UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
JERRY L. DANIEL	)	CASE NO. 14-30655 HCD
ELAINE N. DANIEL	)	CHAPTER 7
	)	
DEBTORS	)	
	)	
	)	
	)	
STATE OF INDIANA ON THE RELATION	)	
OF THE INDIANA DEPARTMENT OF	)	
WORKFORCE DEVELOPMENT	)	
	)	
PLAINTIFF	)	
vs.	)	PROC. NO. 14-3042
	)	
JERRY L. DANIEL	)	
	)	
DEFENDANT	)	

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

Jerry L. Daniel, 1313 Franklin Street, Michigan City, Indiana 46360, pro se

MEMORANDUM OF DECISION[1]

At South Bend, Indiana, on June 15, 2015.

[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).

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

Background

Daniel filed for relief under chapter 7 on March 25, 2014. The deadline for objecting to Daniel's discharge was June 30, 2014. Daniel's chapter 7 trustee filed a report of no distribution June 26, 2014. On June 29, 2014, the IDWD filed a motion to extend the time to file objections to discharge until July 30, 2014. Due to technical defects in this pleading, on July 7, 2014 the court ordered the IDWD to submit an amended motion by July 28, 2014. The IDWD filed their amended motion to extend time on July 8, 2014. Without any objections, the court extended the deadline for the IDWD to file a complaint to determine dischargeability of debt and objecting to discharge until July 30, 2014. The court issued a discharge to Daniel on August 4, 2014. The case was closed September 18, 2014.[2]

The IDWD filed this adversary proceeding timely on July 29, 2014. The Complaint alleges the IDWD paid Daniel regular and emergency unemployment benefits during periods when he was ineligible to receive such benefits. The IDWD

[2]The Notice of Meeting of Creditors in this case states "Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So." The court did not notify creditors to file claims. Notwithstanding this admonition to creditors, the IDWD filed an unsecured proof of claim on April 21, 2014, in the amount of $18,112.07. The IDWD was the only creditor to file a claim.

asks for a determination, pursuant to 11 U.S.C. §523(a)(2)(A), that the indebtedness of Daniel resulting from these improper payments is not dischargeable as a debt for money obtained by false pretenses, false representations, or actual fraud.

The IDWD filed an Amended Complaint on November 25, 2014. As in the original Complaint, the Amended Complaint asks the court to find Daniel's debt 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 IDWD has certified it served Daniel and his bankruptcy attorney with the Alias Summons and Amended Complaint by regular and certified mail on December 3, 2014.

On February 19, 2015, the IDWD filed a Motion for Entry of Default by the Clerk. The clerk entered the default of Daniel on February 20, 2015. On March 26, 2015, the IDWD filed the Motion now before the court. Two affidavits support the Motion. One is counsel's Affidavit for Default Judgment establishing compliance with the Servicemembers Civil Relief Act (SCRA).[3] The other is an Affidavit of Indebtedness substantiating the amount owed by Daniel. Daniel has not filed a response to any pleading or otherwise participated in this adversary proceeding.

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[3]The purpose of the SCRA is to prevent default judgments from being entered against members of the armed services in circumstances under which they may be unable to appear and defend themselves. 50 App. U.S.C. §502(2). *See In re Redmond*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008) (The SCRA prevents default judgments against members of the military when they might be unable to participate in litigation.). The requirements of the SCRA may be satisfied by an affidavit. 50 App. U.S.C. §521(b)(1). *See also In re Montano*, 192 B.R. 843, 845 (Bankr. D. Md. 1996). (The SCRA applies in bankruptcy cases.)

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, e.g.*, *Domanus v. Lewicki*, 742 F.3d 290, 301 (7th Cir. 2014). 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 B.R. 175, 186 (7th Cir. 2014) (citations omitted).

Obtaining a default judgment is a two-step process, establishment of default by the clerk followed by entry of a default judgment. *See e.g.*, *Lowe v. McGraw-Hill Cos., Inc.*, 361 F.3d 335, 339 (7th Cir. 2004). ("The Federal Rules of Civil Procedure make a clear distinction between the entry of default and the entry of a default judgment.") To receive a default judgment, after obtaining the entry of default by the clerk, a movant must show 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 record shows the IDWD properly served Daniel, and he failed to respond. The court finds Daniel 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. On the subject of default, "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. 2d 897, 905 (E.D. Wis. 2010).

The IDWD's Amended Complaint asks this court to find Daniel's debt to the IDWD nondischargeable under §523(a)(2)(A). To meet its burden under subsection §523(a)(2)(A), the IDWD must establish the following: (1) Daniel obtained the money from the IDWD through representations that Daniel either knew to be false, or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) he acted with an intent to deceive the IDWD; and (3) the IDWD justifiably relied on Daniel's false representations to its detriment. *See*, *e.g.*, *In re Davis*, 638 F.3d 549, 553 (7th Cir. 2011). The Amended Complaint alleges the IDWD improperly paid a total of $9,795.00 in regular and emergency unemployment compensation benefits to Daniel between November 2008 and August 2011.

As an exhibit to its Amended Complaint, the IDWD attached weekly unemployment claim vouchers submitted by Daniel to the IDWD. These vouchers each incorporate a certification by Daniel that he reported "all work, earnings, and self-employment activity." In response to the question on each voucher, "Did you work?," Daniel responded negatively. Another exhibit to the Amended Complaint

includes weekly verification of earnings submitted by Kelly Services, Inc. and the City of Michigan City.[4]

Daniel has not presented any evidence or argument to challenge the IDWD's allegations of his ineligibility to receive benefits. The court finds his claim vouchers are clear statements by Daniel that he had no income or earnings for these reporting periods; however, these representations were false since he received wages from Kelly Services and the City of Michigan City during those periods. Based on the unrebutted documentary evidence in the record, the court finds the IDWD has presented a *prima facia* case that Daniel made false representations about his employment status that he knew to be false at the time he made the statements. "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 court finds Daniel knowingly filed false unemployment benefit claim vouchers with the intent to gain unemployment benefit payments totaling $9,795.00 that he was not entitled to receive. The repeated nature of Daniel's misrepresentations regarding employment status convinces the court that Daniel's actions were willful and knowing false representations that satisfy the requirements of §523(a)(2)(A).

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[4]Indiana employers are required to file periodic wage and contribution reports with the state. *See* IC §22-4-19-6, IC §4-1-6, and 646 Ind. Admin. Code §5-2-1.

Indiana law requires that employers keep records containing information necessary for the state's unemployment compensation system. *See* IC §22-4-19-6 *et seq*. The Indiana unemployment compensation system relies on employers' accurate reporting, and truthful benefit claims by benefit applicants such as Daniel. The record here lacks any suggestion by Daniel that the IDWD improperly relied on his voucher claims and leads the court to conclude that the IDWD was justified in relying on Daniel's voucher claims for unemployment compensation.

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

Because he claimed unemployment benefits during periods when he was ineligible to receive these benefits, Daniel has incurred statutory civil penalties. The Amended Complaint asserts these civil penalties total $5,661.00. Daniel has not presented any evidence to rebut the IDWD's statement of the amount of civil penalties. The court finds Daniel is liable to the IDWD for civil penalties that total $5,661.00.

Conclusion

The court accepts as correct the IDWD's computation of benefit overpayments, $9,795.00, and civil penalties, $5,661.00, owed by Daniel. Including all overpayments and statutory penalties, the debt to IDWD comes to $15,456.00. 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 Jerry L. Daniel to the plaintiff State of Indiana on the Relation of the Indiana Department of Workforce Development from discharge under 11 U.S.C. §523(a)(2)(A) and §523(a)(7). Daniel's obligation to the IDWD, consisting of improperly claimed regular and emergency unemployment compensation benefits, statutory civil penalties totaling $15,456.00, and the adversary proceeding filing fee of $350.00 incurred in filing this action, which together total $15,806.00, is nondischargeable pursuant to 11 U.S.C. §523(a)(2)(A) and §523(a)(7).[5]

SO ORDERED.

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

[5]The court notes that nowhere does the Amended Complaint state the total amount the IDWD demands. The lack of a single "bottom line" statement of the amount sought by the IDWD leaves the court and defendant guessing about exactly how much is at stake. It is customary to include in all complaints an ultimate statement of the full amount demanded. When drafting pleadings the IDWD should take care to conform to the pleading requirements in Bankruptcy Rules 7008 and 7054.