

4-18-2014

Bell v. Idaho Department of Labor Respondent's Brief Dckt. 41592

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES C. BELL,)
)
 Claimant/Appellant,)
)
 vs.)
)
 SEARS,)
)
 Employer/Respondent,)
)
 and)
)
 STATE OF IDAHO,)
 DEPARTMENT OF LABOR,)
)
 Respondent.)

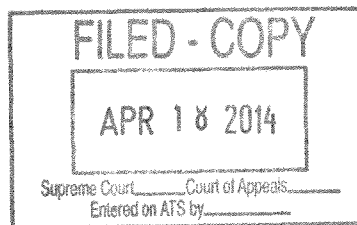
SUPREME COURT NO. 41542-
 411592
 BRIEF OF RESPONDENT
 DEPARTMENT OF LABOR

ON APPEAL FROM THE INDUSTRIAL COMMISSION
 STATE OF IDAHO
 THOMAS P. BASKIN, CHAIRMAN

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EMPLOYER SEARS
 c/o TALX UC EXPRESS
 P.O. Box 173860
 Denver, CO 80217-3869



IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES C. BELL,)	
)	
Claimant/Appellant,)	SUPREME COURT NO. 41542
)	
vs.)	BRIEF OF RESPONDENT
)	DEPARTMENT OF LABOR
SEARS,)	
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Employer/Respondent,)	
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and)	
)	
STATE OF IDAHO,)	
DEPARTMENT OF LABOR,)	
)	
Respondent.)	

ON APPEAL FROM THE INDUSTRIAL COMMISSION
STATE OF IDAHO
THOMAS P. BASKIN, CHAIRMAN

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IDAPA 09.01.30.5501

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STATEMENT OF THE CASE

(1) Nature of the Case:

Charles C. Bell (Claimant) was no stranger to the unemployment claim filing process when he filed his ninth claim for benefits. Exhibit 8, p. 1; Tr. p. 12, Ll. 4-7. Nine times the Department told Claimant how to report his earnings and nine times the Department told Claimant that if he estimated his earnings he must contact his local office when he received correct earnings information. Exhibit 2B, Tr. p. 12, Ll. 8-9. Claimant filed eighteen continued claim reports. Exhibits 11 and 33. All Claimant had to do was keep track of the hours he worked each day, add them together at the end of the week and multiply them by his rate of pay. Tr. p. 23, Ll. 3-7. Instead, he estimated his earnings each time, but did not contact the Department to correct his earnings. Claimant underreported earnings by almost \$2,000.00 and received unemployment benefits he was not entitled to receive.¹ Exhibit 11, Exhibit 33, and Exhibit 34, pp. 10-11; Tr. P. 23, Ll. 11-16; p. 24, Ll. 21-25; p. 26, Ll. 1-18; p. 35, Ll. 5-10. The Industrial Commission (Commission) concluded Claimant willfully made false statements and willfully failed to report material facts each of those weeks. R. pp. 14-24.

¹ IDAPA 09.01.30.550 requires each claimant to report weekly for benefits as directed. An application for benefits or waiting week credit for a specific compensable week is called a continued claim. IDAPA 09.01.30.010.12.

(2) Course of the Proceedings Below:

In March 2013, the Department discovered a discrepancy between the weekly earnings Claimant reported and the earnings Sears reported it paid him in its quarterly reports.² Exhibit 3. The Department investigated. Exhibit 3. As a result of that investigation, the Department issued an Eligibility Determination finding Claimant willfully made false statements or failed to report material facts on his claim in order to receive unemployment benefits for 19 weeks. Exhibit 30. The Department also issued an Eligibility Determination finding Claimant was not unemployed during nine of those weeks. Exhibit 31; Tr. p. 17, Ll. 12-18. Claimant filed an appeal of those Determinations. Exhibit 34, pp. 1-2.

On June 24, 2013, the Department mailed a Notice of Telephone Hearing to the parties setting a hearing for July 9, 2013. Exhibit 1. Claimant and Workforce Consultant Senior Elaine Mattson participated in the hearing. Tr. p. 2, Ll. 8-11. The appeals examiner issued a decision on July 12, 2013, affirming the Eligibility Determinations and concluding Claimant was not eligible for a waiver of the requirement to repay benefits and liable for a penalty pursuant to Idaho Code § 72-1369. R. pp. 1-6. On August 4, 2010, Claimant filed a timely appeal of the decision to the Commission. R. pp. 7-9.

The Commission issued its Decision and Order on September 16, 2013, based on a *de novo* review of the record, including the exhibits and an audio recording of the hearing before the appeals examiner. Idaho Code § 72-1368(7); R. pp. 14-27. The Commission affirmed, in part,

² Pursuant to IDAPA 09.01.35.011.01 employers must report all wages paid to employees for services in covered employment each calendar quarter.

and reversed, in part, the appeals examiner's decision. R. pp. 14-27. The Commission affirmed the appeals examiner's decision concluding Claimant was not unemployed. R. pp. 14-27. The Commission also affirmed examiner's decision concluding Claimant willfully made false statements or failed to report material facts with the exception of one week, the week ending October, 13, 2012. R. pp. 14-27. The Commission concluded the difference between what Claimant reported and what he should have reported for that week was nominal and it was "not inclined to find Claimant willfully made a false statement during the week." R. p. 24. The Commission also affirmed the appeals examiner's decision Claimant was liable for a penalty and ineligible for a waiver. R. pp. 14-27.

On September 25, 2013, the Commission received a document from Claimant that it treated as a request for reconsideration. R. pp. 28-41. The Commission denied Claimant's request for reconsideration in an Order filed October 10, 2013. R. pp. 38-41. On November 12, 2013, Claimant filed a Notice of Appeal with this Court. R. pp. 42-62.

(3) Statement of Facts:

Claimant filed for unemployment benefits eight times before filing once again on May 30, 2012. Exhibit 8, p. 1. Claimant acknowledged that each time he filed a new claim for benefits he went through the Department's Electronic Claims process. Exhibit 5; Tr. p. 13, Ll. 1-25; p. 14, Ll. 1-16. Each time Claimant filed a claim, as a part of that process Claimant received a "Certification Agreement." Exhibit 5, p. 10; Tr. p.16. In that agreement, he had to certify the following:

I UNDERSTAND THAT THE LAW PROVIDES PENALTIES OR IMPRISONMENT OR BOTH IN ADDITION TO DISQUALIFICATION

AND REPAYMENT OF BENEFITS IF I KNOWINGLY FAIL TO DISCLOSE INFORMATION OR GIVE FALSE INFORMATION IN ORDER TO OBTAIN OR INCREASE BENEFITS. I FURTHER UNDERSTAND THAT REPAYMENT OF BENEFITS MAY INCLUDE OFFSET OF FUTURE BENEFITS FROM THE DEPARTMENT, AS WELL AS FUTURE UI BENEFITS FROM ANOTHER STATE.

Exhibit 5, p. 10 (emphasis original). He also had to certify that he would read the “Claimant Benefit Rights, Responsibilities and Filing Instructions” pamphlet that the Department mailed to him with his monetary determination.³ Exhibit 5, p. 12; Exhibit 6. Claimant had to certify he was responsible for knowing the information in the pamphlet and he was aware that denial of benefits may result from not following instructions in the pamphlet. Exhibit 5, p. 12; Exhibit 6; Tr. p. 14, Ll. 5-16. The Department also warned Claimant, **“YOU ARE RESPONSIBLE FOR KNOWING THE INFORMATION PROVIDED IN THE PAMPHLET.”** Exhibit 5, p. 12; Exhibit 6 (emphasis original); Tr. p. 14, Ll. 5-16. Claimant acknowledged that he had received the pamphlet. Tr. p. 12, Ll. 1-17.

The Department mailed the “Claimant Benefit Rights, Responsibilities and Filing Instructions” pamphlet to Claimant each time he filed. Tr. p. 11, L. 25; p. 26, Ll. 1-9; p. 12, Ll. 4-17. Based on the wages Claimant made in his base period, the Department set Claimant’s maximum weekly benefit amount for the May 30th claim at \$343.00. Exhibit 11;

Each time Claimant filed a claim successfully, he received a “Congratulations/Attention” page with his confirmation number. Exhibit 5, p. 1; Tr. p. 13, Ll. 6-9 and 16-18. In the page the

³ To be eligible for benefits payments a claimant must have made a minimum qualifying amount wages during his base period. I.C. § 72-1367. A claimant’s base period is normally the first four of the last five completed calendar quarters immediately preceding the beginning of his benefit year. I.C. § 72-1306. A benefit year begins the first day of the week a claimant files a claim for benefits. I.C. § 72-1308.

Department told Claimant that if he worked during the week for which he was claiming benefits, he must “report all earnings for work performed that week” and the amount reported must be his “gross earnings (before any deductions),” regardless of whether he received the pay for the work performed. Exhibit 9. Tr, p. 13, Ll. 1-25; p. 14, Ll. 1-16.

The front cover of the pamphlet Claimant agreed to read every time he filed a claim told him, “You are legally responsible to know the information in this booklet.” Exhibit 2B, p. 1; Tr. p. 18-20. The Department warned Claimant in the pamphlet he must follow all the instructions carefully and if there was anything he did not understand, to ask his local office. Exhibit 2B, p. 1. In the pamphlet the Department told Claimant that benefit payments were based on what he reported and gave him detailed instructions on when, how and what to report. Exhibit 2B, p.4 (pamphlet p. 14). Claimant acknowledged that he knew that the amount he reported each week would determine how much his unemployment payment would be. Exhibit 23, p. 2.

In each pamphlet Claimant received, the Department told him he would not be eligible for benefits if he worked full-time, but he could be eligible for benefits if he worked part-time and earned less than one and one-half times your weekly benefit amount. Exhibit 2B, p 1 (pamphlet p. 7); p. 3 (pamphlet pp. 10-12). The Department told Claimant in the pamphlet it expected him to report all work performed, regardless of whether he expected payment and it defined work for him as time spent in all services, performed for an employer, commission work, self-employment, tips and volunteer work. Exhibit 2B, p. 3 (pamphlet p. 11).

In each pamphlet, the Department told Claimant to report all of his earnings before any deductions and if he could not determine the exact amount of his earnings he could estimate as

closely as possible. Exhibit 2B, p. 3 (pamphlet p. 11). The Department warned Claimant that if he estimated his earnings he must contact his local office when he received the correct earnings information.” Exhibit 2B, p. 3 (pamphlet p. 11). In each pamphlet Claimant received the Department warned him that it would review the earnings he reported and it warned him repeatedly if he made false statements or withheld information he would be ineligible for benefits for 52 weeks, required to repay benefits he already received with interest and penalties as well as possible criminal prosecution. Exhibit 2B, pp. 2 and 4 (pamphlet pp. 6, 14 and 15).

After filing his initial claim on May 30th, Claimant filed weekly continued claim reports in order to receive benefits via the internet. Exhibit 11 and 23; p. 1. Tr. p. 28, Ll. 3-9. In each continued claim report the Department asked Claimant a series of questions to determine his eligibility for benefits that week. Exhibit 2B, p. 2 (pamphlet p. 7); Exhibit 7 and 11. Prior to answering questions each week, the Department told Claimant that by using the continued claim system he agreed to have his answers become part of his claim record. Exhibit 7, p. 1; Tr. p. 14, Ll. 14-22. Each week, the Department also warned Claimant he was certifying that his answers were true and accurate and that he could be penalized for giving false answers or withholding information. Exhibit 7, p. 1; Tr. p. 14, Ll. 22-25. Claimant recalled seeing this warning each week. Tr. p. 14, Ll. 17-25; p. 15, Ll. 1-2.

While he was filing weekly claims for unemployment benefits, Claimant started work for Sears on September 25, 2012. Exhibit 34, pp. 17-20 and 26. For the first couple of weeks, Claimant was in training and Sears paid him \$9.00 an hour, but after the training Claimant made \$9.35 an hour. Exhibit 23, p. 2; Exhibit 34, p. 26; Tr. p. 8, Ll. 2-6. Once he began working for

Sears, Claimant reported that he worked and had earnings in his continued claim reports. Exhibit 11, Tr. p. 23, Ll. 11-16. Claimant filed weekly continued claim reports in order to receive weekly benefit payments from the end of September 2012 through the beginning of May 2013. Exhibit 11; Tr. p. 23, Ll. 11-16.

Claimant acknowledged that each week, the Department asked him, “Did you work for any employers during the week claimed, include National Guard or Reserve?” Exhibit 7, p. 3; Tr. p. 15, Ll. 5-18. When he answered “yes” the Department told him to “[e]nter the total amount you earned during the week from all employers, plus tips, before any deductions were made.” Exhibit 7, p. 3; Tr. p. 15, Ll. 5-18. The Department also instructed him to report his gross earnings during the week in which he earned them. Exhibit 7, p. 3; Tr. p. 15, Ll. 5-18.

To report his gross earnings Claimant had to multiply the hours he worked each week by his rate of pay. Tr. p. 23, Ll. 4-7. Claimant acknowledged he understood how to report his earnings correctly. Tr. p. 29, Ll. 15-17. In spite of all the instructions he received, when Claimant filed he did not multiply the actual hours he worked by his rate of pay. Instead, he estimated the hours he worked by taking the hours he was scheduled to work, not the hours he actually worked, and multiplying that by \$9.35. Exhibit 23, p. 2; Exhibit 34, p. 26; Tr. p. 9, Ll. 1-6; p. 29, Ll. 1-5.

Claimant called the Department on November 21, 2012, December 28, 2012, and January 9, 2013, to change weekly continued claim reports he had already filed when his reports made him ineligible for a benefit payment. Exhibit 14; Exhibit 34, p. 27. When Claimant called the Department on November 21, 2012, he told the Department he made an error for the week

ending November 10, 2012. Exhibit 14. He told the Department his earnings were \$185.00, rather than the \$525.00 he reported.⁴ Exhibit 14. Claimant actually worked 38.98 hours the week ending November 10, 2012, and earned \$364.46, but did not report that to the Department when he called on November 21st. Exhibit 11, p. 8 and Exhibit 22, p. 9.

Claimant called the Department again on December 28, 2012. Exhibit 14. He told the Department did not work full-time as he reported in his weekly continued claim for the week ending December 15, 2012.⁵ Exhibit 11, p. 7 and Exhibit 14. Claimant actually worked 41.38 hours the week ending December 15, 2012 and made \$386.90, but he did not report that to the Department when he called on December 28th. Exhibit 22, p. 9. Claimant called the Department a third time on January 9, 2013 to say he made a mistake when he indicated on his report he was out of the area.⁶ Exhibit 14. Once Sears paid him, Claimant he never compared what he reported with what Sears actually paid him to insure his continued claim reports were accurate. Exhibit 23, p. 2; Tr. p. 9, Ll. 10-17.

In March 2013, Claimant came into the local office and left his business card because he wanted to participate in a job fair. Exhibit 3, p. 2. When Department Workforce Consultant Senior Chris Orders checked to see if Claimant had been reporting self-employment, she discovered the wages he reported in his weekly continued claim reports did not match the wages Sears reported it paid Claimant in its quarterly reports. Exhibit 3, p. 2.

⁴ When Claimant reported \$525.00 he reported more than one and one-half times his weekly benefit amount of \$343.00 and was ineligible for benefits pursuant to Idaho Code § 72-1312(4).

⁵ A claimant working full-time is not eligible for benefits pursuant to Idaho Code § 72-1312(1).

⁶ Pursuant to IDAPA 09.01.30.175.23 a claimant is not eligible for benefits when he leaves his local labor market during the week unless the primary purpose of the absence is to look for work in the other labor market.

Sears did not provide the Department with Claimant's payroll information broken down by week, so Mattson called Claimant in May 2013, and asked him to provide his pay stubs and the hours he worked each week for Sears for weeks between September 2012, and May 11, 2013.⁷ Exhibit 3, pp. 3-4; Exhibits 15 and 16. Claimant provided the hours he worked, his pay stubs and his rate of pay for the weeks Mattson specified. Exhibit 19, Exhibit 22; Exhibit 34, pp. 10-11; Tr. p. 18, Ll. 1-14.

Mattson multiplied the number of hours Claimant supplied in response to her request with his rate of pay, \$9.35, and determined the earnings matched the amounts Sears reported to the Department, but they did not match the earnings Claimant reported in his weekly continued claim reports. Exhibit 3,p. 2; Exhibit 22 and 33; Tr. p. 18, Ll. 17-21. She found Claimant underreported his earnings on his weekly reports for the following weeks:

Week Ending Date	Earnings reported by Claimant on his weekly continued claim reports	Corrected earnings (based on hours reported by Claimant to Mattson)
9/29/12	\$315.00	\$344.08
10/13/12	\$333.00	\$337.35
10/20/12	\$245.00	\$315.10
10/27/12	\$338.75	\$352.03
11/10/12	\$185.00	\$364.46
11/17/12	\$225.00	\$411.96
12/1/12	\$339.73	\$471.33
12/8/12	\$266.05	\$338.75
12/15/12	\$250.00	\$386.90
12/22/12	\$254.00	\$407.19
12/29/12	\$270.00	\$370.54

⁷ Under Idaho's Employment Security Law a week begins on Sunday and ends the following Saturday. I.C. § 72-1330. In this Brief, Weeks are identified by their week ending date.

1/5/13	\$286.38	\$372.88
1/12/13	\$302.75	\$409.06
1/19/13	\$276.50	\$368.95
1/26/13	\$280.00	\$422.25
2/2/13	\$280.00	\$447.68
2/16/13	\$240.00	\$404.98
3/16/13	\$150.00	\$203.83
3/23/13	\$171.50	\$233.10
totals	\$5,008.66	\$6,962.42

Exhibit 11, 33 and Exhibit 34, pp. 10-11; Tr. p. 23, Ll. 11-16; p. 23, Ll. 11-25; p. 24, Ll. 1-25; p. 25, Ll. 1-19; p. 26, Ll. 1-18; p. 35, Ll. 5-10; p. 38, Ll. 17-25. Claimant acknowledged that he may not have kept track of his hours as he should have. Tr. p. 8, Ll. 13-19; p. 15, Ll. 14-18.

The information Claimant provided also indicated that he worked full time, more than 40 hours a week, for nine weeks during this period. Exhibit 11, 31 and Exhibit 34, pp. 10-11; Tr. p. 23, Ll. 11-16; p. 24, Ll. 21-25; p. 26, Ll. 1-18; p. 35, Ll. 5-10. Claimant maintained he did not report he was working full time during these weeks because Sears did not consider him to be a full-time employee. Tr. p. 10, Ll. 19-25; p. 11, Ll. 1-10; p. 25, Ll. 9-25; p. 26, Ll. 1-8. Claimant acknowledged he never asked the Department what it meant by “full-time.” Exhibit 7, p. 3; Tr. p. 27, Ll. 1-9.

ISSUES ON APPEAL

I.

Is there substantial and competent evidence in the record to support the Industrial Commission's findings and conclusion that Claimant willfully made false statements or willfully failed to report material facts in order to obtain unemployment benefits?

II.

Does Claimant's failure to cite authority and present argument bar the Supreme Court's consideration of other issues?

STANDARD OF REVIEW

In appeals from decisions of the Industrial Commission, the Court's review is limited to questions of law. Idaho Constitution Article V, § 9; *Pimley v. Best Values, Inc.*, 132 Idaho 432, 434, 974 P.2d 78, 80 (1999). This Court has held that the burden of establishing statutory eligibility in cases where a claimant is alleged to have willfully made a false statement or willfully failed to report a material fact rests with the claimant. *McNulty v. Sinclair Oil Corporation*, 152 Idaho 582, 585, 272 P.3d 554, 557 (2012); *Cahoon v. Employment Security Agency*, 82 Idaho 224, 231, 351 P.2d 477, 481 (1960); *Steffen v. Davison, Copple, Copple & Copple*, 120 Idaho 129, 132, 814 P.2d 29, 32 (1991). The determination of whether a claimant willfully made a false statement or willfully failed to report material facts to the Department in a claim for unemployment insurance benefits is a finding of fact. *Steffen*, 120 Idaho at 133, 814 P.2d at 33; *Gaehring v. Department of Employment*, 100 Idaho 118, 594 P.2d 628 (1979). The

Commission's determination that a claimant willfully failed to report a material fact must be based on substantial evidence. *Gaehring*, 100 Idaho at 119, 594 P.2d at 629.

Evidence is substantial and competent when it is relevant evidence that a reasonable mind might accept to support a conclusion. *Current v. Haddons Fencing, Inc.*, 152 Idaho 10, 13, 266 P.3d 485, 488 (2011). "Substantial evidence is more than a scintilla of proof, but less than a preponderance." *Painter v. Pottlach Corporation*, 138 Idaho 309, 312, 63 P.2d 435, 438 (2003), citing *Zapata v. J.R. Simplot Co.*, 132 Idaho 513, 515, 975 P.2d 1178, 1180 (1999). This Court does not reweigh the evidence or consider whether it would have reached a different conclusion. *Ginther v. Boise Cascade Corporation*, 150 Idaho 143, 244 P.3d 1229, 1233 (2010).

While conflicting evidence may exist in the record, the Court will not disturb the Commission's factual findings unless they are clearly erroneous. *Id.* The factual findings of the Commission will be upheld provided they are supported by substantial and competent evidence. *Uhl v. Ballard Medical Products, Inc.*, 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003). The Court has described the appropriate test for substantial and competent evidence for the purposes of judicial review as requiring a court to determine whether an agency's findings of fact are reasonable. *Steen v. Denny's Restaurant*, 135 Idaho 234, 237, 16 P.3d 910, 913 (2000).

It is for the Commission to determine the credit and weight to be given to the testimony admitted. *Bullard v. Sun Valley Aviation, Inc.*, 128 Idaho 430, 432, 914 P.2d 564, 566 (1996). In reviewing a decision of the Commission, the Court views all facts and inferences in the light most favorable to the party who prevailed before the Commission. *Id.*

Appellate court review is limited to the evidence, theories, and arguments that were presented below. *Obenchain v. McAlvain Construction, Inc.*, 143 Idaho 56, 137 P.3d 443, 444 (2006). The Court will not consider arguments raised for the first time on appeal. *Excell Construction, Inc. v. State Department of Labor*, 141 Idaho 688, 693, 116 P.3d 18, 23 (2005).

This Court will not consider issues on appeal not supported by propositions of law, citation to legal authority, or argument. *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006). An issue cited on appeal is waived if either authority or argument is lacking, not just if both are lacking. *Gem State Insurance Company v. Hutchison*, 145 Idaho 10, 16, 175 P.3d 172, 178 (2007).

ARGUMENT

I.

There is substantial and competent evidence in the record to support the Industrial Commission's findings and conclusion that Claimant willfully made false statements or willfully failed to report material facts in order to obtain unemployment benefits.

After filing nine claims for benefits since 2005, Claimant is the very essence of a frequent filer. Exhibit 8. Nine times Claimant went through the Department's Electronic Claims process. Exhibit 5, Tr. p. 13, Ll. 1-25, p. 14, Ll. 1-16. Nine times, as part of that process, Claimant had to certify that he would read and understand the "Claimant Benefit Rights, Responsibilities and Filing Instructions" pamphlet. Exhibit 5, p. 12; Exhibit 6; Tr. p. 14, Ll. 5-16. Nine times, the Department mailed him a pamphlet. Tr. p. 12, Ll. 4-9.

When filing a claim for benefits, a claimant is required to provide the Department with all necessary information pertinent to his eligibility. IDAPA 09.01.30.425.07; Idaho Code §72-1366(1). In *Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 589 P.2d 89 (1979), this Court held that the Department should be able to assume claimants “are reporting all the information solicited from them fully and accurately.” *Meyer*, 99 Idaho at 760, 589 P.2d at 95.

To promote accurate reporting, Idaho Code §§ 72-1366(12) and 72-1369(2) disqualify a claimant from benefits for 52 weeks, subject him penalties and require him to repay any sums received in any week he received benefits as a result of his willful false statement of a material fact or willful failure to report a material fact to the Department in order to obtain benefits. I.C. §§ 72-1366(12) and 72-1369(2). IDAPA 09.01.04.013 defines “any sums received” in § 72-1366(12) as all unemployment benefits received in any week the Department determines the claimant received benefits as a result of his willful false statement or failure to report a material fact. The pamphlet Claimant received and agreed to read nine times warned him that reporting accurately was essential and he faced possible administrative and criminal penalties if he did not. Exhibit 2B.

This Court has held that the allegation that a claimant is ineligible for benefits under Idaho Code § 72-1366(12) does not rise to the level of an allegation of fraud, but rather is a “lesser willful standard.” *Cox v. Hollow Leg Pub and Brewery*, 144 Idaho 154, 159, 158 P.3d 930, 935 (2007). This Court has held that the burden of establishing statutory eligibility in these cases rests with the Claimant. *McNulty*, 152 Idaho at 585, 272 P.3d at 557. Claimant must demonstrate that his failure to accurately report his earnings did not render him ineligible under

Idaho Code § 72-1366(12). The Commission concluded Claimant's behavior was the type of behavior Idaho Code § 72-1366(12) was intended to discourage. R. p. 23. Substantial and Competent evidence supports that conclusion.

Claimant filed his claim for benefits on May 30, 2012, in order to obtain unemployment benefits. Each week to receive a benefit payment, Claimant had to answer questions about his activities during the week. Exhibit 7. Each week, before Claimant began answering those questions, the Department warned him his answers had to be true and accurate and he could be penalized for giving false answers or withholding information. Exhibit 7, p. 1. Each week. Claimant recalled seeing that warning. Tr. p. 14, Ll. 17-25; p. 15, Ll. 1-4.

Each week, the Department asked Claimant to report his work and earnings. Exhibit 7, pp. 2-3. Pursuant to IDAPA 09.01.40.012 all information the Department asks a claimant to provide when applying for benefits or making a weekly claim is material and it need not actually affect the outcome of an eligibility determination. This Court has held that “[c]omplete and unqualified disclosure can best be promoted by defining materiality to include any information that is relevant to the determination of a Claimant's right to benefits. *Current*, 152 Idaho at 13, 266 P.3d at 488 (2011). Claimant acknowledged that he knew the earnings he reported would affect the amount of his benefit payment. Exhibit 23, p. 2. The Commission concluded that Claimant's work and earnings were material. R. p. 20.

The Commission found Claimant did not contest the earnings Sears reported he reported to the Department. R. p. 20; Tr. p. 10, Ll. 6-10. At the Department's request, Claimant provided the hours he worked and his paystubs from Sears. Exhibit 17, 19, 22 and 34, p. 29, Tr. p. 18, Ll.

11-12. Mattson multiplied those hours by \$9.35. Tr. p. 19, Ll. 17-21. The amounts did not match the wages Claimant reported in his weekly continued claim reports. Exhibit 3, p. 2; Exhibit 22 and 33; Tr. p. 18, Ll. 17-21. Claimant acknowledged he did not keep track of his hours each week and as a result he did not report correctly. Tr. p. 8, Ll 16-17; p. 9, Ll. 21-22; p. 15-21. He maintains in his Brief that his errors were not willful. Appellant's Brief, p. 7. The Commission concluded his underreporting was willful. R. p. 21.

This Court has defined willful in a manner that does not require a demonstration of evil intent on the part of a claimant to reach a conclusion that his conduct was willful. *Meyer*, 99 Idaho at 761, 754 P.2d at 96. Willful implies simply a purpose or willingness to commit the act or make the omission, not an intent to violate the law. *Current*, 152 Idaho at 13, 266 P.3d at 488. "Willful" as it is used in this context implies something more than an accident. *Meyer*, 99 Idaho at 761, 586 P.2d at 96. In *Meyer*, the Court stressed that the mere assertion by the claimant that there was a communication gap of some kind does not preclude a finding that a claimant did in fact willfully fail to report a material fact to obtain benefits. *Meyer*, 99 Idaho at 762, 589 P.2d at 97.

"A claimant's mental state need not be established by expert testimony; it can be inferred from the claimant's conduct and from the circumstances." *Cox*, 144 Idaho at 158, 158 P.3d at 934. In *Gaehring v. Department of Employment*, Fred Gaehring also maintained he had made mistakes, but did not intend to defraud the Department. *Gaehring*, 100 Idaho at 119, 594 P.2d at 629. This Court held in that case that evidence to support the Commission's finding could be found in the fact that the claimant was well aware of the regulations regarding unemployment

insurance. *Id.* Like Fred Gachring, Claimant was also well aware of the regulations regarding unemployment insurance. The Commission found the Department gave Claimant sufficient information to allow him to report his earnings accurately. R. p. 21

The Commission found that Claimant opened a claim for benefits nine times and each time he was instructed to report accurately Exhibit 8; R. pp. 21-22; Tr. p. 12, Ll. 5-7. It found he received a certification agreement that told him that he had to report all earnings for the work performed during the week and that the amount reported must be gross earnings before any deductions. Exhibit 5, p. 10 and Exhibit 6; R. p. 21; Tr. p. 13; The Commission noted the Certification Agreement required Claimant to certify that he understood that failure to comply with the requirements would result in denial of benefits, penalties and a payment obligation. Exhibit 5, p. 10; R. p. 21.

The Commission found Claimant also had to certify that he would read and be responsible for the information in the pamphlet. Exhibit 5, p. 12 and Exhibit 6; R. p. 21-22; Tr. p. 11, L. 25; p. 12, Ll. 1-17. The Commission noted that Claimant acknowledged that he did receive the pamphlet. R. 22; Tr. p. 12, Ll. 15-17. The Commission found the pamphlet told Claimant that he had to report “ALL earnings” before deductions and that filing inaccurately could result in Claimant being ineligible for benefits. Exhibit 2B, p. 3; R. p. 22 (emphasis original).

Claimant testified that he estimated his earnings by taking the number of hours he was scheduled to work and multiplying it by his rate of pay, \$9.35. Tr. p. 9, Ll. 4-9. The Commission concluded the hours Claimant was scheduled to work were not the hours he actually

worked, making his estimates inaccurate. R. p. 22. Each time Claimant filed for benefits the pamphlet he received told him that he could estimate his earnings in his weekly continued claim reports, but if he did so he must notify the Department and correct his estimates once he learned the accurate amount of earnings. Exhibit 2B, p. 3; R. 22. The Commission found Claimant estimated his earnings, but did not contact the Department to correct them. R. 22; Tr. p. 9, Ll. 10-15.

The Commission also found Claimant was aware that he could correct inaccurate information since he had done so in the past. R. p. 23. Claimant called the Department three times when the information he reported made him ineligible for benefits. Exhibit 14. Although Claimant was capable of calling the Department to make changes to the earnings he reported, he never called to correct his reports when he received more money than he was entitled to receive. Although, Claimant maintained throughout the hearing that his misreporting was just an error on his part, Commission could conclude based on the facts in the record that Claimant's explanation is unworthy of belief. *Cox*, 144 Idaho at 158, 158 P.3d at 934. It is for the Commission to determine the credit and weight to be given to the testimony admitted. *Bullard*, 128 Idaho at 432, 914 P.2d at 566.

As the Commission concluded, Claimant was no novice. R. p. 23. All Claimant had to do was keep a record of the time he worked each day, add the hours up at the end of the week and multiply by his rate of pay. Despite certifying he was providing accurate information each week, Claimant chose instead to estimate his earnings. Claimant knew he had to correct any estimated earnings, but he elected not to do so. Claimant's failure to report accurately was not

based on any misunderstanding or confusion on his part. The Commission could infer from the facts in the case that Claimant's conduct was something more than an accident, it was willful. *Cox*, 144 Idaho at 158, 158 P.3d at 934. A preponderance of the evidence in the record supports the Commission's conclusion that Claimant willfully failed to report material facts in order to obtain benefits for the weeks at issue in violation of Idaho Code § 72-1366(12).

II.

Claimant's failure to cite authority and present argument bars the Supreme Court's consideration of other issues.

Idaho Appellate Rule 35 sets forth the requirements for the contents and arrangement of an appellant's brief on appeal to this Court. It provides, in part, "[t]he argument shall contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefore, with citations to the authorities, statutes and parts of the transcript and record relied upon." Claimant's brief fails to comply with this rule. "Persons acting *pro se* are held to the same standards as those represented by attorneys." *Huff*, 143 Idaho at 500, 148 P.3d at 1246.

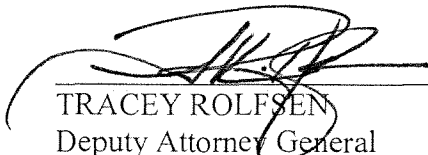
In his Notice of Appeal to this Court Claimant made other assertions about the conclusions reached by the Commission. R. pp. 46-49. However, in his Brief Claimant argued only one issue, that he did not have a "willful intent" required by Idaho Code § 72-1366(12). Appellant's Brief, p. 6-8. When issues cited on appeal are not supported by propositions of law, authority or argument, they will not be considered. *Huff*, 143 Idaho at 500, 148 P.3d at 1246; and *St. Alphonsus Regional Medical Center v. Bannon*, 128 Idaho 41, 44, 910 P.2d 155, 158 (1995).

Claimant failed to cite authority and present argument on any issue other than whether he willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. Issues are waived if either authority or argument is lacking. *Gem*, 145 Idaho 10, 16, 175 P.3d at 178. In this case both are lacking. Idaho Appellate Rule 35 bars the Supreme Court's consideration of any issue other than whether substantial and competent evidence supports the Commission's conclusion Claimant made willful false statements or willfully failed to report material facts in order to obtain benefits in violation of Idaho Code § 72-1366(12).

CONCLUSION

There is substantial and competent evidence in the record to support the Industrial Commission's findings and conclusions that Claimant was ineligible for benefits because he willfully made false statements or failed to report material facts while claiming unemployment insurance benefits in order to obtain benefits and the Department asks the Court to affirm the Commission's decision.

Respectfully submitted,



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Idaho Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of April, 2014, I served two true and correct copies of the foregoing Brief of Respondent Department of Labor upon each of the following by depositing said copies in the United States mail, first class, postage prepaid:

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