UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
RUSSELL JAMES YESKEY and	)	CASE NO. 14-31937 HCD
LINDA DARLENE YESKEY	)	CHAPTER 13
DEBTORS	)	
	)	
	)	
STATE OF INDIANA on the relation	)	
of the INDIANA DEPARTMENT of	)	
WORKFORCE DEVELOPMENT	)	
PLAINTIFF	)	
vs.	)	PROC. NO. 14-3079
	)	
RUSSELL JAMES YESKEY	)	
DEFENDANT	)	

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

Russell James Yeskey, pro se

MEMORANDUM OF DECISION[1]

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

[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).

Workforce Development (IDWD) against the defendant Russell James Yeskey (Yeskey), pursuant to 11 U.S.C. § 523(a)(2)(A). The court finds the IDWD properly served Yeskey, and he did not file any response. For the reasons stated below, the court grants the relief sought by the IDWD.

Background

Debtors Russell James Yeskey and Linda Darlene Yeskey filed a petition for relief under chapter 13 on July 25, 2014. Among the creditors listed by the Debtors is the IDWD. The Debtor's Schedule F shows a debt to the IDWD for benefit overpayments in the amount of $5,527.00. The Debtors filed a chapter 13 plan that proposed to pay 100% to all allowed unsecured claims over a period of up to 60 months. Of the 15 or so listed creditors, only seven have filed claims. The claims register in this bankruptcy shows the IDWD filed a timely proof of claim on August 8, 2014. No party has objected to the IDWD claim. The court confirmed the Debtor's plan on October 17, 2014. The record in this chapter 13 case does not contain any indication that these debtors are not fulfilling their obligation under the confirmed plan to make payments to the chapter 13 trustee.

The IDWD filed this adversary proceeding on October 27, 2014. The Complaint alleges the IDWD paid Yeskey regular 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 Yeskey resulting from these improper payments is not dischargeable as a debt for money obtained by false pretenses, false representations or actual fraud.

On October 28, 2014, the clerk issued a Summons in this adversary proceeding. The Summons required Yeskey to respond to the Complaint by November 27, 2014. The certificate of service filed by the IDWD shows they served Yeskey the Complaint and Summons by regular and certified mail on October 29, 2014. The IDWD filed a Motion for Entry of Default by Clerk on January 2, 2015. On January 6, 2015, the clerk entered the default of Yeskey. The IDWD filed the Motion now before the court on February 24, 2015. The court notes the Motion is accompanied by counsel's Affidavit for Default Judgment. This Affidavit verifies that Yeskey is not a member of any branch of the armed forces in satisfaction of the Servicemembers Civil Relief Act, 50 App. U.S.C. §521(b)(1). Yeskey has not filed a response to any pleading or otherwise participated in this adversary proceeding.

Discussion

Initially the court notes the IDWD has filed a timely proof of claim in the underlying bankruptcy of Yeskey. Because no party in interest has objected to this claim, it is deemed allowed. See 11 U.S.C. § 502(a). Under the terms of the confirmed chapter 13 plan, the IDWD will be paid in full over the term of the plan.

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 Yeskey. Yeskey failed to respond. The court finds Yeskey 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. "[T]his 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 Complaint asks this court to find Yeskey'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 that subsection of § 523(a), the IDWD must establish that: (1) Yeskey obtained the money from the IDWD

through representations that Yeskey either knew to be false, or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) Yeskey acted with an intent to deceive the IDWD; and (3) the IDWD justifiably relied on Yeskey'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).

<u>False Representations</u>

In its Complaint, the IDWD alleges that it improperly paid unemployment compensation benefits to Yeskey between the weeks ending December 4, 2010 and August 6, 2011. As an exhibit to its Complaint, the IDWD attached Yeskey's 19 weekly unemployment claim vouchers. Each of these vouchers incorporates a certification by Yeskey that he reported "all work, earnings, and self-employment activity." One question each voucher asks is "Did you work?" Yeskey consistently answered "No" to this question. The IDWD has submitted verifications of weekly earnings from Yeskey's employer, Forest River, Inc. These earnings verifications cover the same periods as Yeskey's claim vouchers. Yeskey has not presented any evidence or argument to challenge the IDWD's allegations. The court finds these vouchers are clear representations by Yeskey that he had no income or earnings for these reporting periods even though he was employed by Forest River.

Intention to Deceive

As the court has noted above, Yeskey did not respond to the IDWD's Complaint, and the clerk has entered Yeskey'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). Lacking any evidence or argument to the contrary, the court finds Yeskey intended to deceive the IDWD when submitting unemployment vouchers.[2]

"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 Yeskey knowingly filed multiple vouchers for regular unemployment compensation benefits during periods when he was in fact employed. The repeated nature of Yeskey's misrepresentations about his employment status convinces the court that his actions were willful and knowing false representations that satisfy the requirements of § 523(a)(2)(A). The court finds Yeskey made these false representations intending to induce the IDWD into improperly paying him unemployment compensation benefits.

Justifiable Reliance

[2]The court notes Yeskey's admission of his indebtedness when he was interviewed by the IDWD on September 9, 2011. At that interview, Yeskey stated under penalty of perjury, "Work slow, can't pay bills and other house etc. Truck payments. Shouldn't have claimed benefit while still working. I will pay back owed benefits." This clear acknowledgment shows Yeskey was aware that he was not entitled to receive benefits he was claiming.

The IDWD has attached verified copies of weekly earnings reports from Yeskey's employer, Forest River, Inc., to its 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. These weekly earnings reports by his employer reflect wages paid to Yeskey 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 Yeskey. The design of Indiana's unemployment compensation system and the lack of any suggestion by Yeskey that the IDWD improperly relied on his voucher claims, lead the court to conclude that the IDWD was justified in relying on Yeskey's voucher claims for unemployment compensation.

Damages

The exhibits to the IDWD's Complaint include Yeskey's installment payment agreement where he acknowledges his indebtedness to the IDWD. This payment agreement lists the specific amount owed to the IDWD when Yeskey signed the agreement on November 21, 2011. The exhibits also document all benefit payments made by the IDWD to Yeskey. The court finds this documentation properly establishes the amount of the indebtedness of Yeskey to the IDWD.

Allowing for adjustments, set-offs, and repayments, the IDWD alleges Yeskey owes $4,813.50 in improper unemployment benefit payments and penalties. Yeskey has not presented any evidence pointing to errors in the IDWD's

calculations of the amount owed. The court accepts the IDWD's computation of the amount of overpayment and penalties as correct.

Conclusion

For the reasons stated in this Memorandum of Decision, the court grants the relief sought in the IDWD's Complaint to Determine Dischargeability of Debt. The court excepts the debt of defendant Russell James Yeskey to the plaintiff Indiana Department of Workforce Development from discharge under 11 U.S.C. § 523(a)(2)(A). Yeskey's obligation to the IDWD, consisting of improperly claimed regular unemployment compensation benefits totaling $4,813.50 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).

SO ORDERED.

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