it erroneously paid unemployment to LORETTA QUAGLIO – benefits in [*sic*] which the Defendant was not entitled.

R. 8, ¶ 19. Referring to the Weekly Claims forms attached as Exhibit A, the Motion showed the defendant's deception by pointing out that Quaglio answered "yes" to the sixth question, "Did you work?" on each voucher but then underreported her wages in the eighth question:

QUAGLIO answered the eighth question, "If you worked, how much did you earn for the week?" by reporting wages less than her actual wages earned, which would have rendered QUAGLIO ineligible for benefits for each week that she collected benefits. Exhibit A.

Id., ¶ 10.

The court examined the documentary evidence submitted by the plaintiff in support of its pleading and motion. Attached as Exhibit F was the ALJ's Decision. The court found that the ALJ made no inquiry concerning Quaglio's fraudulent intent. It specifically made only this finding of fact:

The claimant did not present substantive evidence as to the reason for her underreporting her earnings and generally testified that she made a mistake. The evidence is persuasive that the claimant knowingly falsely reported her earnings and knowingly failed to report her total gross earnings for each of the nineteen weeks for which she underreported her earnings.

Id., Ex. F at 2. The court's review of the Weekly Claims forms in Exhibit A confirmed that Quaglio stated that she worked and reported her wages for each week.² Exhibit B, the Verification of Weekly Earnings submitted by the employer Help at Home Inc., presented the employer's report of Quaglio's "gross earnings," which were higher than the earnings Quaglio reported on the weekly claims vouchers.

² Exhibit A also includes copies of "Claimant Vouchers" signed by the defendant. However, on the copies submitted to the court, the questions to which the defendant responded on the forms were too small to print and two blurred to read properly. As far as the court could read it, nevertheless, the defendant was not asked to report "gross wages," as the employer was asked to report on Exhibit B.

The court's examination of the Motion and the appended documents raised two issues. The first arose from the three different references to "wages":

(1) The defendant, as claimant and employee, was asked, on the weekly claims vouchers, "how much did you earn for the week?"

(2) The defendant's employer was asked, on the "Verification of Weekly Earnings," to report the defendant's gross wages.

(3) The ALJ found that the defendant "knowingly failed to report her total gross earnings."

With that evidence before it, the plaintiff, in its Motion for Default Judgment, concluded that the defendant's reporting, on the Weekly Claims forms, of "less than her actual wages earned . . . rendered QUAGLIO ineligible for benefits for each week that she collected benefits." However, neither the documents nor the Motion for Default Judgment presented the evidence to show that her reporting was knowingly false, rather than merely mistaken, and neither explained the method by which false reporting or underreporting was determined. *See In re Hayes*, 2011 WL 4352315 at *2-*3 (Bankr. D. Neb. Sept. 16, 2011) (finding that debtor's claims for benefits was an intentional mistake, not merely a listing of net rather than gross wages).

In the view of the court, there are plausible distinctions among "weekly earnings," "gross wages," and "actual wages." The ALJ found that the defendant "testified that she made a mistake." He further found that he was persuaded by the evidence before him that she "knowingly falsely reported her earnings and knowingly failed to report her total gross earnings." In reliance on the ALJ's findings, the plaintiff argued that the defendant was ineligible for benefits. Based on the record before it, however, the court concludes that the plaintiff has not established, as a matter of law, that the defendant made representations that the defendant either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation. The plaintiff thus has failed to show that the first requirement of § 523(a)(2)(A) is met.

Secondly, the plaintiff has failed to establish the second requirement of § 523(a)(2)(A), intent to deceive. The court noted that the plaintiff based its legal allegation of Quaglio's deception upon the

factual allegation that Quaglio “obtained unemployment benefits from the Department by certifying that she was unemployed and eligible to receive benefits.” *Id.*, ¶ 19. However, the court could find no evidence in the record that Quaglio certified that she was *unemployed*. The documents attached to the plaintiff’s Motion revealed that Quaglio reported that she was employed, that she earned a certain amount each week, and that the amount stated was less than the gross earnings reported by her employer. The record also demonstrated that she testified to the ALJ “that she made a mistake.” On this record, the court has found no evidence of an intent on the part of Quaglio to deceive the plaintiff.

The intent to deceive is an essential element of § 523(a)(2)(A). Without a showing of fraudulent intent, a *prima facie* case has not been established. *See In re Cheeks*, 467 B.R. 136, 144 (Bankr. N.D. Ill. 2012); *In re Hostetter*, 320 B.R. 674, 681-83 (Bankr. N.D. Ind. 2005). Having found that the plaintiff failed to prove two of the required factors of § 523(a)(2)(A), the court need not go further in its analysis. It concludes that IDWD did not demonstrate that its debt was nondischargeable as a matter of law.

Accordingly, the court determines that IDWD has failed to establish nondischargeability under § 523(a)(2)(A). Moreover, without proof that the debt itself is nondischargeable, no fine or penalty upon that debt can be held nondischargeable under § 523(a)(7). Consequently, the court denies the plaintiff’s Motion for Default Judgment and dismisses the plaintiff’s unacceptable Complaint.

CONCLUSION

For the reasons set forth herein, the court denies the Motion for Default Judgment filed by the plaintiff, the State of Indiana on the relation of the Indiana Department of Workforce Development, against the defendant Loretta Jo Quaglio. The plaintiff’s Complaint is dismissed with prejudice.

SO ORDERED.

/s/ HARRY C. DEES, JR.

HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT