UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
CHARLES L. NULL	)	CASE NO. 14-30546 HCD
DEBTOR	)	CHAPTER 7
	)	
	)	
STATE OF INDIANA ON THE RELATION	)	
OF THE INDIANA DEPARTMENT OF	)	
WORKFORCE DEVELOPMENT	)	
PLAINTIFF	)	
vs.	)	PROC. NO. 14-3028
	)	
CHARLES L. NULL	)	
DEFENDANT	)	

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

Charles L. Null, 724 North Seventh, Goshen, Indiana 46525, pro se.

MEMORANDUM OF DECISION

At South Bend, Indiana, on May 18, 2015.

Before the court is the Motion for Default Judgment (Motion) filed by plaintiff the State of Indiana on the relation of the Indiana Department of Workforce Development (IDWD) against the defendant Charles L. Null (Null), pursuant to 11 U.S.C. §523(a)(2)(A)[1]. The court finds the IDWD properly served

[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. Venue is proper pursuant to 28 U.S.C. §1409(a). The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).

Null, and he did not file any response. For the reasons stated below, the court grants the relief sought by the IDWD. The court excepts Null's debt owing to the IDWD from discharge.

Background

The IDWD filed this adversary proceeding on June 10, 2014. The Complaint alleges the IDWD paid Null emergency unemployment benefits during periods when he was ineligible to receive such benefits. The IDWD asks for a determination, pursuant to 11 U.S.C. §523(a)(2)(A), that the indebtedness of Null resulting from these improper payments is not dischargeable as a debt for money obtained by false pretenses, false representations or actual fraud.

On June 12, 2014, the clerk issued a summons in this adversary proceeding. The summons required Null to respond to the complaint by July 14, 2014. The certificate of service filed by the IDWD shows they served Null the Complaint and Summons by regular and certified mail on June 17, 2014. The IDWD filed a Motion for Entry of Default by Clerk on July 30, 2014. On August 13, 2014, the clerk entered the default of Null.

The IDWD filed an Amended Complaint on October 16, 2014. In addition to asking the court to find the debt of Null to the IDWD nondischargeable under 11 U.S.C. §523(a)(2)(A), the Amended Complaint also requests the court to rule under §523(a)(7) that the statutory civil penalties assessed by the IDWD are a fine, penalty or forfeiture, for the benefit of a governmental unit and not compensation for actual pecuniary loss. The clerk issued an alias summons on

October 20, 2014. The alias summons required a response by November 19, 2014. When Null failed to respond to the Alias Summons, the IDWD filed a Motion for Entry of Default by Clerk on January 2, 2015. The clerk entered the default of Null on January 6, 2015. The IDWD filed the Motion now before the court on February 19, 2015. The Motion is supported by counsel's affidavit establishing compliance with the Servicemembers Civil Relief Act (SCRA).[2] Null has not filed a response to any pleading or otherwise participated in this adversary proceeding in any way.

Discussion

The court's entry of a judgment by default is discretionary. *See Sun v. Board of Trustees of U. of IL*, 473 F.3d 799, 809 (7th Cir. 2007), *cert. denied*, 551 U.S. 1114 (2007). Rule 7055 of the Federal Rules of Bankruptcy Procedure, which governs defaults, applies Rule 55 of the Federal Rules of Civil Procedure in adversary proceedings. Civil Rule 55 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). *Lowe* sets forth a two-step process for a movant: proof of a default

---

[2]To comply with the SCRA the affidavit accompanying a request for default must

(A) state whether or not the defendant is in military service and show necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

Servicemembers Civil Relief Act, 50 App. U.S.C. §521(b)(1). See *In re Redmond*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008), *In re Montano*, 192 B.R. 843, 845 (Bankr. D. Md. 1996).

and then justification for a judgment by default. *See In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004). With the entry of default by the clerk, the IDWD has met the first part of test for default judgment. The IDWD properly served Null. Null failed to respond. The court finds Null is in default.

"Once the default is established, and thus liability, the plaintiff still must establish his entitlement to the relief he seeks." *Catt*, 368 F.3d at 793. The IDWD's Amended Complaint asks this court to find Null's debt to the IDWD nondischargeable under §523(a)(2)(A). Under that subsection of §523(a), the IDWD must establish that: (1) Null obtained the money from the IDWD through representations that Null either knew to be false, or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) Null acted with an intent to deceive the IDWD; and (3) the IDWD justifiably relied on Null'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, at 716-17 (7th Cir. 2010); *In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994).

<u>False Representations</u>

In its Amended Complaint, the IDWD alleges that it improperly paid unemployment compensation benefits to Null between the weeks ending March 20, 2010 and October 2, 2010.[3] As an exhibit to its Amended Complaint, the IDWD

---

[3]In Indiana, an individual is deemed totally unemployed in any week when no compensation for personal services was payable to that individual. Ind. Code. §22-4-3-1. Totally unemployed individuals are entitled to properly claimed weekly benefits. See Ind. Code §22-4-12-2. The knowing failure to disclose earnings disqualifies individuals for

(continued...)

attached Null's 28 weekly unemployment claim vouchers. Each of these claim vouchers incorporates a certification by Null that he reported "all work, earnings, and self-employment activity." One question asked on each vouchers is "Did you work?" Null consistently answered "No" to this question. Null has not presented any evidence or argument to challenge the IDWD's allegations. To counter Null's answers, the IDWD attached to the Amended Complaint verifications of weekly earnings from Null's employer covering the same weeks as his claim vouchers. The court finds these claim vouchers are clear statements by Null that he had no income or earnings for these reporting periods although the representations were factually incorrect.

Intention to Deceive

As the court has noted above, Null did not respond to the IDWD's Amended Complaint, and the clerk has entered Null's default in this adversary proceeding. "Where a debtor knowingly or recklessly makes false representations which the debtor knows or should know will induce another to act, an intent to deceive may be inferred." *In re Westfall*, 379 B.R. 798, 804 (Bankr. C.D. Ill. 2007) (citations omitted). The lack of any presentation by Null to the contrary leads the court to conclude he intended to deceive the IDWD when submitting unemployment vouchers.

---

[3](...continued)
benefits. See Ind. Code §22-4-13-1.1. Indiana law requires individuals who receive improper benefits to repay those amounts to the state. See Ind. Code §22-4-13-1.

As part of its investigation into the payments it made to Null, the IDWD scheduled an interview with Null on August 26, 2011. Null failed to appear at that interview. The record also shows that Null never visited or contacted the local IDWD office to seek assistance in completing his weekly claim vouchers. Null's failure to take advantage of his opportunities to seek guidance in completing claim vouchers and meet with the IDWD indicates his proclivity to avoid providing truthful information.

"A debtor's silence regarding a material fact can constitute a false representation under §523(a)(2)(A)." *Westfall*, 379 B.R. at 803. The court finds the IDWD presented unrebutted documentary evidence that establishes a *prima facia* case that Null knowingly filed multiple vouchers for emergency unemployment compensation benefits during periods when he was in fact employed. The repeated nature of Null's misrepresentations regarding employment status convinces the court that Null's actions were willful and knowing false representations that satisfy the requirements of §523(a)(2)(A). The court finds Null made these false representations intending to induce the IDWD into improperly paying him unemployment compensation benefits.

Justifiable Reliance

The IDWD has attached verified copies of weekly earnings reports from Null's employers, Heartland Recreational Vehicles LLC and Axis Productions, Inc., to its Amended Complaint. Indiana law requires employers keep records containing information necessary for the state's unemployment compensation

system. See Ind. Code §22-4-19-6 *et seq*. The weekly earnings reports by these employers reflect wages paid to Null over the same periods that he had filed unemployment claim vouchers. The Indiana unemployment compensation system relies on accurate reporting by employers, and truthful benefit claims by benefit applicants such as Null. The design of Indiana's unemployment compensation system and the lack of any suggestion by Null that the IDWD improperly relied on his voucher claims lead the court to conclude that the IDWD was justified in relying on Null's voucher claims for unemployment compensation.

Allowing for adjustments, set-offs, and repayment, the IDWD alleges Null owes $9,517.00 in improper unemployment benefit payments and civil penalties. Null has not presented any evidence pointing to errors in the IDWD's allegations. The court accepts the IDWD's computation of the amount of overpayment and civil penalties as correct.

Conclusion

For the reasons stated in this Memorandum of Decision, the court grants the relief sought in the IDWD's Amended Complaint to Determine Dischargeability of Debt. The court excepts the debt of defendant Charles L. Null to the plaintiff Indiana Department of Workforce Development from discharge under 11 U.S.C. §523(a)(2)(A) as a debt for money obtained by false pretenses, false representations or actual fraud. The statutory civil penalties assessed by the IDWD are a fine, penalty or forfeiture, for the benefit of a governmental unit and not compensation for actual pecuniary loss and are also excepted from discharge under

11 U.S.C. §523(a)(7). Null's obligation to the IDWD, consisting of improperly claimed emergency unemployment compensation benefits and statutory civil penalties, totaling $9,517.00, and the adversary proceeding filing fee of $350.00 incurred in filing this action, is nondischargeable pursuant to 11 U.S.C. §523(a)(2)(A) and (a)(7).

SO ORDERED.

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