

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
MICHAEL JOSHUA LESLIE)	CASE NO. 14-30540 HCD
DEBTOR)	CHAPTER 7
)	
)	
STATE OF INDIANA ON THE)	
RELATION OF THE INDIANA)	
DEPARTMENT OF WORKFORCE)	
DEVELOPMENT)	
PLAINTIFF)	
vs.)	PROC. NO. 14-3030
)	
MICHAEL LESLIE)	
DEFENDANT)	

Appearances:

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

Michael Leslie, P.O. Box 242, North Liberty, Indiana, pro se

MEMORANDUM OF DECISION¹

At South Bend, Indiana, on May 28, 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 Michael Leslie (Leslie)

¹The 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).

pursuant to 11 U.S.C. §§523(a)(2)(A) and (a)(7). For the reasons stated below, the court grants the relief sought by the IDWD.

Background

Leslie filed for relief under chapter 7 on March 18, 2014. On April 17, 2014, Leslie's chapter 7 trustee filed a report of no distribution. The deadline for objecting to Leslie's discharge was June 16, 2014. The court issued a discharge to Leslie on June 23, 2014.

The IDWD filed this adversary proceeding on June 16, 2014. The Complaint² alleges the IDWD paid Leslie regular and 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 Leslie resulting from these improper payments is not dischargeable as a debt for money obtained by false pretenses, false representations, or actual fraud.

On June 18, 2014, the clerk issued a Summons in this adversary proceeding. The Summons required Leslie to respond to the Complaint by July 18, 2014. The certificate of service filed by the IDWD shows they served Leslie the Complaint and Summons by regular and certified mail on June 19, 2014. The IDWD filed a Motion for Entry of Default by Clerk on July 30, 2014. On July 31, 2014, the clerk entered the default of Leslie.

²The Complaint consists of five counts, 72 numbered paragraphs, and 26 exhibits.

The IDWD filed an Amended Complaint on October 16, 2014. In addition to asking the court to find the debt of Leslie to the IDWD nondischargeable under 11 U.S.C. §523(a)(2)(A) as a debt for money obtained by false pretenses, false representation, or actual fraud, 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.³ The clerk issued an Alias Summons on October 17, 2014. The Alias Summons required a response by November 17, 2014. The IDWD made service of the Alias Summons and Amended Complaint on Leslie using both regular and certified mail on October 20, 2014. When Leslie 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 Leslie on January 5, 2015. On February 24, 2015, the IDWD filed the Motion now before the court. The court notes counsel's Affidavit for Default Judgment accompanying the Motion verifies that Leslie is not a member of any branch of the armed forces of the United States.⁴ The record in this adversary proceeding shows no responsive pleading from

³The Amended Complaint restates the five counts in the original Complaint with greater precision. The additional factual allegations bring the numbered paragraphs to 154. The IDWD included 27 exhibits with this Amended Complaint.

⁴In order to comply with the Servicemembers Civil Relief Act (SCRA), an 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, must state 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. (continued...)

Leslie, nor does the record reflect that Leslie has otherwise participated in this adversary proceeding.

Discussion

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. Granting a default judgment falls within the court's discretion. See *Domanus v. Lewicki*, 742 F.3d 290, 301 (7th Cir. 2014); *Yong-Qian Sun v. Board of Trustees of U. of IL*, 473 F.3d 799, 809 (7th Cir. 2007), *cert. denied*, 551 U.S. 1114 (2007); *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1322 (7th Cir. 1983). Entry of a default judgment is appropriate where defendants fail to timely answer and offer no "justifiable excuse for their conduct." *In re Klarchek*, 509 F.3d 175, 186 (7th Cir. 2014).

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, 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 the test for default judgment. The IDWD properly served Leslie. Leslie failed to respond. The court finds Leslie is in default.

⁴(...continued)
628, 632 (Bankr. N.D. Ind. 2008), *In re Montano*, 192 B.R. 843, 845 (Bankr. D. Md. 1996).

“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. “This circuit follows the rule that ‘the well-pleaded allegations of the complaint relating to liability are taken as true,’ and those ‘relating to the amount of damages suffered ordinarily are not.’ ... Damages must be proved unless they are liquidated or capable of calculation.” *Merrill Lynch Mortgage Corp. v. Narayan*, 908 F.2d 246, 253 (7th Cir. 1990) (internal citations omitted); *Tate v. Troutman*, 683 F. Supp. 897, 905 (E.D. Wis. 2010).

The IDWD’s Amended Complaint asks this court to find Leslie’s debt to the IDWD nondischargeable under §523(a)(2)(A) as a debt for money obtained by false pretenses, false representation, or actual fraud. Under subsection §523(a)(2)(A), the IDWD must establish that: (1) Leslie obtained the money from the IDWD through representations that Leslie either knew to be false, or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) Leslie acted with an intent to deceive the IDWD; and (3) the IDWD justifiably relied on Leslie’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).

IDWD Proof of Claim

The court notes an unusual characteristic pertaining to the IDWD’s debt. Leslie listed the IDWD on Schedule F as an unsecured creditor owed \$14,466.00. Exhibit A to the Amended Complaint is an installment payment

agreement signed by Leslie on June 19, 2013. This agreement acknowledges a \$14,727.20 debt of Leslie to the IDWD. The debt consists of unemployment insurance benefits improperly paid to Leslie. See Exhibit A, Installment Payment Agreement, ECF No. 8-2, at pg. 1. Leslie has submitted nothing to challenge the validity of this Agreement. The court finds this Agreement is a clear admission by Leslie of his indebtedness to the IDWD.⁵

False Representations

In its Amended Complaint, the IDWD alleges that it improperly paid unemployment compensation benefits⁶ to Leslie multiple times between the weeks ending September 27, 2008 and February 11, 2012. As an exhibit to its Amended Complaint, the IDWD attached 20 of Leslie's weekly unemployment claim vouchers.⁷ Each of these vouchers incorporates a certification by Leslie that he

⁵A second irregular fact relates to the Notice of Meeting of Creditors. This Notice states "Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So." See ECF No. 5. The court did not notify creditors to file claims. Rather, the chapter 7 trustee filed a report of no distribution. Notwithstanding this admonition to creditors, the IDWD filed an unsecured proof of claim on April 21, 2014, in the amount of \$14,659.51. The IDWD was the only creditor to file a claim. In the experience of this court, it is atypical for creditors to file claims unless notified to do so. A third irregular fact, the record shows at least three different assertions of the amount owed by Leslie. The IDWD has not provided any clear explanation for these different statements of the amount owed.

⁶In 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 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.

⁷The court notes the body of IDWD's Amended Complaint asserts Leslie submitted improper claim vouchers for a total of 38 weeks. By the court's count the number of weeks in question totals 37.

reported “all work, earnings, and self-employment activity.” One question each voucher asks is “Did you work?” Leslie consistently answered “No” to this question. In contrast to this negative statement on Leslie’s claim vouchers, the IDWD has submitted verifications of weekly earnings from Leslie’s three employers, CSR Acquisition, Inc., Bremen Castings, Inc., and Labor Ready Mid Atlantic, Inc. These earnings verifications cover the same periods as Leslie’s claim vouchers. Leslie has not presented any evidence or argument to challenge the IDWD’s allegations of his ineligibility to receive benefits. The court finds these vouchers are clear statements by Leslie that he had no income or earnings for these reporting periods, even though these representations were false.

Intention to Deceive

As the court has noted above, Leslie did not respond to the IDWD’s Amended Complaint, and the clerk has entered Leslie’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 Leslie to the contrary leads the court to conclude he intended to deceive the IDWD when submitting unemployment vouchers.

As part of its investigation into the payments it made to Leslie, the IDWD scheduled an interview with Leslie on March 17, 2010. Leslie failed to

appear at that interview.⁸ “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 un rebutted documentary evidence establishing a *prima facie* case that Leslie knowingly filed multiple vouchers for regular and emergency unemployment compensation benefits during periods when he was in fact employed and not entitled to receive these benefits. The repeated nature of Leslie’s misrepresentations regarding employment status convinces the court that Leslie’s actions were willful and knowing false representations that satisfy the requirements of §523(a)(2)(A). The court finds Leslie 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 Leslie’s three employers to its Amended Complaint. Indiana law requires that 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 Leslie over the same periods that he had filed unemployment claim vouchers. The Indiana unemployment compensation system relies on accurate reporting by employers, and

⁸The court notes that while Leslie failed to appear at the interview scheduled for March 2010, the IDWD continued to make benefit payments to Leslie later in 2010, and in calendar years 2011 and 2012. The record does not explain why the IDWD continued to make benefit payments while it was investigating the validity of Leslie’s benefit claims.

truthful benefit claims by benefit applicants such as Leslie. The design of Indiana's unemployment compensation system and the lack of any suggestion by Leslie that the IDWD improperly relied on his voucher claims lead the court to conclude that the IDWD was justified in relying on Leslie's voucher claims for unemployment compensation.

Penalties

Under Indiana law, the first instance of overpayment of an unemployment benefit, where an individual fails to disclose material facts that would make the individual ineligible for benefits, results in a civil penalty of 25% of the overpayment amount. The second instance gives rise to a 50% civil penalty. The statute imposes a 100% civil penalty for the third and all subsequent overpayments. See Ind. Code §22-4-13-1.1(b).

As a result of claiming unemployment benefits during periods when he was ineligible to receive these benefits Leslie has incurred statutory civil penalties. The civil penalty for the weeks of September 27, 2008 to December 13, 2008, is \$425.00. Overpayment during the weeks of December 20, 2008 to January 17, 2009, and January 31, 2009 to March 28, 2009, triggered a civil penalty of \$1,091.50. For the compensable weeks of November 21, 2009 to December 5, 2009, and January 9, 2010 to January 16, 2010, the assessed civil penalty totals \$1,584.00.

Damages

The exhibits to the IDWD's Amended Complaint document all benefit payments made by the IDWD to Leslie. The exhibits also include Leslie's

installment payment agreement acknowledging an indebtedness of \$14,727.20. The court finds this documentation properly establishes the amount of the indebtedness of Leslie to the IDWD.

Allowing for adjustments, set-offs, and repayment, the IDWD alleges in Count I that Leslie owes \$2,125.00 in improper regular unemployment benefit payments and penalties. Count II alleges indebtedness of \$1,981.50 for improper emergency benefits. Count III alleges a debt for wrong emergency benefits of \$3,168.00. Count IV seeks recovery of \$1,668.00 for unjustified regular benefits. Count V seeks a judgment against Leslie of \$2,268.00 for regular benefits. Leslie has not presented any evidence pointing to errors in the IDWD calculations of overpayment and penalty amounts. The court accepts the IDWD's computation of the amount of overpayment and penalties as correct. Including all overpayments and statutory penalties, and allowing for adjustments, set-offs and repayments, the debt to IDWD comes to \$11,210.50.

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 Michael Joshua Leslie to the plaintiff Indiana Department of Workforce Development from discharge under 11 U.S.C. §§523(a)(2)(A) and 523(a)(7). Leslie's obligation to the IDWD, consisting of improperly claimed regular unemployment compensation benefits and emergency unemployment compensation benefits and statutory civil

penalties totaling \$11,210.50, plus 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