

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
JENNIFER JEAN MAXEY,	)	CASE NO. 13-30487 HCD
	)	CHAPTER 7
	)	
DEBTOR.	)	
	)	
	)	
STATE OF INDIANA on the relation of the	)	
INDIANA DEPARTMENT OF WORKFORCE	)	
DEVELOPMENT,	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 13-3024
	)	
JENNIFER JEAN MAXEY,	)	
DEFENDANT.	)	

Appearances:

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

Jennifer Jean Maxey, pro se, 504 North Starke Street, Lot #43, Hamlet, Indiana 46532.

MEMORANDUM OF DECISION

At South Bend, Indiana, on November 19, 2013.

Before the court is the Motion for Default Judgment filed in this adversary proceeding by the plaintiff, State of Indiana on the relation of the Indiana Department of Workforce Development (“plaintiff” or “IDWD”), against the chapter 7 debtor Jennifer Jean Maxey (“defendant” or “Maxey”). The plaintiff commenced this adversary proceeding by filing a Complaint To Determine Dischargeability of Debt pursuant to 11 U.S.C. § 523(a)(2)(A). The Complaint alleged that the defendant received unemployment compensation benefits, in the amount of \$4,845.00, to which she was not entitled, and sought to have that debt declared nondischargeable as a debt for money obtained by false pretenses, false representation, or

actual fraud. The defendant did not respond to the Complaint or to the Motion for Default Judgment. For the reasons stated below, the court grants the Motion for Default Judgment.<sup>1</sup>

### BACKGROUND

Jennifer Jean Maxey, by counsel, filed a voluntary chapter 7 petition on March 7, 2013. After the § 341 meeting of creditors was held, the chapter 7 Trustee filed his Report of No Distribution, certifying that there was no estate property available for distribution and that the debtor's estate had been fully administered. On June 10, 2013, the Order granting the debtor her discharge under 11 U.S.C. § 727 was issued, but the Order explained that "debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged." R. 12, Order, p. 2, Case No. 13-30487. The IDWD had filed its adversary proceeding against the defendant-debtor on May 1, 2013, and thus the debt under consideration therein was not discharged. The main bankruptcy case was closed on June 12, 2013, but the adversary case remained pending.

### DISCUSSION

The plaintiff asks the court to enter default judgment against the defendant because she neither appeared nor responded in this adversary proceeding. Rule 7055 of the Federal Rules of Bankruptcy Procedure governs defaults. That bankruptcy rule applies Rule 55 of the Federal Rules of Civil Procedure in adversary proceedings. Rule 55 clearly distinguishes between an "entry of default" and "judgment by default." *See Lowe v. McGraw-Hill Cos., Inc.*, 361 F.3d 335, 339 (7th Cir. 2004). An entry of default is made by the clerk when two acts occur: (1) the defendant fails to plead or defend, and (2) that failure is shown "by affidavit or otherwise." *See Fed. R. Civ. P. 55(a)*.

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<sup>1</sup> 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. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

In default cases, the court begins its analysis by determining that the Complaint initiating the adversary proceeding was timely filed. *See* Fed. R. Bankr. P. 4007(c). The plaintiff duly served the summons and Complaint upon the debtor-defendant and her bankruptcy attorney of record, pursuant to Federal Rules of Bankruptcy Procedure 7004(b)(9) and (g). *See* R. 5. Service was effected by first class U.S. mail and by certified mail, and the certified mail return receipts were attached to the Certificate of Service, thereby verifying proper proof of service and notice. The defendant failed to appear or to file a response within thirty days of issuance of the summons and Complaint. *See* Fed. R. Bankr. P. 7012(a). Once the deadline had passed, the plaintiff sought entry of default.

The court finds that the plaintiff followed the criteria set forth in the rules governing defaults. It complied with Rule 55(a) by establishing the defendant's default and by requesting the Clerk's Entry of Default. *See* R. 6, Motion, Affidavit in Support; *see also Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008). By affidavit the plaintiff showed timely, proper service of process; receipt of the summons and Complaint by the defendant and her bankruptcy attorney; the defendant's failure to respond; and the verified non-military status of the defendant. When the plaintiff fulfilled the criteria of Rule 55(a), the Clerk of the Court entered default against the defendant. *See* R. 7.

The plaintiff now requests that the court enter a judgment by default, in accordance with Rule 55(b). *See* R. 9. Attached to the Motion for Default Judgment are two Affidavits. The first is an Affidavit of plaintiff's counsel, verifying that the defendant is not an infant, an incompetent person, or one on active military duty, as confirmed by the Department of Defense Manpower Data Center. The second is an Affidavit of the plaintiff's Collection Specialist, declaring that the defendant filed unemployment benefit claims and received benefits but was ineligible to receive those benefits, and that it owed the plaintiff \$4,845.00. Also attached to the Motion were documentary exhibits: weekly vouchers declaring that the defendant did not work and sought benefits for 15 weeks (Ex. A); the plaintiff's Investigation Work History (Ex. B); the plaintiff's Unemployment Insurance Benefit Payment Audit (Ex. C); the plaintiff's

Determination of Eligibility (Ex. D); the defendant's Sworn Statement (Ex. E); and the plaintiff's Notice of Potential Overpayment for the 15 weeks the defendant received unemployment benefits while she was working (Ex. F).

In the Motion itself, the plaintiff presented its § 523(a)(2)(A) claim by setting forth its undisputed facts, gleaned from the attached documents:

- (1) Maxey received unemployment benefits by stating that she was unemployed each of 15 weeks;
- (2) Maxey answered "no" to the question "Worked this week?" on each voucher submitted;
- (3) for 15 weeks, Maxey was employed by Winamac Company Inc. and received wages;
- (4) the plaintiff paid Maxey \$4,845.00 in benefits during those 15 weeks; and
- (5) in a sworn statement, Maxey stated that she gave her husband her pay stubs to enter her wages and that he filled out her vouchers at the neighbor's home.

See R. 9, ¶¶ 7-12. An investigator for the IDWD interviewed the defendant, after learning of her employment during the period she was receiving unemployment benefits. Maxey appeared at that interview and told him that her husband had filled out the vouchers at a neighbor's home. She also stated that she had given her husband her pay stubs to enter her wages. The IDWD thereafter notified Maxey of its determination that she "knowingly failed to disclose, or falsified, [information] regarding earnings or other material facts" and that she received benefits to which she was not entitled and which she was liable to repay to the IDWD. R. 1, Ex. D. Maxey did not appeal the decision. Now in this bankruptcy adversary proceeding, the plaintiff summarized its argument for nondischargeability in the Motion for Default Judgment:

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

R. 9, ¶ 14. It asked the court for a judgment of nondischargeability in its favor by default. The defendant did not file any response to the Motion.

A bankruptcy court's entry of a judgment by default is discretionary. *See Sun v. Board of Trustees of Univ. of Ill.*, 473 F.3d 799, 810 (7th Cir.), *cert. denied*, 551 U.S. 1114, 127 S. Ct. 2941, 168 L.Ed.2d 262 (2007). It may be denied when the facts are insufficient to support the claim in the complaint. *See In re Mergen*, 473 B.R. 743, 744 (Bankr. W.D. Wis. 2012). Particularly in a bankruptcy setting, in which "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) (citations omitted); *see also In re Liebl*, 434 B.R. 529, 536 (Bankr. N.D. Ill. 2010); *In re Hostetter*, 320 B.R. 674, 678 (Bankr. N.D. Ind. 2005).

The court finds, first, that the plaintiff's request for a default judgment under Rule 55(b) included the required supporting affidavit that verified the defendant's status as not an infant, an incompetent person, or one holding military status. It presented the appropriate information that complied with the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App., § 501 *et seq.* *See In re Redmond*, 399 B.R. at 632 (citing cases). Before entering a default judgment, however, the court also requires that a plaintiff establish a *prima facie* showing on the merits of its claim. *See In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003) ("[B]efore a litigant is awarded the relief it seeks when the opposing party fails to respond, the court needs to satisfy itself that the facts before it demonstrate a *prima facie* entitlement to that relief."); *cf. Ojeda v. Goldberg*, 599 F.3d 712, 718 (7th Cir. 2010) (stating that "exceptions to discharge are to be construed strictly against a creditor and liberally in favor of the debtor") (quoting cases). The plaintiff's Complaint asked the court to declare nondischargeable the defendant's debt to the IDWD under § 523(a)(2)(A) as a debt for money obtained by false pretenses, false representation, or actual fraud.

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*, 599 F.3d at 716-17; *In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994).

This court, having evaluated the plaintiff's default judgment motion, together with the attachments, finds that the IDWD demonstrated that the defendant obtained the plaintiff's money by applying for and receiving regular unemployment benefits through representations on the vouchers that she was not working. However, during the compensable weeks of June 24, 2006 to September 30, 2006, she in fact was employed and paid by Winamac Company Inc. The defendant thus falsely stated the material fact that she was unemployed, thereby receiving benefits to which she was not entitled. *See, e.g., Telligman v. Review Bd. of IDWD*, \_\_\_N.E.2d \_\_\_, 2013 WL 5799438 at \*7 (Ind. App. Oct. 29, 2013) (affirming Board decision that defendant falsified facts to obtain unemployment benefits while employed).

The defendant tried to avoid liability for that repayment to the plaintiff by stating that she herself had not entered the information on the vouchers; her husband had filed them. Nevertheless, it is evident that the defendant gave permission to her husband to fill out the vouchers on her behalf, and thus she obtained unemployment benefits from the plaintiff through representations that she either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation. *See, e.g., Telligman*, 2013 WL 5799438 at \*6 (affirming Board's finding that defendant knowingly failed to disclose material facts, even though former wife submitted the weekly vouchers); *Tiller v. Review Board of IDWD*, 974 N.E.2d 478, 480-82 (Ind. App. 2012) (finding that claimant's wife filed vouchers, that both knew that claimant was earning wages but did not disclose them to IDWD, and that claimant knew of obligation to report earnings to IDWD; affirming Board's decision not to accept additional evidence).

It is also clear that the plaintiff paid the defendant unemployment benefits in the amount of \$4,845.00 as a consequence of its reliance on the defendant's false representations that she was unemployed. *See, e.g., In re Yuppa*, 2013 WL 4854479 at \*4 (Bankr. S.D. Ohio, June 12, 2013) (finding that state agency justifiably relied on defendant's misrepresentations on benefits applications and certifications); *In re*

*O'Brien*, 110 B.R. 27, 32-33 (Bankr. D. Colo. 1990) (finding that state agency, by ensuring that there was a basis for relying on debtor's representation, reasonably relied). The court finds that the plaintiff met its burden of demonstrating the first and third factors of the *prima facie* test of § 523(a)(2)(A), false representation and justifiable reliance.

However, the plaintiff's showing concerning the second essential element, the defendant's intent to deceive the plaintiff, was problematic. The investigator of Maxey's claim made no inquiry into her intent. *See* R. 9, Ex. D. In addition, the plaintiff made no allegation of the defendant's intent to deceive in its Complaint, and in its Motion for Default Judgment it merely stated conclusorily that "Maxey deceived the Department." R. 9, ¶ 14. In fact, the Indiana unemployment compensation statute upon which the plaintiff relies contains no requirement that an intent to deceive be found. It states:

(c) Any individual who knowingly:

(1) makes, or causes to be made by another, a false statement or representation of a material fact knowing it to be false; or

(2) fails, or causes another to fail, to disclose a material fact; and

as a result thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such amount, with interest at the rate of one-half percent (0.5%) per month, to the department . . . .

Ind. Code § 22-4-13-1(c). The statute requires a finding of a knowingly false representation or omission of a material fact, but it lacks any language requiring examination of the claimant's intent to deceive.<sup>2</sup> The plaintiff did not direct the court to any provision or case imposing a fraudulent intent factor under the state

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<sup>2</sup> After a brief review of the Indiana unemployment compensation provisions, the court is of the opinion that the statutes generally do not condition ineligibility of benefits on the actual intent of a claimant. For example, in the denial-of-benefits cases based upon a claimant's "discharge for just cause," codified at Indiana Code § 22-4-15-1(d), "there is no specified statutory intent for discharges for breach of duty." *Recker v. Review Bd. of IDWD*, 958 N.E.2d 1136, 1142 (Ind. 2011). "Fault or just cause for discharge, in the unemployment context, means 'failure or volition, and does not mean something blameworthy, culpable, or worthy of censure.'" *Davis v. Review Bd. of IDWD*, 900 N.E.2d 488, 493 (Ind. App. 2009) (quoting *Wakshlag v. Review Bd. of Ind. Employment Security Div.*, 413 N.E.2d 1078, 1082 (Ind. App. 1980)). *Wakshlag* noted that the law does not require "findings of fact as to subjective intent if discharge is reasonably justified on the employee's objective behavior." *Id.* (citation omitted).

unemployment benefits statutes, and the court has found none. The court thus concludes that the element of intent to deceive is not essential to a recovery under Indiana Code § 22-4-13-1(c) but is required under § 523(a)(2)(A) of the Bankruptcy Code. It further determines that, in this case, fraudulent intent was not determined by the plaintiff's investigator or argued sufficiently by the plaintiff.<sup>3</sup>

Nevertheless, the plaintiff presented a document which demonstrated the defendant's intent to deceive. The defendant had appeared at an interview with the investigator of her claim and had made the following Sworn Statement at that time:

I, JENNIFER MAXEY, without being coerced or threatened and without being promised any reward or special consideration, after first being duly sworn according to law, hereby depose and say:

Q. You claimed unemployment benefits for the period of 5/13/06 to 10/21/06. Why did you fail to disclose your employment and earnings from WINAMAC COMPANY INC. when claiming benefits for weeks ending 6/24/06 to 10/21/06?

A. I wasn't entering it myself. My husband filled out my vouchers over at my neighbor's. I gave him my pay stub to enter wages.

Q. Did you notice your check was bigger than it should be?

A. Yes. I asked him if he was reporting my income and he see [sic] he was.

R. 9, Ex. E, p. 3. Relying on Indiana Code § 22-4-13-1(c), the plaintiff asserted that Maxey deceived the IDWD.

The court already determined that the plaintiff successfully demonstrated that the defendant, by consenting to her husband's filing of the vouchers, was liable for the knowingly false statements of material fact he made on her behalf. It now further finds that the plaintiff also showed that the defendant's husband, filing the vouchers while holding the pay stubs she gave him, intentionally certified falsely that Jennifer Maxey did not work for each of 15 weeks she had pay stubs. In addition, the defendant's Sworn Statement demonstrated that the husband and wife, this defendant, intended to deceive the plaintiff. She admitted that

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<sup>3</sup> Compare *In re Chen*, 227 B.R. 614 (D.N.J. 1998) (affirming bankruptcy court's decision that state statute required knowing misrepresentation, not intent to deceive, and that defendant did not have the intent to deceive required for § 523(a)(2)(A)).

she noticed that the check was “bigger than it should be,” and yet she accepted each one for 15 weeks and knowingly withheld that material information from the plaintiff. The court finds that the husband’s conduct, filing the defendant’s vouchers for 15 weeks, reflected an actual intent to deceive the plaintiff, and the defendant-wife’s conduct, continuing to accept the oversized benefit checks in silence, fully intended the deception as well. *See In re Yuppa*, 2013 WL 4854479 at \*4 (“Repeated misrepresentations of employment status when applying for unemployment benefits are sufficient to prove fraudulent intent.”) (citing cases); *In re Hampton*, 396 B.R. 28, 30 (Bankr. N.D. Iowa 2008) (“Bankruptcy courts have overwhelmingly held that a debtor’s silence regarding a material fact can constitute a false representation actionable under section 523(a)(2)(A).”); *cf. In re Westfall*, 379 B.R. 798, 803 (Bankr. C.D. Ill. 2007) (finding that concealment of material information was clear misrepresentation by omission).

Based upon the defendant’s own sworn statement and the unrebutted facts in the plaintiff’s Motion for Default Judgment and its appended documents, the court determines that the plaintiff has succeeded in demonstrating the second essential component to a determination of nondischargeability under § 523(a)(2)(A), the defendant’s intent to deceive the plaintiff. Consequently, the court concludes that the plaintiff has established a *prima facie* showing of each of the required elements of nondischargeability of a debt under § 523(a)(2)(A).

Accordingly, the court finds that the Plaintiff has complied with the procedural requirements of Rules 7055 and 55(a) and (b). Moreover, because the Complaint’s allegations stated a legitimate claim for relief, and because the defendant failed to challenge those allegations, the court determines that a nondischargeability judgment by default is proper. Therefore the court grants the Plaintiff’s Motion for Default Judgment against the defendant and grants the relief sought in the Complaint.

CONCLUSION

For the reasons presented in this Memorandum of Decision, 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 Jennifer Jean Maxey, is granted. The relief requested in the plaintiff's Complaint pursuant to 11 U.S.C. § 523(a)(2)(A) is granted. The obligation owed by the defendant to the plaintiff, in the amount of \$4,845.00, is excepted from the defendant-debtor's discharge.

SO ORDERED.

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