

5-16-2016

Christy v. Grasmick Produce Clerk's Record v. 1 Dckt. 43968

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO **LAW CLERK**

Vol. 1 of 3

JIMMY L. CHRISTY, JR.,

Claimant/Appellant,

v.

GRASMICK PRODUCE and CONSOLIDATED ELECTRICAL, Employers; MR. MUDD CONCRETE CORPORATION, Major Base Employer; IDAHO STATE PENITENTIARY, Cost Reimbursement Employer; and IDAHO DEPARTMENT OF LABOR,

Respondents.

SUPREME COURT NO. 43968

AGENCY RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

For Attorney for Claimant/Appellant

D BLAIR CLARK
1513 TYRELL LANE STE 130
BOISE ID 83706

For Employers/Respondents

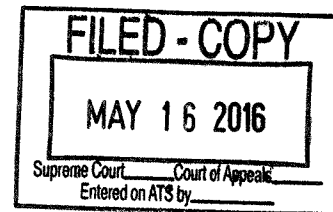
GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

IDAHO STATE PENITENTIARY
STATEHOUSE MAIL
BOISE ID 83720-0001

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038

IDAHO DEPARTMENT OF LABOR
DOUGLAS A WERTH
DEPUTY ATTORNEY GENERAL
317 W MAIN STREET
BOISE ID 83735

MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714



43968

AGENCY RECORD - JIMMY L. CHRISTY, JR.

COPY

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

JIMMY L. CHRISTY, JR.,

Claimant/Appellant,

v.

GRASMICK PRODUCE and CONSOLIDATED
ELECTRICAL, Employers; MR. MUDD
CONCRETE CORPORATION, Major Base
Employer; IDAHO STATE PENITENTIARY,
Cost Reimbursement Employer; and IDAHO
DEPARTMENT OF LABOR,

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SUPREME COURT NO. 43968

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AGENCY RECORD – JIMMY L. CHRISTY, JR.

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DECISION OF APPEALS EXAMINER mailed date 09/18/2015.....1

IDAHO DEPARTMENT OF LABOR NOTICE OF APPEARANCE file date 10/16/201517

LIST OF EXHIBITS..... i

LIST OF EXHIBITS

HEARING TRANSCRIPT taken on 09/16/15 will be lodged with the Supreme Court.

EXHIBITS ADMITTED into record before IDAHO DEPARTMENT OF LABOR

.....Notice of Telephone Hearing, mailed September 3, 2015 (pp. 1-3)

Exhibit:

.....Important Information About Your Hearing Read Carefully (pp. 1-2)

.....Claimant Benefit Rights, Responsibilities, and Filing Instructions (pp. 3-11)

.....IDOL website screens (pp. 12-14)

.....Claimant's Acknowledgement of Reading Claimant Benefit Rights and Responsibilities (p. 14)

.....Claimant's Continued Claim Report (pp. 15-20)

.....UI Summary (pp. 21-39)

.....IDOL Claimant's Notes (pp. 40-41)

.....IDOL Reported Earnings dated 5/26/15 (pp. 42-44)

.....Correspondence from Claimant's Attorney (p. 45)

.....Employers' Responses to IDOL Weekly Earnings Request (pp. 46-47)

.....IDOL Eligibility Determination date mailed 6/24/2015 (p. 48-50)

.....IDOL Overpayment Determination date mailed 6/24/15 (pp. 51-52)

.....Correspondence from Claimant's Attorney dated 7/7/15 (pp. 53-56)

.....IDOL Eligibility Interview Request date mailed 12/29/14 (p. 57)

.....Claimant's Bank Record Submitted by his Attorney on 7/7/15 (p. 58)

.....Employer Grasmick's Payroll Register 12/19/14 – 4/10/15 (pp. 59-62)

.....Claimant's Request for Appeals Hearing dated 7/9/15 (pp. 63-74)

.....IDOL Decision dated mailed 8/15/15 (pp. 75-77)

.....IDOL Claimant Notes exported 8/31/15 (pp. 78-79)

.....Claimant's Request for Appeals Hearing dated 8/20/15 (pp.80-85)

Exhibit

.....IDOL Overpayment Determination mail date 8/12/15 (pp. 86-87)

.....IDOL Claimant Notes (pp. 88-89)

10

APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

JIMMY L. CHRISTY JR.,
SSN [REDACTED]
Claimant

vs.

GRASMICK PRODUCE,
Employer

and

CONSOLIDATE ELECTRICAL,
Employer

and

MR MUDD CONCRETE CORPORATION,
Major Base Employer,

and

IDAHO STATE PENITENTIARY,
Cost Reimbursement Employer,

and

IDAHO DEPARTMENT OF LABOR

DOCKET NUMBER 421003924-2015

DECISION OF APPEALS EXAMINER

DECISION

Benefits are **DENIED** effective June 21, 2015 through June 18, 2016. The claimant willfully made a false statement or willfully failed to report a material fact in order to obtain benefits, as defined by § 72-1366(12) of the Idaho Employment Security Law.

Benefits are **DENIED** effective December 28, 2014, through March 28, 2015

The Eligibility Determination dated August 12, 2015, finding claimant willfully made a false statement or willfully failed to report a material fact in order to obtain benefits, is hereby **AFFIRMED**.

The claimant has received benefits to which the claimant is not entitled. The requirement to repay benefits owed to the Employment Security Fund is **NOT WAIVED**, in accordance with § 72-1369(5) of the Idaho Employment Security Law. Those benefits must be repaid to the Employment Security Fund.

DECISION OF APPEALS EXAMINER - 1 of 9

The Overpayment Determination dated August 12, 2015 is hereby **AFFIRMED**.

HISTORY OF THE CASE

The above-entitled matter was heard by Judge Richmond, Appeals Examiner of the Idaho Department of Labor, on September 16, 2015, by telephone in the City of Boise, in accordance with §72-1368 (6) of the Idaho Employment Security Law.

The claimant, Jimmy L. Christy Jr., appeared and testified Also appearing on Claimant's behalf:
Blake Clark - Attorney at Law

The employer, Grasmick Produce, appeared. Appearing on Employer's behalf and providing testimony:

Angela Reed
Vicki McFadden

Appearing on behalf of the Idaho Department of Labor and providing testimony:
Jennifer Roop

The Notice of Telephone Hearing and Exhibit pages 1-85 and testimony from the previous hearing were entered into and made a part of the record at the hearing without objection. All parties stipulated to the inclusion of the previous record.

ISSUES

The issues before the Appeals Examiner are as follows:

1. Whether the claimant willfully made a false statement or willfully failed to report a material fact in order to obtain unemployment insurance benefits, according to § 72-1366(12) of the Idaho Employment Security Law;
2. Whether the claimant is ineligible for waiting week credit or benefits, as a result of having willfully made a false statement or willfully failed to report a material fact, according to §§ 72-1329 and 72-1366(12) of the Idaho Employment Security Law;
3. Whether the claimant is subject to a (25%/50%/100%) civil penalty as a result of having made a false statement or failed to report a material fact according to § 72-1369(2) of the Idaho Employment Security Law;
4. Whether claimant has received benefits to which the claimant was not entitled, and if so, whether the requirement to repay benefits owed to the Employment Security Fund may be waived, according to §72-1369(5) of the Idaho Employment Security Law;

FINDINGS OF FACT

Additional facts or testimony may exist in this case. However, the Appeals Examiner outlines only those that are relevant to the decision and those based upon reliable evidence. Based on the exhibits and testimony in the record, the following facts are found:

1. The claimant opened an additional claim effective November 30, 2014.
2. During the claim filing process the claimant was given instructions in a slide show presentation regarding the proper method of reporting work and wages.

3. At the end of the claim opening process the congratulations screen states, "I understand that if I work during the week for which I am claiming benefits, I must report that I did work even if I will not earn any pay. This includes work as a volunteer or a corporate officer. I understand that if I work during the week for which I am claiming benefits, I must report all earnings for work performed that week. The amount reported must be my gross earnings (before any deductions), regardless of whether I have received pay for the work performed."
4. The claimant was mailed a Claimant Benefit Rights Booklet that includes information about filing weekly claims while working.
5. The Department conducted a cross match audit comparing the claimant's reported wages with the wages reported by the employer.
6. The employers responded to the Department's request for the claimant's weekly earnings for the weeks in question.
7. Department determined there were discrepancies between the employer's reporting and what the claimant reported and sent the claimant a letter requesting an explanation of the discrepancies.
8. Claimant did not respond to the Department's return call.
9. Department issued an Eligibility Determination based on the information provided by the employer.
10. The Eligibility Determination resulted in an overpayment and penalties.
11. The employer, Grasmick Produce, stated that the weekly earnings request they submitted may be inaccurate because the claimant did work some Sundays and the report may not have included those days.
12. Employer provided time records to the Department and the matter was remanded back for further review and new Eligibility Determinations.
13. Department issued a new Eligibility Determination finding the claimant had failed to accurately report his wages.
14. A new Determination of Overpayment was issued based on the corrected wages.
15. The parties agreed to dismiss the employer from the hearing because the claimant is no longer contesting the accuracy of the wages reported by the employer.
16. Claimant did contact the Department requesting direction on how to report his wages.
17. Notes of the contacts with the claimant indicate the Department had corrected the claimant's earnings and explained to report his hours Sunday through Saturday.
18. Claimant testified he was told by a Department employee that he is to report what he receives in wages.
19. The wages reported by the employer over the three months in question totalled \$4,088.64. The claimant reported a total of \$1,641.00 for the same period. A difference of \$2,447.64. The record fails to support the claimant's position that he was reporting his net wages
20. Department determined the claimant willfully failed to accurately report his gross earnings each week when he filed his claims.

21. Claimant was told how to report when he spoke with the Department on December 19, 2014.
22. Claimant thought he was reporting accurately and to the best of his ability.
23. Claimant filed a timely protest.

AUTHORITY

I.C. § 72-1369 of the Idaho Employment Security Law provides as follows:

(1) Any person who received benefits to which he was not entitled under the provisions of this chapter or under an unemployment insurance law of any state or of the federal government shall be liable to repay the benefits and the benefits shall, for the purpose of this chapter, be considered to be overpayments.

(2) Civil penalties. The director shall assess the following monetary penalties for each determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department:

- (a) Twenty-five percent (25%) of any resulting overpayment for the first determination;
- (b) Fifty percent (50%) of any resulting overpayment for the second determination; and
- (c) One hundred percent (100%) of any resulting overpayment for the third and any subsequent determination.

(3) Any overpayment, civil penalty and/or interest which has not been repaid may, in addition to or alternatively to any other method of collection prescribed in this chapter, including the creation of a lien as provided by section 72-1360, Idaho Code, be collected with interest thereon at the rate prescribed in section 72-1360(2), Idaho Code. The director may also file a civil action in the name of the state of Idaho. In bringing such civil actions for the collection of overpayments, penalties and interest, the director shall have all the rights and remedies provided by the laws of this state, and any person adjudged liable in such civil action for any overpayments shall pay the costs of such action. A civil action filed pursuant to this subsection (3) shall be commenced within five (5) years from the date of the final determination establishing liability to repay. Any judgment obtained pursuant to this section shall, upon compliance with the requirements of chapter 19, title 45, Idaho Code, become a lien of the same type, duration and priority as if it were created pursuant to section 72-1360, Idaho Code.

(4) Collection of overpayments.

(a) Overpayments, other than those resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, which have not been repaid or collected, may, at the discretion of the director, be deducted from any future benefits payable to the claimant under the provisions of this chapter. Such overpayments not recovered within five (5) years from the date of the final determination establishing liability to repay may be deemed uncollectible.

(b) Overpayments resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant which have not been recovered within eight (8) years from the date of the final determination establishing liability to repay may be deemed uncollectible.

(5) The director may waive the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, and interest thereon, if:

- (a) The benefit payments were made solely as a result of department error or inadvertence and made to a claimant who could not reasonably have been expected to recognize the error; or

(b) Such payments were made solely as a result of an employer misreporting wages earned in a claimant's base period and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported.

(6) Neither the director nor any of his agents or employees shall be liable for benefits paid to persons not entitled to the same under the provisions of this chapter if it appears that such payments have been made in good faith and that ordinary care and diligence have been used in the determination of the validity of the claim or claims under which such benefits have been paid.

(7) The director may, in his sole discretion, compromise any or all of an overpayment, civil penalty, interest or fifty-two (52) week disqualification assessed under subsections (1) and (2) of this section and section 72-1366(12), Idaho Code, when the director finds it is in the best interest of the department.

I.C. § 72-1366(12) A claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible for waiting week credit and shall repay any sums received for any week for which the claimant received waiting week credit or benefits as a result of having willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting from a determination that he willfully made a false statement or willfully failed to report a material fact.

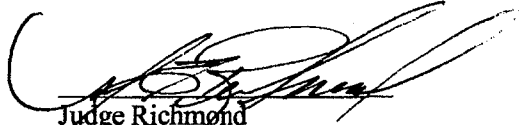
"Willfully" implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It does imply a conscious wrong, and may be distinguished from an act maliciously or corruptly done in that it does not necessarily imply an evil mind, but is more nearly synonymous with "intentionally," "designedly," and therefore not accidental. Meyer vs. Skyline Mobile Homes, 99 Idaho 77, 589 P.2d 89 (1979).

CONCLUSIONS

Claimant did seek clarification from the Department on how to report his wages and the Department provided the information and stated that the claimant understood how to properly report his wages. Claimant was provided accurate information during both the filing process and during his contacts with the Department. Claimant's testimony that he was told by a Department employee that he is to report his net wages is not corroborated by the record and contradicts all the information provided by the Department regarding the requirement to report gross wages. Furthermore, the claimant's assertion that he was reporting his net wages is not supported by the record. The undisputed wages reported by the employer over the three months in question totalled \$4,088.64. The claimant reported a total of \$1,641.00 for the period. A difference of \$2,447.64. The record fails to support the claimant's position that he was reporting his net wages.

The Appeals Examiner concludes that it has been established by the preponderance of the evidence that the claimant willfully made false statements or representations in order to receive unemployment insurance benefits.

The claimant has received benefits to which the claimant is not entitled. These benefits must be repaid to the Employment Security Fund. The claimant is not eligible for waiver of the repayment of benefits by law.



Judge Richmond
Appeals Examiner

September 18, 2015
Date of Mailing

October 02, 2015
Last Date to Protest

APPEAL RIGHTS

You have **FOURTEEN (14) DAYS FROM THE DATE OF MAILING** to file a written appeal with the Idaho Industrial Commission. The appeal must be taken or mailed to:

Idaho Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, Idaho 83720-0041

In person:

Idaho Industrial Commission
700 S Clearwater Lane
Boise Idaho 83712

Or transmitted by facsimile to (208) 332-7558 Attn: IDOL Appeals.

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or an Idaho Department of Labor local office will not be accepted by the Commission. ***TO EMPLOYERS WHO ARE INCORPORATED:*** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

DERECHOS DE APELACIÓN

Usted tiene **CATORCE (14) DIAS DESDE LA FECHA DE ENVIO** para archivar una apelación escrita con la Comisión Industrial de Idaho. La apelación debe ser llevada o enviada a:

Idaho Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, ID 83720-0041

In person delivery to: Idaho Industrial Commission
700 S. Clearwater Lane
Boise, ID 83712

O puede enviarla por fax al (208) 332-7558.

Si la apelación es enviada por correo, la fecha en el sello del correo debe ser no más tarde de la fecha del último día en que puede apelar. Una apelación tardada será descartada. Apelaciones archivadas con la Agencia de Apelaciones o con la Oficina de Empleo no serán aceptadas por la Comisión. Una apelación archivada por medio de fax debe ser recibida por la comisión no mas tarde de las 5:00 P.M. Hora Standard de la Montaña, del último día en que puede apelar. Una transmisión de fax recibida después de las 5:00 P.M. se considerará recibida por la comisión, hasta el próximo día hábil. **EMPLEADORES QUE SON INCORPORADOS:** *Si una apelación es archivada en la Comisión Industrial de Idaho, la apelación tiene que ser firmada por un oficial o representante designado y la firma debe incluir el título del individuo. Si solicita una audiencia ante la Comisión Industrial, o permiso para archivar un escrito legal, ésta solicitud se debera de hacer por medio de un abogado con licencia para practicar en el estado de Idaho. Preguntas deben ser dirigidas a la Comisión Industrial de Idaho, Unemployment Appeals, (208) 334-6024.*

Si ninguna apelación se archiva, esta decisión será la final y no podrá cambiarse. **AL RECLAMANTE:** Si esta decisión se cambia, todos los beneficios pagados estarán sujetos a reembolso. Si una apelación se archiva, usted debería de continuar reportando en su reclamo mientras esté desempleado.

APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

CERTIFICATE OF SERVICE

SEP 18 2015

I hereby certify that on _____, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

GRASMICK PRODUCE
215 EAST 2ND STREET
BOISE ID 83714-

JIMMY L CHRISTY JR.
559 N CARSWELL
STAR ID 83669-

IDAHO STATE PENITENTIARY
STATEHOUSE
BOISE ID 83720-0001

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING, TX 75038

D. BLAIR CLARK
1513 TYRELL LANE SUITE 130
BOISE, ID 83706

IDAHO DEPARTMENT OF LABOR
ATTN. JENNIFER ROOP
317 W. MAIN STREET
BOISE, ID 83735-0740

MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY, ID 83714



Quick Load

Docket Number: Year: Court: Source:

Appeal Information

[Edit](#)
 Docket Number: Year: SSN: Name:
 Court Level: Date Filed: Due Out Date:
 Appellant: Program: Related To Docket:
 Status: Local Office:
 Multiple Appeals: Tax Due: Penalty: Interest:
 Tax Rep Name:
 Setup By: Setup Date: Setup
 Scheduled By: Scheduled Set On:

Participants

[Add](#)

Type	Name	Address	City	State	Zip	Phone	Fax Phone
Major Base Employer	MR MUDD CONCRETE CORPORATION	119 E 46TH ST STE 206	GARDEN CITY	ID	83714	2088617833	
Claimant	Jimmy I Christy jr	559 N CARSWELL	STAR	ID	83669	1 (208) 841-4439	
Employer	GRASMICK PRODUCE	215 EAST 42ND STREET	BOISE	ID	83714		
Employer	CONSOLIDATED ELECTRICAL	1920 WESTRIDGE DR	IRVING	TX	75038		
Cost Reimbursement Employer	IDAHO STATE PENITENTIARY	STATEHOUSE	BOISE	ID	83720-0001		
Claimant's Representative	D BLAIR CLARK	1513 TYRELL LANE SUITE 130	BOISE	ID	83706	208-475-2050	
Respondent	Idaho Department of Labor - JENNIFER ROOP	317 W Main St	Boise	ID	837350740	2083323575	2086393255

Issues

[Maintain Issues](#)

Issue Code	Level	iUS ID	Primary	Issue	Status	Determination	Decision	Resolution
700				Waiver of requirements to repay Overpayment	Unknown	Unknown	None	
120		3102495196		Fraud	Deny	Deny	None	
121		3102504201		Fraud - Misreport Earnings Weekly	Deny	Deny	None	
121		3102504202		Fraud - Misreport Earnings Weekly	Deny	Deny	None	
129		3102504490		Overpayment Balance, First Offense	Deny	Deny	None	

Schedule Information

[Add](#)

Examiner	Date	Start	End	MeetingID	Status	End Meeting
Mark Richmond	Sep 16, 2015	11:00 AM	12:00 PM	683549	Past	End Meeting

Notes

[Print All Notes](#) [Add](#)

Note	UpdatedBy	LastUpdated
Issue # 3102504201 was the first issue I docketed and iUS would not allow me to select the correct protest date of 8/21/15, selected 8/24/15 per WB. The correct Protest date is 8/21/15 for all of these issues.	DOE\csalisbu	8/27/2015 4:13:28 PM
I have this file at my desk, I talked to AH about this file. The letter we have is from CL attorney. It does not say he wants to protest, Jennifer Roop is going to call CL attorney and tell him if he wants to protest we need a letter saying he is protesting and then we will also have the timeliness issue.	DOE\mshields	7/9/2015 12:12:41 PM
Recv'd faxed protest from CL attorney. Changed protest date to today	DOE\mshields	7/9/2015 2:42:19 PM
Set up	DOE\mshields	7/9/2015 3:43:09 PM
Mailed NTH for CL to address on protest	DOE\mshields	7/9/2015 4:03:26 PM

<u>Employer called with questions about what this hearing was for. Explained the hearing process.</u>	DOE\egloeckl 7/23/2015 9:41:41 AM
<u>Cloned From 421003488-2015</u>	DOE\mshields 8/31/2015 11:00:04 AM
<u>Set up Used Appeal Packet from 421003488-2015 and added revised determination and customer notes to the back of packet</u>	DOE\mshields 8/31/2015 12:36:13 PM
<u>Recv'd email from J Roop with attachments .Gave to AE</u>	DOE\mshields 9/16/2015 11:12:21 AM
<u>IC Protest received; processed as needed.</u>	DOE\egloeckl 9/30/2015 10:30:32 AM

Documents

NTH
 Dismissal

D. Blair Clark (ISB #1367)
LAW OFFICES OF D. BLAIR CLARK PC
1513 Tyrell Lane, Suite 130
Boise, ID 83706
Phone: (208) 475-2050
Fax: (208) 475-2055
Email: dbc@dbclarklaw.com
Attorneys for Jimmy L. Christy, Jr., Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In re:

JIMMY L. CHRISTY, JR., Claimant

SSN [REDACTED]

v.

GRASMICK PRODUCE, Employer

and

CONSOLIDATED ELECTRICAL, Employer

and

MR. MUDD CONCRETE CORPORATION, Major
Base Employer

and

IDAHO STATE PENITENTIARY, Cost
Reimbursement Employer

and

IDAHO DEPARTMENT OF LABOR

Docket Number: 421003924-2015

**NOTICE OF APPEAL and
CLAIM FOR REVIEW**

FILED

SEP 29 2015

INDUSTRIAL COMMISSION

TO: THE IDAHO INDUSTRIAL COMMISSION, JUDICIAL COMMISSION, IDOL APPEALS;
IDAHO DEPARTMENT OF LABOR;
ALL INTERESTED PARTIES

1. NOTICE IS HEREBY GIVEN that the Claimant, Jimmy L. Christy, Jr., appeals against the above named Respondents pursuant to the Rules of Appellate Practice and Procedure Under the Idaho Employment Security Law (R.A.P.P.), Rule 2 and 3, and further submits this Appeal as a "Claim for Review" as provided by Idaho

NOTICE OF APPEAL and CLAIM FOR REVIEW - Page 1

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Code § 72-1368(6) (hereafter "Appeal"). This Appeal is taken from the Decision of Appeals Examiner of the Honorable Judge Richmond dated September 18, 2015.

2. Claimant-Appellant has a right to appeal, and the Decision described above is an appealable order.
3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is as follows:
 - A. The Decision wrongfully determined that claimant "willfully made a false statement or willfully failed to report a material fact in order to obtain benefits.
 - B. The Decision wrongfully imposed penalties upon Claimant.
 - C. The "Slide Show" presentation on which the Decision was based in part was not part of the record.
 - D. The Judge found that Claimant thought he was reporting accurately and to the best of his ability. Therefore, the Conclusions found are erroneous.
 - E. Claimant's testimony upon which the Judge made the determination that Claimant was told how to report when he spoke with the Department on December 19, 2014, is unimpeached. Therefore, the Conclusions found are erroneous.
 - F. The determination by the Judge that the "Claimant's assertion that he was reporting his net wages is not supported by the record" is erroneous when considering the uncontradicted testimony in the record.
 - G. The determination that the Claimant "willfully made false statements or representations" and the conclusions that this was determined by the preponderance of the evidence completely fails to recognize that Claimant has learning disabilities, and that is not a native English speaker/writer/reader.
 - H. The determination that Claimant had a "purpose or willingness to commit the act or make the omission referred to" is not supported by the record.


NOTICE OF APPEAL and CLAIM FOR REVIEW - Page 2

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4. Claimant requests that leave be granted for briefing pursuant to Rule 5. Further, Claimant respectfully requests per Rule 4, that a written transcript be prepared to aid in citations required by Rule 5.

Dated this 29th day of September, 2015.


LAW OFFICES OF D. BLAIR CLARK PC

by 
D. Blair Clark
Attorneys for Jimmy L. Christy, Jr., Claimant

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2015, I caused to be served a true and correct copy of the foregoing by fax, to the following:

Idaho Industrial Commission
Judicial Division, IDOL Appeals
VIA FAX 208-332-7558 ATTN: IDOL Appeals


D. Blair Clark

NOTICE OF APPEAL and CLAIM FOR REVIEW - Page 3

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JIMMY L. CHRISTY JR.,
SSN: [REDACTED]

Claimant,

v.

GRASMICK PRODUCE,

and

CONSOLIDATED ELECTRICAL,

Employers,

and

MR. MUDD CONCRETE CORPORATION,

Major Base Employer,

and

IDAHO STATE PENITENTIARY,

Cost Reimbursement Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 421003924-2015

**NOTICE OF FILING
OF APPEAL**

FILED

OCT 02 2015

INDUSTRIAL COMMISSION

PLEASE TAKE NOTICE: The Industrial Commission has received an appeal from a decision of an Appeals Examiner of the Idaho Department of Labor. A copy of the appeal is enclosed, along with a copy of the Commission's Rules of Appellate Practice and Procedure.

PLEASE READ ALL THE RULES CAREFULLY

The Industrial Commission promptly processes all unemployment appeals in the order received. In the mean time, you may want to visit our web site for more information: www.iic.idaho.gov.

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor.

INDUSTRIAL COMMISSION
POST OFFICE BOX 83720
BOISE IDAHO 83720-0041
(208) 334-6024

Calls Received by the Industrial Commission May Be Recorded

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2015 a true and correct copy of the **Notice of Filing of Appeal and compact disc of the Hearing** was served by regular United States mail upon the following:

APPEAL:

MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714

IDAHO STATE PENITENTIARY
STATEHOUSE
BOISE ID 83720-0001

IDAHO DEPARTMENT OF LABOR
ATTN JENNIFER ROOP
317 W MAIN ST
BOISE ID 83735-0740

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

APPEAL AND DISC:

JIMMY L CHRISTY JR
C/O D BLAIR CLARK
1513 TYRELL LANE STE 130
BOISE ID 83706

GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038

kh


Assistant Commission Secretary

LAWRENCE G. WARDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE – ISB# 3431
CHERYL GEORGE – ISB# 4213
DOUGLAS A. WERTH – ISB# 3660
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
Telephone: (208) 332-3570

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JIMMY L. CHRISTY JR.,)
)
 Claimant,)
)
 vs.)
)
 GRASMICK PRODUCE,)
)
 and)
)
 CONSOLIDATED ELECTRICAL,)
)
 Employers,)
 and)
)
 MR. MUDD CONCRETE CORPORATION,)
)
 Major Base Employer,)
)
 and)
)
 IDAHO STATE PENITENTIARY,)
)
 Cost Reimbursement Employer,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR.)
)

IDOL NO. 421003924-2015

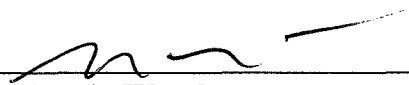
NOTICE OF APPEARANCE

FILED
OCT 16 2015
INDUSTRIAL COMMISSION

TO THE ABOVE-NAMED PARTIES:

Please be advised that the undersigned Deputy Attorney General representing the Idaho Department of Labor hereby enters the appearance of said attorneys as the attorneys of record for the State of Idaho, Department of Labor, in the above-entitled proceeding. By statute, the Department of Labor is a party to all unemployment insurance appeals in Idaho.

DATED this 17 day of October, 2015.



Douglas A. Werth
Deputy Attorney General
Idaho Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE, was mailed, postage prepaid, this 17th day of October, 2015, to:

JIMMY L. CHRISTY JR.
C/O D BLAIR CLARK
1513 TYRELL LANE STE 130
BOISE ID 83706

MR MUDD CONCRETE
CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714

GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

IDAHO STATE PENITENTIARY
STATEHOUSE
BOISE ID 83720-0001

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JIMMY L. CHRISTY, JR.,

Claimant

v.

GRASMICK PRODUCE,

and

CONSOLIDATED ELECTRICAL,

Employers,

and

MR. MUDD CONCRETE CORPORATION

Major Base Employer .

and

IDAHO STATE PENITENTIARY

Cost Reimbursement Employer

and

IDAHO DEPARTMENT OF LABOR

IDOL #421003924-2015

BRIEF OF APPELLANT

FILED

OCT 26 2015

INDUSTRIAL COMMISSION

D. BLAIR CLARK, ISB #1367
LAW OFFICE OF D. BLAIR CLARK, PC
1513 Tyrell Lane, Suite 130
Boise, ID 83706
Phone: (208) 475-2050
Fax: (208) 475-2055
Email: dbc@dbclarklaw.com
Attorney for Appellant

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE - ISB# 3431
CHERYL GEORGE - ISB# 4213
DOUGLAS A. WERTH - ISB# 3660
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735

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STATUTES

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BASIS OF APPELLATE JURISDICTION AND PROCEDURES

Idaho Code §72-1368(6) provides an Appellate Procedure in unemployment compensation cases. Appeals from the decisions of the Industrial Commission are appealed directly to the Idaho Supreme Court (§72-1368(9)). The Industrial Commission has further promulgated Rules of Appellate Practice and Procedure (RAPP) pursuant to Idaho Code §72-1368(7).

Idaho Code §72-1368(7) provides further that

The record before the commission shall consist of the record of proceedings before the appeals examiner, unless it appears to the commission that the interests of justice require that the interested parties be permitted to present additional evidence. In that event, the commission may, in its sole discretion, conduct a hearing or may remand the matter back to the appeals examiner for an additional hearing and decision. On the basis of the record of proceedings before the appeals examiner as well as additional evidence, if allowed, the commission shall affirm, reverse, modify, set aside or revise the decision of the appeals examiner or may refer the matter back to the appeals examiner for further proceedings.

RAPP 5 provides the general rules of briefing. Since the CD of the hearing is the record for purposes of this appeal, the requirement of citation to page and line number of the transcript is not applicable. To the extent practicable, counsel will attempt to cite to the "time line" of the recording.

ISSUES PRESENTED

In the Notice of Appeal, the following issues were designated:

1. The Decision wrongfully determined that claimant "willfully made a false statement or willfully failed to report a material fact in order to obtain benefits.
2. The Decision wrongfully imposed penalties upon Claimant.
3. The "Slide Show" presentation on which the Decision was based in part was not part of the record.
4. The Judge found that Claimant thought he was reporting accurately and to the best of his ability. Therefore, the Conclusions found are erroneous.
5. Claimant's testimony upon which the Judge made the determination that Claimant was told how to report when he spoke with the Department on December 19, 2014, is

unimpeached. Therefore, the Conclusions found are erroneous.

6. The determination by the Judge that the “Claimant’s assertion that he was reporting his net wages is not supported by the record” is erroneous when considering the uncontradicted testimony in the record.

7. The determination that the Claimant “willfully made false statements or representations” and the conclusions that this was determined by the preponderance of the evidence completely fails to recognize that Claimant has learning disabilities, and that is not a native English speaker/writer/reader.

8. The determination that Claimant had a “purpose or willingness to commit the act or make the omission referred to” is not supported by the record.

STANDARD OF APPELLATE REVIEW

The Commission’s Order Establishing Briefing Schedule provides that briefs must comply with the RAPP and “be based upon the evidence as established in the evidentiary record. Any inclusion of, or comment on, evidence not contained in the record as admitted by the Appeals Examiner will not be considered by the Commission.” There was no request under Rule 7 for a further evidentiary hearing.

The appellate body “will not disturb the factual findings if they are supported by substantial and competent evidence. Laundry v. Franciscan Health Care Ctr., 125 Idaho 279, 281, 869 P.2d 1374, 1376 (1994). Substantial and competent evidence consists of relevant evidence a reasonable mind might accept as adequate to support a conclusion.” The appellate body “exercises free review over questions of law. Id.; Idaho Const. art V, §9.” Qualman v. State, 129 Idaho 92, 922 P.2d 389 (1996).

This case also raises the question of which party bears the burden of proof. This has been held to vary depending on the facts and circumstances of each particular case. Generally speaking,

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"The claimant bears the burden of showing that he has satisfied all of the eligibility requirements, Guillard v. Dept. of Employment, 100 Idaho 647, 603 P.2d 981 (1979), and, as we stated in Hudson v. Hecla Mining Co., 86 Idaho 447, 452, 387 P.2d 893, 896 (1963): "No hard or fast rule definitive of elements of proof of those requirements of benefit eligibility 'should be or perhaps could be adopted; it must depend, at least in part, upon the particular facts and circumstances as developed in each case.'" Thus, the question of whether a claimant has met the eligibility requirements of I.C. § 72-1366 is a question of fact for the Industrial Commission to decide. Hudson v. Hecla Mining Co., supra. If the commission's resolution of such questions of fact is supported by substantial competent evidence on the record it will not be overturned on appeal." Burnside v. Gate City Steel Corp., 112 Idaho 1040, 739 P.2d 339 (1987)

In this regard, Appellant has shown that he satisfied the eligibility requirements for the award of unemployment. Indeed, eligibility was not questioned. What the issues on appeal were and are pertains to events that occurred thereafter.

STATEMENT OF THE CASE

Nature of Case, Course of Proceedings and Disposition Below

Appellant filed for unemployment compensation effective November 30, 2014 (Finding of Fact #1). As Judge Richmond found, there was a "cross match audit" that resulted in further inquiries concerning Claimant's reporting of his wages received during the period of time he was on unemployment, and an Eligibility Determination made by Jennifer Roop. During the period of inquiry for the first determination, Mr. Christy had moved and did not receive the request for information from Ms. Roop. At the first hearing on the protest of this Determination, Judge Richmond remanded the proceedings back to Ms. Roop to do a review with Claimant's input, since he was now informed of the issues and had retained counsel. This she did, after which she did make a new Determination of Overpayment (Finding of Fact #13. The remand was also discussed at length in the telephonic hearing of September 16, 2015).

Ms. Roop determined that the Claimant "wilfully failed to accurately report his gross

earnings each week when he filed his claims.” (Finding of Fact #20). She therefore assessed a penalty of \$1,244.75 and an overpayment of \$4,987.00, for a total due of \$6,231.75.

The second appeal hearing from Ms. Roop’s determination occurred on September 16, 2015. The Hearing Officer recited the prior appellate history, and the remand to Ms. Roop. The “new” record began on p. 75 of the Record. The parties stipulated that all documents were part of the record at the 9/16 hearing. The Hearing Officer did note that the Record did not include the Overpayment Determination. Ms. Roop emailed the document to Appellant’s counsel in the early stages of the hearing.

JENNIFER ROOP TESTIMONY:

After the remand, Ms. Roop recalculated the time based on the employer’s records. She sent out a new letter to Appellant and counsel, and received a response from counsel. She then made a new decision on August 12, 2015. (Ex. 86-87; this was the decision emailed to the parties during the startup of the hearing). The outcome was basically the same, except that in her opinion, one week ended up “ok” and one week was not.

On cross-examination, she confirmed that her determination was made on the Employer’s records submitted at the prior hearing. She confirmed that she wrote to the undersigned, and got what she thought was the “same thing” that she received earlier. She never talked to Mr. Christy.

She made a determination that the claimant “did not fully report his earnings.” When pressed, she was unclear that this was “fraud,” but she did confirm that it was a “wilful” failure to report properly. Her notes confirmed that this was, however, a fraud determination. (16.39).

“Fraud,” to her, was failing to provide accurate information (16.51). She did confirm that this was not always “fraud.” (17.03) There seems to be no discretion involved in this

BRIEF OF APPELLANT - Page 7

determination.

She did recall in the prior testimony, that Mr. Christy went to the WaterTower Office, and told to “report what he got.” (17.40). When asked if she recalled that Mr. Christy had problems with the reporting, she was first directed to page 4. She was directed to the column “What is Fraud?” She also corroborated (19.25) that the instructions show that if there is a mistake made, the claimant is to go to the local office.

The inquiry next turned to the applicant’s contact logs, beginning on Exhibit Page 40, (21.19), the “Department Notes.” The bottom note shows that Mr. Christy called and had issues. It specified that the “Claimant didn’t understand question.” The Department Notes also showed on the next page that Mr. Christy had spoken specifically with Ms. Roop on June 3, and said that he didn’t understand because people at the office helped him. She understood that this meant people at the WaterTower office.

Ms. Roop was then asked (26.18) where Mr. Christy committed fraud on the Department. She said that this did not apply to unemployment, and wasn’t exactly what they used. “Fraud” to them was simply providing inaccurate information. She was then asked what evidence in the record showed that Mr. Christy wilfully submitted false information. *Yet she is relying on a question (27.53) that does not show up in the record.* See discussion, *infra*, of the “drop down” menu—that document which is not in the record.

At 28.39, she recognized that Mr. Christy has always contended that his belief was that he was to report “what he received.” She said that she did recognize that but referred to page 13 (evidently Slide 11 of 19) to show that this was “plenty of information” to the contrary. This was the slide show that the claimants are shown when they file their original claim. At 30.14, she also

said that the "Handbook," (Exhibit, pp. 3-4) also mentioned "earnings before any deductions." The word "gross" was admittedly not there (30.52).

When Ms. Roop was asked if she discounted any possibility that Mr. Christy simply made a mistake, (31.03) she said that she did not discount it. "I do believe that," but then said that in her opinion there was plenty of information to tell him the contrary. She then stated that he should have checked every week, and it was his responsibility to do this check weekly (31.45). And again, albeit reluctantly, she confirmed that Mr. Christy did make a mistake (32.40). A review of the line of questioning and the answers thereto demonstrates that Ms. Roop believes that there is really no difference between "wilfully" providing false information and simply making a mistake based on a misunderstanding. Yet she finally conceded that making a mistake is not "necessarily" fraudulent (33.18).

JIMMY CHRISTY TESTIMONY:

Mr. Christy then testified (36.40 et seq). First, he testified about the trip to WaterTower. He went between Christmas and New Years, 2014. He had questions about the method of reporting and the pay periods, and met with "John" at the WaterTower office of the Department. Mr. Christy identified him as being in his mid-50's. Mr. Christy was confused about the time to be entered because of the "Saturday" issue (Grasmick's pay period varied from that of the Department's normal standard). Mr. Christy had a check with him from Grasmick, and he and John got involved in a discussion about what he was to report. At 39.00, Mr. Christy confirmed that his advice was to report what he received. At 39.16, Mr. Christy again confirmed his understanding that he was to report "what he got." The conversation went on for about "an hour and 30 minutes." (39.34). After that date, he reported "what my check was" because that's what

he thought he was supposed to do. He confirmed that the mis-reporting occurred because of a mistake (40.39). He was then asked (40.47) why he thought the situation happened, he testified that he believed it was a misunderstanding of what the Department wanted and what he was supposed to do (41.00).

He did recall reading the handbook (41.13) but he still had questions, which is why he went to WaterTower for help. "It didn't make sense to me (41.27)" Mr. Christy has problems with numbers and words, like dyslexia (41.30-41.40). He has reading difficulties, and has all his life. In Chicago, he went through a special class called "RR Studies" (42.12) to help his comprehension. English is not his native language, that being (42.30) a Phillipine language. He did not learn to speak English until age 7 (42.36).

The Judge asked Mr. Christy about materials he had been furnished. Asked specifically about the materials in the handbook about reporting gross wages without any deductions (44.23), Mr. Christy confirmed again that he did not fully understand this point. That is specifically why, among other reasons, that he went to see John at WaterTower. He was then asked about reporting periods (45.44) and work times, and confirmed that he did not have a complete record of his hours from Grasmick for any specific week, so he estimated his hours worked (46.02) in several instances. He pointed out a time where he forgot to add a day, and called the Department to correct that day.

OTHER MATERIALS IN THE RECORD: Besides the employer's wage report from Grasmick Produce, the record also contains Ms. Roop's determinations, and Mr. Christy's two letters in response thereto, the first being dated July 7, 2015 (Exhibit pp. 53-74) and the second August 20, 2015 (Exhibit pp. 80-85). There were also several notes from the Department personnel,

BRIEF OF APPELLANT - Page 10

including telephone call logs, and the "pamphlet" which is given to all new claimants. (Exhibit, pp. 3-11). The record also included a "Power Point" presentation or "slide show" which is presented to every Claimant when they apply for unemployment benefits. As is noted below, however, not all of the Power Point presentation was included in the record.

ARGUMENT:

Starting first with the various Issues Presented, Appellant refers the Commission first to No. 6. There were only two witnesses in this case, Ms. Roop and Mr. Christy. And in evaluating their testimony, the Idaho law is, and has been for many years, that "In Idaho we have determined that uncontradicted testimony of a credible witness must be accepted by the trier of fact unless the testimony is inherently improbable or impeached in some way. Casey v. State, 129 Idaho 13, 19, 921 P.2d 190, 196 (Ct. App. 1996)." State v. Miller, 131 Idaho 288, 955 P.2d 603 (Idaho Ct. App. 1997). See also Farber v. State, 107 Idaho 823, 824, 693 P.2d 469, 470 (Ct. App. 1984), citing Dinneen v. Finch, 100 Idaho 620, 626-27, 603 P.2d 575, 581-82 (1979); Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 447-48, 74 P.2d 171, 175 (1937). The decision of Judge Richmond ignored this unequivocal precept of law.

Yet under the authorities cited in the prior briefs and not contradicted, Judge Richmond specifically found that "Claimant thought he was reporting accurately and to the best of his ability." (Finding of Fact #22). He also found that Claimant did contact the Department requesting direction on how to report his wages (Finding of Fact #18). Therefore, the specific Finding of Fact #22 shows as a matter of law that Appellant made a mistake in his understanding of the reporting requirements.

Reviewing the remaining Issues on Appeal:

BRIEF OF APPELLANT - Page 11

1. "The Decision wrongfully determined that claimant 'willfully made a false statement or willfully failed to report a material fact in order to obtain benefits.' This Issue is clearly corroborated by Ms. Roop's testimony that she believed Mr. Christy simply made a mistake, and by Judge Richmond's specific finding #22.

2. The Decision wrongfully imposed penalties upon Claimant.

3. "The "Slide Show" presentation on which the Decision was based in part was not part of the record." This, to Appellant, is troubling. Part of the presentation is in the record, but not the "drop down" menu on which Ms. Roop bases a great deal of her decision. It is impossible to examine what was in that 'drop down,' or what Mr. Christy should or should not have gleaned therefrom. But as the Commission's own rules note, (RAPP, Rule 8(D), "Written argument must be based upon evidence established in the record." It is patently improper for either the Department or the Appellant to discuss a finding based on non-existent evidence. Any finding based thereon must be excluded.

4. "The Judge found that Claimant thought he was reporting accurately and to the best of his ability. Therefore, the Conclusions found are erroneous." This is incontrovertible.

As has been argued repeatedly (see Exhibit pp. 84-85, the Finding made by Judge Richmond precludes any finding of wilfully making a false statement.

"A person making a false representation which in good faith he believes to be true is not doing so wilfully or knowingly. While he is not required to know the unlawfulness of the act to come within the definition of "knowingly" or "wilfully" he certainly must know that his statement is false or untrue."

People v. Haydon, 106 Cal. App. 2d 105, 108, 234 P.2d 720, 722 (Cal. App., 1951).

See also McNulty v. Sinclair Oil Corp., 152 Idaho 582, 272 P.3d 554 (2012) which held that

"Willfully implies simply a purpose or willingness to commit the act or make the omission referred

to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. *It does imply a conscious wrong, and may be distinguished from an act maliciously or corruptly done*, in that it does not necessarily imply an evil mind, but is more nearly synonymous with 'intentionally,' 'designedly,' 'without lawful excuse,' and therefore not accidental." There is specifically no finding of a conscious, wilful act. To the contrary, the finding was that Claimant thought he was doing it right.

Ms. Roop corroborated this finding in her testimony. When asked, as discussed above, she testified that she believed that this was a mistake.

The Idaho Supreme Court has so held. "The Court further reiterated that the legislature intended to disqualify claimants who knowingly or consciously fail to report material facts, but not to punish accidental omissions due to negligence or misunderstanding. *Id.*" Quoting Meyer v. Skyline Mobile Homes, 99 Idaho 754. See also Cox v. Hollow Leg Pub & Brewery, 144 Idaho 154, 158 P.3d 930 (2007), holding that "The term "willfully" refers to those claimants who "purposely, intentionally, consciously, or knowingly fail to report a material fact or make a false statement, not those whose omission or false statement is accidental because of negligence, misunderstanding or other cause." The Claimant's failure to properly report his earnings is admittedly due to negligence or misunderstanding. Indeed, Appellant's testimony upon which Judge Richmond made the determination that Claimant was told how to report when he spoke with the Department on December 19, 2014, is unimpeached. Therefore, the Conclusions found are erroneous.

5. "The determination by the Judge that the 'Claimant's assertion that he was reporting his net wages is not supported by the record' is erroneous when considering the uncontradicted

testimony in the record.” The Findings of Fact were to the contrary. The determination of Judge Richmond cannot stand in light of the specific Findings.

6. “The determination that the Claimant ‘willfully made false statements or representations’ and the conclusions that this was determined by the preponderance of the evidence completely fails to recognize that Claimant has learning disabilities, and that is not a native English speaker/writer/reader.” Please remember that the Appellant never spoke English until he was 7 years of age; his native tongue was a Philippine dialect. He has dyslexia with numbers and words. And while Ms. Roop felt there was plenty of information in the record that he could have known that he was giving inaccurate information, let us please note that the pamphlet is written in two languages—English and Spanish. It is not written in the dialect Mr. Christy knows. And he admittedly had trouble with the pamphlet—that’s the reason he went to WaterTower.

Judge Richmond’s Conclusion on p. 5 of the Decision that “Claimant’s testimony that he was told by a Department employee that he is to report his net wages is not corroborated by the record and contradicts all the information provided by the Department regarding the requirement to report gross wages” is contradicted by his own Findings of Fact. He found in #22 that Appellant “thought he was reporting accurately and to the best of his ability.” And there is no evidence in the record to contradict that Appellant believed he was doing the reporting correctly.

Moreover, the Appeals Examiner misconstrued the burden of proof requirement. He apparently required “corroboration” of the discussion with “John,” the Department employee. There is nothing in the law that so requires. The contact logs from the Department corroborate that Claimant contacted the Department both by phone and at the WaterTower office several times during December.

Finally, Appellant asserts that it is altogether more likely than not that Claimant and "John" both could have believed they were saying one thing and hearing another. The record shows that John told Claimant to "report what you got." It was and is altogether reasonable to believe that they both thought that they had correctly understood the conversation. Claimant could easily have understood "what you got" as what he received net, while John may well have understood that "what you got" meant gross.

7. "The determination that Claimant had a "purpose or willingness to commit the act or make the omission referred to" is not supported by the record." Quoting from the Decision, "The Appeals Examiner concludes that it has been established by the preponderance of the evidence that the claimant willfully made false statements or representations in order to receive unemployment insurance benefits." Yet there are no findings in any of the Findings of Fact to support that. To the contrary, the specific written finding that "Claimant thought he was reporting accurately and to the best of his ability" (#22) negates that as a matter of law. As the Supreme Court held in the Cox decision, supra, "willfully" requires as a matter of law that the misrepresentation be made "purposely, intentionally, consciously, or knowingly."

The Appeals Examiner also based his decision on looking at a "total" wages reported v. actually earned to determine that the Claimant was not reporting his net wages. Decision, p. 5. However, Claimant submits that this method of calculation is incorrect. Consider, instead, the table of the various weeks prepared in the response to Ms. Roop of July 7, 2015, Exhibit pp. 65-68.

In that table, the wages reported compared with the wages that should have been reported were outlined and compared. And starting out with the first week, there were wages reported during a week in which no check was even written at all. The next week, 12/20, were actually

overstated by \$12.20. The 12/27 check was overstated by a greater amount. The next week, however, January 3, shows his report compared with what he had received in net wages was off **five cents**. The week of January 10 was similar; the discrepancy was only \$4.56 between "net" wages and his report. This evidence corroborates the reporting of "net" wages compared with actual receipts, which now corroborates the instructions from "John" to "report what you got."

Looking at the grand totals of the columns themselves in a vacuum is simply improper; the weekly reporting should be examined week-by-week. So doing shows the amount reported (which Claimant testified during the hearing he estimated many times, which is also within the purview of the reporting requirement) shows that most checks reported were close to the amount of his net receipt except for 2/28, 3/14, and 3/21. Those were all explained in the columns, and were admitted errors, with the reason for each set forth. But they were not "willful."

Moreover, making the examination of each week, and comparing the net reported with the actual net check shows that with the exception of those weeks in February and March, the actual receipts were extremely close to the amount Claimant reported. Contrary to the Appeals Examiner's determination that the record shows that he was not reporting his "net wages," the actual record, looking at the times and dates before and after the discussion with "John" shows *unquestionably* that he definitely was so doing.

PENALTY: As noted in the Decision, to assess a penalty requires that there be made a false statement, misrepresentation or failed to report a material fact. Idaho Code §72-1369(2). Since, as discussed, there can be no wilfully false statement or misrepresentation, the penalty was inappropriate. The *penalty* is different than the *overpayment* which is governed by §72-1369(1). While both the overpayment and the penalty may be compromised under §72-1369(7), the

standards for waiver of the overpayment per se are listed in subsection (5) and seem far more limited. Both Judge Richmond and Ms. Roop seemed not to recognize that the penalty was more discretionary than was the requirement to repay an overpayment, and consequently abused their discretion in not waiving or compromising the penalty. A trier of fact “does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason.” Njeld v. Pocatello Health Servs., Inc., 156 Idaho 802, 332 P.3d 714 (2014). With both Judge Richmond and Ms. Roop, they did not perceive the issues as discretionary. Instead, they were both far more absolute.

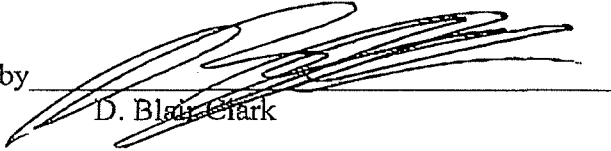
Consider that Ms. Roop specifically said that she believed the Claimant made a mistake. However, she considered that trumped by there being “plenty of materials” that explained the reporting requirement. She did not consider that the Claimant was dyslexic, nor that he was not a native English speaker/reader; instead, she imposed a “wilful failure” standard and penalty after she determined that the situation was one of mistake only. The Idaho case law does not allow that result; rather, if the situation was due to *negligence* or *mistake*, then by definition it is not *willful*.

CONCLUSION:

1. The decision of Judge Richmond, both as to the “Wilful” nature of the overpayment and the appropriateness of the penalty, should be reversed.
2. The Commission should hold that under the law, the penalty is improper.
3. The Claimant should be allowed a waiver of the repayment obligation.
4. The denial of benefits both for the periods December 28, 2014–March 28, 2015, and June 21, 2015–June 18, 2016, should be reversed.

Dated this 26th day of October, 2015.

LAW OFFICE OF D. BLAIR CLARK, PC

by 
D. Blair Clark

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2015, I caused to be served by fax a true and correct copy of the within and foregoing, to the following:

LAWRENCE G. WASDEN
ATTORNEY GENERAL

Idaho Industrial Commission
ATTN: Unemployment Appeals
PO Boxo 83720
Boise, ID 83720-0041
VIA FAX: (208) 332-7558

CRAIG G. BLEDSOE - ISB# 3431
CHERYL GEORGE - ISB# 4213
DOUGLAS A. WERTH - ISB# 3660
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
FAX: (208) 334-6125

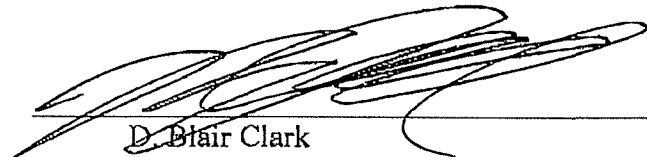
And by US Mail, postage prepaid, to:

GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038

IDAHO STATE PENITENTIARY
STATEHOUSE
BOISE ID 83720-0001


D. Blair Clark

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JIMMY L. CHRISTY, JR.,
SSN: [REDACTED]

Claimant,

v.

GRASMICK PRODUCE and
CONSOLIDATED ELECTRICAL

Employers,

and

MR. MUDD CONCRETE CORPORATION,

Major Base Employer,

and

IDAHO STATE PENITENTIARY,

Cost Reimbursement Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 421003924-2015
DECISION AND ORDER

FILED

JAN 07 2015

INDUSTRIAL COMMISSION

Appeal of a Decision issued by an Appeals Examiner with the Idaho Department of Labor finding Claimant ineligible for unemployment benefits. AFFIRMED as MODIFIED with respect to the dates of ineligibility.

Claimant, Jimmy L. Christy, Jr., appeals through counsel to the Industrial Commission a Decision issued by the Idaho Department of Labor (“IDOL” or “Department”) ruling Claimant ineligible for unemployment benefits. The Department’s Appeals Examiner concluded that: 1)

DECISION AND ORDER - 1

Claimant willfully made false statements for the purpose of obtaining unemployment benefits when he misreported his wages for the period December 28, 2014 through March 28, 2015. Claimant is consequently ineligible for unemployment benefits effective those weeks as well as the fifty-two (52) week period June 21, 2015 through June 18, 2016; and 2) Claimant is ineligible for a waiver and must repay the benefits he has received but which he was not entitled.

None of the interested parties has sought a new hearing before the Commission. However, Claimant's counsel sought an opportunity to argue Claimant's case in a brief. That request was granted in an Order issued on October 15, 2015.

The undersigned Commissioners have conducted a *de novo* review of the record, pursuant to Idaho Code § 72-1368(7). Super Grade, Inc. v. Idaho Dep't of Commerce and Labor, 144 Idaho 386, 390, 162 P.3d 765, 769 (2007). The evidentiary record in this case contains the audio recording of the hearing the Appeals Examiner convened on September 16, 2015 and the exhibits made part of the record during that proceeding. Those exhibits consist of the Notice of Telephone Hearing ("Notice") [pp. 1-3] and Exhibit: [pp. 1 through 89.] The brief filed on Claimant's behalf on October 26, 2015 was also considered. None of the other interested parties filed briefs.

The parties stipulated that the testimony taken during the hearing on July 28, 2015 was also part of the record. At the conclusion of the hearing on July 28, 2015, the Appeals Examiner remanded the matter back to the claims examiner to further review Claimant's wage records from Employer, Grasmick Produce.

FINDINGS OF FACT

A preponderance of the evidence in the record yields the following Findings of Fact:

1. On December 11, 2014, Claimant started working for Employer, Grasmick Produce, part-time. Claimant typically worked on Sunday, Thursday and Friday for which Employer paid him \$10.00 per hour.
2. Employer's pay period runs Monday through Sunday. Employer issues paychecks on Friday for the week that ended on Sunday. Pay is based on the hours an employee works, as indicated by the log of the times the employee uses a "swipe" card to clock in and out.
3. Claimant went to the IDOL office in Meridian, Idaho on December 10, 2015 to open a claim for unemployment benefits. A consultant in the office assisted Claimant in navigating the process over the computer. As part of the claim application process, Claimant reviewed a slide show explaining how to complete his weekly claim reports and other information pertinent to his continued eligibility for benefits. (Exhibit: pp. 12-14.) IDOL reminded Claimant that he had agreed to report his wages accurately on his Weekly Reports and that he would read the Claimant Benefit Rights, Responsibilities, and Filing Instructions pamphlet. (Exhibit: pp. 3-7, p. 15.)
4. Claimant returned to the Meridian office to complete his resume and job applications as IDOL had directed. While there, Claimant purportedly asked for clarification about how to report his income. Claimant had his paystub. Claimant maintains that he was instructed to report "what he got."
5. On December 19, 2014, Claimant called IDOL with questions regarding the status of his claim. Claimant did not understand the question on the weekly claim report about school. The Claim Specialist who talked to Claimant changed the earnings he had reported because he had reported earnings for the Sunday prematurely. The Claimant Specialist explained to Claimant that he had to figure his earnings for the Sunday to Saturday week IDOL uses rather than the Monday to Sunday payroll week Grasmick uses.
6. Claimant continued filing his weekly claim reports. Each week, Claimant indicated that he had worked and entered a number to represent his wages.
7. Claimant started another job with Consolidated Electrical on March 16, 2015. Claimant earned \$10.00 per hour. Claimant worked for both Consolidated Electrical and Grasmick Produce during the weeks ending March 21, 2015 and March 28, 2015. Claimant quit his job with Grasmick Produce on April 3, 2015 and continued working for Consolidated Electrical.
8. IDOL did a "cross-match" audit of thirteen weeks of weekly claim reports Claimant had filed. The Department contacted Employer and Consolidated Electrical for an itemization of the wages they had paid Claimant during the weeks in the audit period. Jennifer Roop, the Department's investigator, compared the wages Claimant reported he had earned with the wages his

employers reported that they had paid him. Roop notified Claimant of the discrepancies, seeking an explanation.

9. At the conclusion of the investigation, IDOL issued an Eligibility Determination ruling Claimant ineligible for benefits on the basis that he willfully misstated material facts when he sought benefits and a Determination of Overpayment seeking the repayment of those benefits.

DISCUSSION

Willful Misstatement of Material Fact

The essential facts in this case are not in dispute. For the benefit weeks at issue, Claimant worked for Employer Grasmick Produce approximately 24 hours per week and earned wages at the rate of \$10.00 per hour. Claimant reported that he had worked when he completed his weekly claim reports. The wages Claimant reported varied from the wages he actually earned, as Employer reported. The Department concluded that Claimant's failure to report his wages accurately was a willful misstatement of material fact and therefore has ruled him ineligible for the benefits he received. Claimant disputes the Department's characterization of his conduct.

Claimant has the burden of proving his eligibility for benefits by a preponderance of the evidence whenever the claim is questioned. Guillard v. Department of Employment, 100 Idaho 647, 653, 603 P.2d 981, 987 (1979). Idaho Code § 72-1366(12) provides that a claimant is ineligible for unemployment insurance benefits if it is determined that he or she willfully made a false statement or failed to report a material fact to IDOL. A fact is material "if it is relevant to the determination of a claimant's right to benefits; it need not actually affect the outcome of the determination." Meyer v. Skyline Mobile Homes, 99 Idaho 754, 760, 589 P.2d 89, 95 (1979). In this case, the wages Claimant earned in a week he sought unemployment benefits is a material fact.

The term “willful” is not defined in the Idaho Employment Security Act. The Idaho Supreme Court defines “willfulness” as “imply[ing] simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law.” Current v. Haddons Fencing, Inc., 152 Idaho 10, 13, 266 P.3d 485, 488 (2011). In Meyer, the Court observed that in drafting Idaho Code § 72-1366(12), the Idaho legislature “intended to disqualify those claimants who purposely, intentionally, consciously or knowingly fail to report a material fact, not those whose omission is accidental because of negligence, misunderstanding or other cause.” 99 Idaho 754, at 761, 589 P.2d 89, at 96 (1979)(quoting, Archibald v. Huntington, 34 Idaho 558, 565, 201 P. 1041, 1043, (1921)). A conclusion of willful behavior is equally supportable when the finder of fact concludes that the claimant knew or should have known what information was elicited from IDOL and did otherwise. Cox v. The Hollow Leg Pub and Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

The Department provided Claimant with written instructions on how to complete his weekly claim reports in the form of a slide show he reviewed before he completed his application for benefits and a pamphlet he received. (Exhibit: pp. 3-11 and 12-14, respectively.) The Internet-based system Claimant used to complete his weekly report reminded Claimant about the importance of providing accurate information. Therefore, the issue in this case comes down to assessing the probability that, given the information available to Claimant, he did not know what IDOL was asking, and, then, deliberately elected not to seek clarification. Meyer, 99 Idaho at 762, 589 P.2d at 97.

The Idaho Labor Unemployment Insurance Claimant Benefit Rights, Responsibilities and Filing Instructions pamphlet Claimant received when he opened his claim explained that Claimant was obligated to report all of his earnings for the week he worked, not the week he was

paid, and, if he did not know the exact amount, he could estimate. However, if he estimated his wages, or made an error in his calculations, he was obligated to contact IDOL and update his report. (Exhibit: pp. 3, 4.)

For the weeks at issue, Claimant significantly underreported his earnings. Claimant's counsel points out that Claimant has trouble with numbers and words and has struggled with the English language since childhood. (Brief of Appellant, p. 10.) However, there was no mention of Claimant's special challenges with words and numbers until the second hearing on September 16, 2015. Neither counsel nor Claimant raised the issue during the original hearing on July 28, 2015. There was no mention of these circumstances in either the letter counsel sent to Roop on July 7, 2015 explaining the errors Claimant made in his wage reports or the Protest of the Determination of August 12, 2015. (Exhibit: pp 65-70 and 80-85, respectively.) If Claimant has a documented learning disability or other problem that materially affected his ability to comprehend and follow the Department's instructions, that evidence should have been brought to the forefront at the inception of these proceedings.

Claimant insists that the consultant with whom he talked at the Meridian office looked at his paystub and told him to report what he got. The Department's instructions were further confused by the differences in the "week." Grasmick Produce uses a payroll week beginning on Monday while the Department wanted Claimant's wages reported using a week beginning on Sunday. Therefore, Claimant was not sure where to report the wages he earned from working on Sundays. (Audio Recording.) Claimant explained that when he completed his weekly reports, he used his paystubs and reported the amount in his check for that week. (Audio Recording.)

A comparison to the checks Claimant received ("Check Date" and "Check Amount") to the earnings he reported using those checks does not necessarily support Claimant's explanation.

For the benefit weeks ending January 3, 2015, January 24, 2015, February 7, 2015, and March 28, 2015, it appears that Claimant did report the earnings reflected on the check he received on Friday as his earnings for the benefit week ending on the following day. However, for each of the other nine weeks in the audit period, the amount of Claimant's paycheck does not coincide with the earnings he reported. For the benefit weeks ending February 28, 2015 and March 14, 2015, the variations are substantial. If Claimant was using the paycheck he received on Friday to report as his earnings, as he maintains he was told by the consultant in the Meridian office, then one would expect that the amounts of his paychecks and his reported earnings would be substantially the same, as was the case for the weeks ending January 3, 2015 and February 7, 2015.

Check Date	Benefit Week Ending	Check Amount	Claimant Reported Earnings
1/2/2015	1/3/2015	\$72.95	\$73.00
1/9/2015	1/10/2015	84.56	80.00
1/16/2015	1/17/2015	119.53	103.00
1/23/2015	1/24/2015	62.25	62.00
1/30/2015	1/31/2015	183.79	180.00
2/6/2015	2/7/2015	129.85	130.00
2/13/2015	2/14/2015	151.12	130.00
2/20/2015	2/21/2015	61.36	65.00
2/27/2015	2/28/2015	201.74	120.00
3/6/2015	3/7/2015	166.46	120.00
3/13/2015	3/14/2015	200.11	120.00
3/20/2015	3/21/2015	197.32	130.00
3/27/2015	3/28/2015	88.59	88.00

DECISION AND ORDER - 7

Claimant contends that for the weeks ending February 28, 2015, March 14, 2015, and March 21, 2015, he was called in to work an extra day at Grasmick Produce and forgot to report it. (Exhibit: pp. 67, 68.) However, if Claimant was using his paycheck to report his earnings, he was reporting on the basis of the amount of money he received, not how many hours he had worked. Therefore, working an extra day would not have made a difference in Claimant's purported method of reporting his earnings. The evidence in this record does not provide a reasonable explanation for the earnings Claimant reported for the majority of the weeks in the audit period.

When Claimant opened his claim for unemployment benefits, Claimant reviewed a series of PowerPoint slides explaining what he needed to know about filing for unemployment benefits. The presentation explained the concepts to the "Waiting Week" and completing weekly claim reports. (Exhibit: p. 12.) The presentation specifically explained that he was to report all gross wages paid the week that he earned them. (Exhibit: p. 13.) Claimant also received a booklet entitled "Idaho Labor Unemployment Insurance Claimant Benefits Rights, Responsibilities and Filing Instructions." (Exhibit: pp. 3-7.) The booklet includes a section describing how earnings affect a claimant's weekly benefits. The provision includes the statement that a claimant "must still report all amounts earned, even if gross earnings are less than half [the claimant's] weekly benefits payment." (Exhibit: p. 6.)

Claimant argues that his actions were not willful. Rather, he made mistakes as the result of a misunderstanding of the instructions he received from the consultant in the Meridian office. (Audio Recording.) McNulty raised similar defenses in McNulty v. Sinclair Oil Corp., 152 Idaho 582, 272 P.3d 554 (2012). After IDOL discovered that McNulty had failed to report wages for several weeks, the Department issued a Determination that he had willfully withheld

material information. The amounts McNulty failed to report were less than his weekly benefit amount, and, therefore, had he reported them, the income would not have reduced his benefits. McNulty reasoned that because IDOL had told him he could earn up to half of his weekly benefit amount before his benefits would be reduced, he did not need to report that income. Id. 586, 272 P.3d 589. The Court noted that the question the Department posed was clear and unambiguous, asking that “*all* earnings, regardless of whether they impact one’s [sic] benefits, must be reported when filing a claim.” Id. At 587, 272 P.3d at 559. IDOL provided McNulty with all of the information and resources the Department provided Claimant in this case to ensure proper reporting of wages.

The evidence in this record establishes that Claimant had the resources available to him to ensure that he reported all of his wages properly. Even giving Claimant every benefit of the doubt that he was the victim of a misunderstanding about reporting what he “earned” as reflecting by his paycheck and compounded by his struggles with numbers and the English language, only the reports he made for the weeks ending January 3, 2015; January 24, 2015; February 7, 2015; and March 28, 2015 could be “excused.” However, for the week ending March 28, 2015, Claimant also worked for Consolidated Electrical and earned \$400.00, but did not report those earnings. At the rate of \$10.00 per hour, Claimant worked 40 hours for Consolidated Electrical that week, in addition to the hours he worked for Gransmick Produce. (Exhibit: pp 46, 47.) Claimant offered no explanation for his failure to report his wages from Consolidated Electrical. Therefore, the inaccurate wages Claimant reported for the week ending March 28, 2015 cannot be attributed to a simple misunderstanding.

Claimant’s failure to accurately report the wages he had earned for the remaining weeks at issue was the kind of behavior Idaho Code § 72-1366(12) was intended to discourage.

Consequently, the benefits Claimant received for the weeks ending January 10, 2015; January 17, 2015; January 31, 2015; and February 14, 2015 through March 28, 2015 were obtained through a willful misstatement of material fact. Claimant is ineligible for all of the benefits he received for these weeks and any waiting week credit. Claimant's conduct has also rendered him ineligible for unemployment benefits for the period June 21, 2015 through June 18, 2016. However, the disqualification under Idaho Code § 72-1366(12) does not extend to the benefits Claimant received for the weeks ending January 3, 2015, January 24, 2015,; and February 7, 2015.

Waiver

The Appeals Examiner also concluded that Claimant is ineligible for a waiver and must repay the benefits he received, but to which he was not entitled. Idaho Code § 72-1369(5) provides that the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, can be waived. The evidence in this record establishes that Claimant is not without fault in his receipt of the benefits at issue. Therefore, Claimant does not satisfy the criteria for a waiver and must repay the benefits he has received, but to which he was not entitled for the weeks ending January 3, 2015 through March 28, 2015.

Further, Claimant is responsible for any interest or penalties provided for by Idaho Code § 72-1369(2) on the benefits he received as a result of his failure to report accurately report his wages for the weeks ending January 10, 2015, January 17, 2015, January 31, 2015, and February 14, 2015 through March 28, 2015. However, as explained above, Claimant is not responsible for any penalties provided for under Idaho Code § 72-1369(2) on the benefits he received for the period March 25, 2015, through July 28, 2015.

CONCLUSIONS OF LAW

I

Claimant willfully misstated material facts for the purpose of obtaining unemployment benefits when he misreported his wages for the weeks ending January 10, 2015, January 17, 2015, January 31, 2015, and February 14, 2015 through March 28, 2015. Claimant is ineligible for all of the benefits he received and any waiting week credit. Claimant's conduct has also rendered him ineligible for unemployment benefits for the fifty-two (52) week period June 21, 2015 through June 18, 2016.

II

Claimant is ineligible for a waiver and must repay the benefits he has received, but to which he was not entitled for the weeks ending January 3, 2015 through March 28, 2015. Claimant is responsible for any interest or penalties provided for by Idaho Code § 72-1369(2) on the benefits he received as a result of his failure to accurately report his wages for the weeks ending January 10, 2015, January 17, 2015, January 31, 2015, and February 14, 2015 through March 28, 2015. However, Claimant is not responsible for any penalties provided for under Idaho Code § 72-1369(2) on the benefits he received for the period March 25, 2015, through July 28, 2015.

ORDER

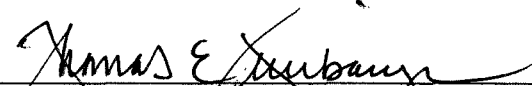
Based on the foregoing analysis, the Decision of the Appeals Examiner is AFFIRMED as MODIFIED. Claimant willfully misstated material facts for the purpose of obtaining unemployment benefits when he misreported his wages for the weeks ending January 10, 2015, January 17, 2015, January 31, 2015, and February 14, 2015 through March 28, 2015. Claimant is ineligible for all of the benefits he received and any waiting week credit. Claimant's conduct

has also rendered him ineligible for unemployment benefits for the fifty-two (52) week period June 21, 2015 through June 18, 2016. Claimant is ineligible for a waiver and must repay the benefits he has received, but to which he was not entitled for the weeks ending January 3, 2015 through March 28, 2015. Claimant is responsible for any interest or penalties provided for by Idaho Code § 72-1369(2) on the benefits he received as a result of his failure to report accurately report his wages for the weeks ending January 10, 2015, January 17, 2015, January 31, 2015, and February 14, 2015 through March 28, 2015. However, Claimant is not responsible for any penalties provided for under Idaho Code § 72-1369(2) on the benefits he received for the period March 25, 2015 through July 28, 2015. This is a final order under Idaho Code § 72-1368(7).


DATED this 7th day of January, 2016.

INDUSTRIAL COMMISSION

R.D. Maynard, Chairman




Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Assistant Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2016 a true and correct copy of **Decision and Order** was served by regular United States mail upon each of the following:

JIMMY L CHRISTY JR
C/O D BLAIR CLARK
1513 TYRELL LANE STE 130
BOISE ID 83706

GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714

IDAHO STATE PENITENTIARY
STATEHOUSE
BOISE ID 83720-0001

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

kc

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JIMMY L. CHRISTY, JR.,
SSN: [REDACTED]

Claimant,

v.

GRASMICK PRODUCE and
CONSOLIDATED ELECTRICAL,

Employers,

and

MR. MUDD CONCRETE CORPORATION,

Major Base Employer,

and

IDAHO STATE PENITENTIARY,

Cost Reimbursement Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 421003924-2015

ERRATUM

FILED

JAN 20 2016

INDUSTRIAL COMMISSION

On January 7, 2016, the Decision and Order was filed by the Commission in the above-entitled case. The following changes should be made:

On the Decision and Order, Page 10, the phrase “period March 25, 2015, through July 28, 2015” in the last sentence under the section entitled “**Waiver**” is replaced with “weeks ending January 3, 2013, January 24, 2015, and February 7, 2015.”

On the Decision and Order, Page 11 under **CONCLUSIONS OF LAW, II**, for the sentence starting “However”, the phrase “for the period March 25, 2015, through July 28, 2015”

ERRATUM - 1


is replaced with “for the weeks ending January 3, 2015, January 24, 2015, and February 7, 2015.”

On the Decision and Order, Page 12 under **ORDER**, for the sentence starting “However”, the phrase “for the period March 25, 2015, through July 28, 2015” is replaced with “for the weeks ending January 3, 2015, January 24, 2015, and February 7, 2015.”

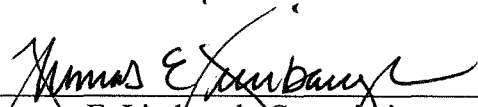
All other aspects of the Decision and Order remain unchanged.

DATED this 20th day of January, 2016.

INDUSTRIAL COMMISSION



R.D. Maynard, Chairman

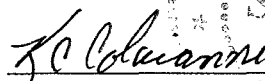


Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Assistant Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of January, 2016, a true and correct copy of **Erratum** was served by regular United States mail upon each of the following:

JIMMY L CHRISTY JR
C/O D BLAIR CLARK
1513 TYRELL LANE STE 130
BOISE ID 83706

GRASMICK PRODUCE
215 EAST 2ND ST
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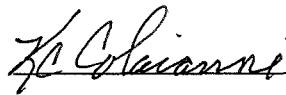
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DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

kc



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JIMMY L. CHRISTY, JR., Claimant

SSN [REDACTED]

v.

GRASMICK PRODUCE, Employer

and

CONSOLIDATED ELECTRICAL, Employer

and

MR. MUDD CONCRETE CORPORATION,
Major Base Employer

and

IDAHO STATE PENITENTIARY, Cost
Reimbursement Employer

and

IDAHO DEPARTMENT OF LABOR

Docket Number: 421003924-2015

NOTICE OF APPEAL

RECEIVED
INDUSTRIAL COMMISSION
2016 FEB 17 P 2:56

D. BLAIR CLARK, ISB #1367
LAW OFFICE OF D. BLAIR CLARK, PC
1513 Tyrell Lane, Suite 130
Boise, ID 83706
Phone: (208) 475-2050
Fax: (208) 475-2055
Email: dbc@dbclarklaw.com
Attorney for Appellant

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE - ISB# 3431
CHERYL GEORGE - ISB# 4213
DOUGLAS A. WERTH - ISB# 3660
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735

TO: THE ABOVE NAMES RESPONDENTS AND PARTY'S ATTORNEYS, AND THE
CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCIES, IDAHO
INDUSTRIAL COMMISSION AND IDAHO DEPARTMENT OF LABOR:

NOTICE IS HEREBY GIVEN:

ORIGINAL

1. That the above named appellant, Jimmy L. Christy, Jr., appeals against the above named respondents to the Idaho Supreme Court from that Decision and Order entered in the above entitled proceeding on the 7th day of January, 2016, by the Industrial Commission of the State of Idaho, Honorable R. D. Maynard, Chairman, presiding (hereafter “Decision”). A copy of the order being appealed to this notice, as well as a copy of the final judgment if this is an appeal an order entered after final judgment.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1 above are appealable order under and pursuant to Rule 11(d)(1), I.A.R.

3. That a preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal, are as follows:

A. The Decision wrongfully determined that claimant “willfully made a false statement or willfully failed to report a material fact in order to obtain benefits in that the evidence fails to show that Appellant “purposely, intentionally, consciously or knowingly” failed to report facts accurately instead of doing so by “negligence, misunderstanding or other cause.” The Commission’s findings in this case based on their own Findings of Facts, are virtually strict liability, which is not within the scope of Idaho law.

B. The Decision wrongfully determined that Claimant-Appellant was provided written instructions on how to complete his claim reports “in the form of a slide show he reviewed before he completed his application for benefits.” There was not slide show ever included within the record in this case. There is no competent evidence to show the nature, wording, or anything else relating to this so-called “slide show”

C. The Decision erroneously disregarded Appellant’s learning disability, which was not otherwise disputed or disregarded. Their position was “that evidence should have been brought to the forefront at the inception of these proceedings.” They also denigrate the testimony of the Appellant in that it was not brought out at the “first hearing.” Such is fallacious. The “first appeal” was *dismissed* and the proceedings remanded back to Jennifer Roop, the hearing officer, so that she could complete “further evaluations and adjudications.” The Order of July 28, 2015, provided “new protest rights” to Appellant. Procedurally, the Decision’s regard of the testimony

of Appellant on the grounds it did is far more than a “weighing” of the evidence. Either the so-called “first hearing” was continued, or the entire first hearing must be disregarded as the matter was dismissed and remanded. The Decision fails to recognize this effect.

D. The Judge found that Claimant thought he was reporting accurately and to the best of his ability. Therefore, the Conclusions found are erroneous.

E. Claimant’s testimony upon which the Judge made the determination that Claimant was told how to report when he spoke with the Department on December 19, 2014, is unimpeached. Therefore, the Conclusions found are erroneous.

F. The determination by the Judge that the “Claimant’s assertion that he was reporting his net wages is not supported by the record” is erroneous when considering the uncontradicted testimony in the record.

G. The determination that the Claimant “willfully made false statements or representations” and the conclusions that this was determined by the preponderance of the evidence completely fails to recognize that Claimant has learning disabilities, and that is not a native English speaker/writer/reader. Further, as stated previously, the determination that such should have been brought up on the “first hearing” fails to recognize that the “first hearing” was dismissed by the Administrative Judge; see Order of Dismissal and Remand entered by Judge Richmond on July 28, 2015.

H. The determination that Claimant had a “purpose or willingness to commit the act or make the omission referred to” is not supported by the record.

4. Has an order been entered sealing all or any portion of the record? NO. If so, what portion. N/A

5. (a) Is a reporter's transcript requested? YES.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in hard copy electronic format both (check one): e.g.

- Record of proceeding of September 16, 2015. Appellant has obtained a written transcript thereof from Northwest Transcripts, which accompanies this Notice of Appeal.

Appellant requests that, unless objected to by Respondent, said transcript be deemed the transcript of such hearing.

- Record of proceeding of July 28, 2015. Appellant has not obtained a written transcript thereof. The record in such case was kept electronically.

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R. - NONE AT THIS TIME.

7. Civil Cases Only. The appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court. - ALL EXHIBITS ADMITTED AT THE HEARINGS.

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below: - NONE AT THIS TIME.

(b) (1) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript. AN ESTIMATE OF \$3.75 PER PAGE FOR 50 PAGES FOR THE JULY 28, 2015, HEARING IS SUBMITTED, I.E. \$187.50. SHOULD FURTHER SUMS BECOME DUE, THEY ARE TENDERED HEREWITH UPON REQUEST.

(c) (1) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d) (1) That the appellate filing fee has been paid. \$109.00 ACCOMPANIES THIS NOTICE OF APPEAL.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

Dated this 17th day of February, 2016.

LAW OFFICES OF D. BLAIR CLARK PC

by 
D. Blair Clark

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2016, I caused to be served by fax a true and correct copy of the within and foregoing, to the following:

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE - ISB# 3431
CHERYL GEORGE - ISB# 4213
DOUGLAS A. WERTH - ISB# 3660
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
FAX: (208) 334-6125

Idaho Industrial Commission
ATTN: Unemployment Appeals
PO Box 83720
Boise, ID 83720-0041
VIA FAX: (208) 332-7558

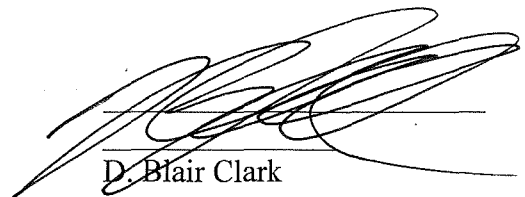
And by US Mail, postage prepaid, to:

GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038

MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714

IDAHO STATE PENITENTIARY
STATEHOUSE
BOISE ID 83720-0001



D. Blair Clark

APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET/BOISE, IDAHO 83735-0720

JIMMY L. CHRISTY, JR.,)
SSN: [REDACTED])
Claimant) IDOL # 421003924-2015
vs.)
GRASMICK PRODUCE,)
Employer)
and)
MR. MUDD CONCRETE CORPORATION,)
Major Base Employer)
and)
IDAHO STATE PENITENTIARY,)
Cost Reimbursement)
Employer)
and) September 16, 2015
IDAHO DEPARTMENT OF LABOR,) Boise, Idaho
And related parties and cases)

HEARING

HELD BEFORE MARK RICHMOND, HEARING OFFICER
FOR THE IDAHO DEPARTMENT OF LABOR

IN ATTENDANCE:

JIMMY L. CHRISTY, JR., Claimant
D. BLAIR CLARK, Attorney for Jimmy Christy
JENNIFER ROOP, Representative of Idaho Department of Labor
ANGELA REED, Representative of Grasmick Produce
VICKI McFADDEN, HR Representative of Grasmick Produce

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

421003924-2015 Christy v. IDOL 09/16/15 Hearing

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P.O. Box 33, Issaquah, Washington 98027-0002
(208) 989-3455 - gayle@nwtranscripts.com

WITNESS & EXHIBIT INDEX

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WITNESSES:

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JIMMY CHRISTY

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Exhibits

EXHIBITS:

ADMITTED

Exhibit 1 through 89 11

* * * * *

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* * * * *

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Hearing

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1 BOISE, IDAHO

WEDNESDAY, SEPTEMBER 16, 2015

2

PROCEEDINGS BEGAN

3

* * * * *

4

HEARING OFFICER RICHMOND: All right. Good morning.

5

My name is Mark Richmond.

6

MR. CLARK: Blair Clark and Jimmy Christy. I guess

7

that was us.

8

OPERATOR: Is now joining.

9

HEARING OFFICER RICHMOND: I'm the appeals examiner

10

assigned to preside over this matter.

11

Hold on for one moment please.

12

(Pause in the Proceedings)

13

MS. REED: Angela Reed.

14

HEARING OFFICER RICHMOND: All right. Good morning.

15

My name is Mark Richmond .

16

OPERATOR: Is now joining.

17

HEARING OFFICER RICHMOND: I'm the appeals examiner

18

assigned to preside over this matter. This is the hearing

19

for the claimant, Jimmy Christy, Junior. The employer

20

Grasmick Produce; the employer, Consolidated Electrical,

21

Major Base Employer; Mr. Mudd Concrete Corporation, Cost

22

Reimbursement Employer; Idaho State Penitentiary; and the

23

Idaho Department of Labor, under docket number 421003924-

24

2015.

25

Claimant Jimmy Christy are you present?

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Christy v. IDOL

09/16/15

Hearing

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CLAIMANT JIMMY CHRISTY: Yes, sir.

HEARING OFFICER RICHMOND: And are you by yourself today or do you have representation?

CLAIMANT JIMMY CHRISTY: Yes, I have representation, Blair Clark.

MR. CLARK: Right here, sir.

HEARING OFFICER RICHMOND: Thank you. One moment.

(Pause in the Proceedings)

HEARING OFFICER RICHMOND: All right. Mr. Christy, I have your mailing address as 559 North Carswell in Star, is that correct?

CLAIMANT JIMMY CHRISTY: That is correct.

HEARING OFFICER RICHMOND: And Mr. Clark, I have 1513 Tyrell Lane, Suite 130 in Boise. Is that accurate?

MR. CLARK: It is that.

HEARING OFFICER RICHMOND: All right. Thank you. Grasmick Produce are you represented?

MS. REED: No. Except for I am an attorney, Your Honor.

HEARING OFFICER RICHMOND: And your name?

MS. REED: Angela Reed. But I'm also the president of Grasmick Produce and I have my HR director here, Vicki McFadden.

HEARING OFFICER RICHMOND: Okay. Thank you. One moment.

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(Pause in the Proceedings)

HEARING OFFICER RICHMOND: And Ms. Reed I have a mailing address of 215 East 42nd Street in Boise, is that correct?

MS. REED: That's correct.

HEARING OFFICER RICHMOND: All right. Thank you. Idaho Department of Labor are you represented?

MS. ROOP: Yes, Jennifer Roop.

HEARING OFFICER RICHMOND: And Ms. Roop, I have attention Jennifer Roop, 317 West Main Street in Boise. Is that accurate?

MS. ROOP: Yes.

HEARING OFFICER RICHMOND: All right. Thank you. One moment.

(Pause in the Proceedings)

HEARING OFFICER RICHMOND: All right, today's date is September 16th, 2015. The time is approximately 11:04 in the morning, Mountain time. We are conducting this hearing by telephone from my office in Boise, Idaho. The hearing is being recorded as required by Idaho Code.

In this hearing the parties will be provided the opportunity to present evidence and testimony related to the issues before me and to call witnesses, if necessary, to provide relevant testimony. The parties will also be given an opportunity to cross-examine everyone who testifies.

1 After all direct and cross is taken I'll give the parties a
2 chance to add, clarify and/or rebut information in the
3 record. After that we'll move to closing statements. I will
4 then adjourned the hearing and begin working on my written
5 order. When issued, my decision will have appeals rights
6 information attached to it. Also all testimony taken today
7 will be under oath and is subject to Idaho's perjury laws.

8 Now I'm going to go through and identify the
9 exhibits but I want to discuss real briefly with the parties,
10 we held a hearing on this matter, oh, about a month ago,
11 give or take, and the hearing was ultimately -- the decision
12 that was made at the hearing was to remand it back to the
13 Department of Labor. Some issues came up in the hearing
14 regarding a different pay period, a Sunday through Friday,
15 rather than the -- or a Saturday through Friday and some
16 other issues. I reviewed the prior record this morning and I
17 just think that it would be -- well, we have two choices. We
18 can go -- start at square one and hold a de novo hearing and
19 get all of the information on the record fresh. Or if the
20 parties would stipulate to adding the previous record of the
21 hearing to this record, then we could just start fresh with
22 what has come out since the remand.

23 Let me start with you, Mr. Clark, any comments on
24 that?

25 MR. CLARK: We certainly have no problem with the

1 prior record, Your Honor.

2 HEARING OFFICER RICHMOND: Okay. Thank you.

3 Ms. Reed, would the employer stipulate to allowing
4 that prior record into this one so we don't have to go back
5 to square one?

6 MS. REED: Yes, Your Honor.

7 HEARING OFFICER RICHMOND: Thank you.

8 And Ms. Roop, do you have any objection to that?

9 MS. ROOP: Nope, not at all.

10 HEARING OFFICER RICHMOND: All right. Thank you.

11 The documents that were identified in the prior
12 record are the same except for -- one moment.

13 (Pause in the Proceedings)

14 HEARING OFFICER RICHMOND: I believe starting at
15 exhibit page 75, the new decision issued by the Department of
16 Labor, so 75 through 85 are the new -- is the new
17 determination and additional notes and then the appeal -- or
18 the new protest from the employer with their supporting
19 argument. So 75 through 85 is the new information. I think
20 that I sent out the entire 1 through 85 in the case as well.

21 Anybody object to stipulating 1 through 74 as part
22 of the previous record that is now part of this record, Mr.
23 Clark?

24 MR. CLARK: Certainly not.

25 HEARING OFFICER RICHMOND: Ms. Reed?

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MS. REED: No.

HEARING OFFICER RICHMOND: And Ms. Roop?

MS. ROOP: No.

HEARING OFFICER RICHMOND: All right. Thank you.

Now in addition, when I was reviewing this prior to the hearing this morning, I became aware that this new record that was provided to me by the Department did not have a new overpayment determination.

Mr. Christy, did the department send you a new overpayment determination with the new decision issued by the department?

CLAIMANT JIMMY CHRISTY: No, sir. To my knowledge, no.

HEARING OFFICER RICHMOND: Okay. There is a determination out there. I can have my staff access it and provide it to the parties. I think that that would be appropriate since I think that that's going to be an issue in today's hearing.

Mr. Clark, I mean I -- it's -- the determination is out there, whether or not it's part of the record means we can argue it or we can't. Do you want that document to be part of this record today?

MR. CLARK: Oh absolutely.

HEARING OFFICER RICHMOND: Okay.

MS. ROOP: Can I interrupt for just a minute?

1 HEARING OFFICER RICHMOND: Yes please.

2 MS. ROOP: Sorry. I have just emailed that
3 document, as well as another one, to Mr. Clark's email
4 address.

5 HEARING OFFICER RICHMOND: Okay.

6 MS. ROOP: The dbclarklaw one.

7 MR. CLARK: dbc@dbclarklaw?

8 MS. ROOP: Yes. Yeah, I mailed it to -- about 5
9 minutes ago because I was trying to help Mr. -- trying to
10 find the same thing because I noticed that same thing.

11 And then I also mailed the same document to the
12 email address that we have for Grasmick which is
13 Vicki@gramickproduce.com and if there's someplace else I need
14 to send it they can let me know and I can do that real fast
15 as well.

16 MS. REED: Would you mind emailing that to Angela.

17 MS. ROOP: No.

18 MS. REED: A-N-G-E-L-A@gramickproduce.com. We're
19 just here under my computer, so.

20 MS. ROOP: Okay. I will go ahead and do that right
21 now.

22 MS. REED: Thank you.

23 MS. ROOP: You're welcome.

24 MR. CLARK: And they just -- they just came up on
25 mine, so.

1 MS. ROOP: Okay. Sorry to interrupt, Mr. Richmond.

2 HEARING OFFICER RICHMOND: No, that's fine.

3 Okay, so that document, I'm just going to continue
4 with the numbering. And so the overpayment determination
5 dated August 12th will be exhibit's page 86 and 87.

6 MR. CLARK: Okay.

7 HEARING OFFICER RICHMOND: All right. One moment
8 please.

9 (Pause in the Proceedings)

10 HEARING OFFICER RICHMOND: Now Ms. Roop, I did
11 receive -- I received an overpayment determination dated
12 6/24. Is that the original that was in the previous record?

13 MS. ROOP: No. Did I send the wrong one to you?

14 HEARING OFFICER RICHMOND: No, I have one dated
15 8/12.

16 MS. ROOP: Okay.

17 HEARING OFFICER RICHMOND: And I have one dated
18 6/24.

19 MS. ROOP: Okay. 8/12 is the most recent one that
20 goes with that updated determination.

21 HEARING OFFICER RICHMOND: Okay. And then did you
22 send a bunch -- some additional notes?

23 MS. ROOP: I did. I also attached the notes that
24 occurred after our last hearing.

25 HEARING OFFICER RICHMOND: Okay. And, Mr. Clark,

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1 did you get a copy of those as well?

2 MR. CLARK: The notes and the determination, yes.

3 HEARING OFFICER RICHMOND: Any objection to those
4 being part of the record?

5 MR. CLARK: No, sir.

6 HEARING OFFICER RICHMOND: All right. The notes
7 will go on to identify as 88 and 89. All right, so 89
8 exhibits in total in this record.

9 Let me just ask real quick. Ms. Reed, have you
10 received those?

11 MS. REED: [No audible response].

12 HEARING OFFICER RICHMOND: Ms. Reed, are you there?

13 MS. REED: I'm sorry, Your Honor.

14 HEARING OFFICER RICHMOND: Did you get that email?

15 MS. REED: I -- yes, I have.

16 HEARING OFFICER RICHMOND: Okay. All right.

17 MS. REED: Sorry. It took them a while.

18 HEARING OFFICER RICHMOND: No, that's fine. I
19 appreciate that.

20 All right, so those exhibits, 1 through 89 are part
21 of the record in this matter.

22 **(Exhibits 1 through 89 admitted)**

23 HEARING OFFICER RICHMOND: Let me go ahead and --
24 what I think I'm going to do in this case is, this matter was
25 remanded back to Ms. Reed, I'm going to place the parties

1 that are going to -- that might be testifying under oath,
2 that would be Ms. McFadden, Mr. Christy and Ms. Roop -- I'm
3 sorry, I meant Ms. Roop. And then I'm going to begin with
4 some questions for Ms. Roop. Kind have her bring me up-to-
5 date on what happened between the remand and where we are
6 today and then we'll -- then I'll -- then we'll flow into the
7 hearing for cross-examination, argument and additional
8 witnesses. So let me do Vicki McFadden.

9 **VICKI McFADDEN, WITNESS HEREIN, SWORN**

10 HEARING OFFICER RICHMOND: Thank you.

11 And Jimmy Christy.

12 **JIMMY CHRISTY, WITNESS HEREIN, SWORN**

13 HEARING OFFICER RICHMOND: Thank you.

14 Jennifer Roop.

15 **JENNIFER ROOP, WITNESS HEREIN, SWORN**

16 HEARING OFFICER RICHMOND: Thank you.

17 **EXAMINATION OF JENNIFER ROOP**

18 **DIRECT EXAMINATION**

19 **BY HEARING OFFICER RICHMOND:**

20 Q. Ms. Roop, again remind me, what is your position or title
21 with the Idaho Department of labor?

22 A. I'm an unemployment insurance claims investigator.

23 Q. And just to refresh. We held a hearing, I remanded it
24 back to you because there were some discrepancies on the
25 weekly earnings request and -- or on what -- what was

1 reported by the employer. Is that correct?

2 A. Yes, that's correct.

3 Q. And what -- when I remanded it back to you, what did you
4 do and how did we get back into this hearing today?

5 A. I use the records that were provided by the employer to
6 recalculate the weekly earnings amount on the Sunday through
7 Saturday calendar, dates that the department uses and that we
8 ask our claimants to provide. Recalculated the --
9 recalculated those based on records provided by the employer
10 after our last hearing. Sent out a new letter to Mr. Christy
11 and his attorney and then got a response back and -- and as a
12 result of that response I guess, ended up reissuing a revised
13 decision -- or a new decision, I guess, on August 12th.

14 Q. All right. One second please.

15 So on exhibit page 87, which is the new determination,
16 in the column where it says "Corrected Earnings," in the
17 previous hearing those were the numbers -- and on the
18 previous determination of overpayment, those were the
19 numbers provided by the employer. The numbers that are in
20 there now you went in and adjusted based on the different pay
21 period?

22 A. Yes. Using the -- the wage records that they provided.
23 It was a daily breakdown, was able to recalculate doing it
24 that way.

25 Q. So would it be -- do you have -- would it be reasonable

1 to say that we're only talking -- you're just shifting
2 numbers around but the outcome was basically the same, except
3 for a couple of dollars?

4 A. The outcome was basically the same. There was one week
5 that ended up being okay and one week that wasn't from before,
6 if I remember correctly.

7 Q. Okay. All right, Ms. Roop, anything else I need to be
8 aware of with respect to your re -- or your new decision in
9 this matter?

10 A. Not that I can think of, no.

11 HEARING OFFICER RICHMOND: All right. Thank you.

12 Mr. Clark, do you have questions for Ms. Roop?

13 MR. CLARK: Yes, I do, sir, if I may?

14 HEARING OFFICER RICHMOND: Go ahead.

15 MR. CLARK: Okay.

16 **CROSS-EXAMINATION**

17 **BY MR. CLARK:**

18 Q. Ms. Roop, if you look at page 87, these new earnings are
19 -- the corrected one from the employer's records, not the
20 ones we had previously, is that right?

21 A. Correct, yes.

22 Q. Okay. Now if you go over to page 88 and 89. When was
23 our last hearing at -- just before the remand?

24 A. Looks like July 28th, I think is what I wrote down. I
25 think that's correct, July 28th.

1 Q. Okay. So, then what did you do on the 29th?
2 A. I -- after recalculating the earnings I mailed an
3 updated letter to the claimant and also to your -- the
4 attorney, to you --
5 Q. Mm-hmm.
6 A. -- asking for a response by August 10th, by 5:00 p.m.
7 Q. And you got a response, did you not?
8 A. I did. Yeah.
9 Q. Okay.
10 A. It's essentially the same thing as what you had -- you
11 guys had, you know, previously stated.
12 Q. Well --
13 A. Reason to -- same.
14 Q. -- it actually had some numerical differences in it. It
15 wasn't the same thing.
16 A. Essentially, right. But yeah.
17 Q. All right. And when did you talk to Jimmy?
18 A. I didn't talk to him. I used your response.
19 Q. You didn't talk to the claimant?
20 A. No.
21 Q. Okay. And you made a conclusion, did you not, that
22 there was fraud involved?
23 A. Failing to fully report the earnings. Yes, that was the
24 conclusion I came to.
25 Q. Okay. Let me go back to my question, because I don't --

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Hearing

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15

1 the right answer. Did you make a determination that there
2 was fraud?

3 A. The decision that is made is, I guess you can call it
4 fraud if you want but the -- the decision is that he failed
5 to fully report his earnings actually [sic] to the
6 department. I'm not saying that he willfully -- or that he,
7 you know, maliciously did that, but he had the information in
8 order to accurately provide information to the department on
9 his -- based on his earnings and he did not do that and
10 therefore, I guess, if you want to call it fraud you
11 certainly can. I'm not saying he was malicious but the
12 decision that comes out of it is yes, he -- he didn't provide
13 that information to the department and then therefore there's
14 a penalty attached as well.

15 Q. Okay. Well, I'm a little -- I'm a little bothered by
16 that answer to be very honest with you because -- your notes
17 say fraud determination, do they not?

18 A. That's the shorthand way of putting it, yes.
19 Absolutely.

20 Q. Do you know what fraud is?

21 A. Failing to provide accurate information in -- as far as
22 the department is concerned.

23 Q. Is that always fraud?

24 A. Not necessarily, no.

25 Q. Okay. Now you heard Mr. Christy's testimony at the

1 prior hearing, didn't you?

2 A. Yes, I did.

3 Q. All right. And you heard him testify that he went to
4 the water wheel or Water Tower, which is it? Is it Water
5 Tower office?

6 HEARING OFFICER RICHMOND: It's Water Tower.

7 MR. CLARK: Water Tower, very good.

8 BY MR. CLARK:

9 Q. He went to the Water Tower office and was told there, so
10 he understood, to report when he got. Do you remember that?

11 A. I do remember the testimony, yeah.

12 Q. Okay. Great. Do you remember that Mr. Christy had
13 other problems with the reporting and the requirements?

14 A. What do you mean other problem?

15 Q. Well, okay. I'm looking now at the exhibits. I've got
16 to be sure I've got them right here because there's a lot of
17 them.

18 A. Yeah.

19 Q. Okay. If I go over to page 4 of the record.

20 A. Page 4?

21 Q. Mm-hmm.

22 A. Okay.

23 Q. It says page 4 of 88.

24 A. Okay.

25 Q. And then there's four columns.

1 A. Okay.
2 Q. Right?
3 A. Yes.
4 Q. Okay. And the very bottom one on the left says "What Is
5 Fraud," correct?
6 A. Sorry, I've -- I'm looking at it on my screen and I'm
7 rotating it so I can read it. Give me just a second.
8 Q. Okay. That's --
9 A. Sorry.
10 Q. Take your time.
11 A. Okay. Bottom left, "What Is Fraud," yes.
12 Q. Okay. And it says that if you make a mistake you're
13 supposed to go to the office to try to correct it, is that
14 right?
15 A. Not under the "What Is Fraud" section, but it does say
16 that on the previous page.
17 Q. Right. Okay. Actually it also says that on page 5,
18 doesn't it, column 11?
19 A. On where?
20 Q. Page 5 of 88.
21 A. Oh, page 5, sorry. I was still looking at page 4.
22 Q. That's okay. And then you've got four columns which I
23 think it's both for --
24 A. Oh, the third column I see it.
25 Q. -- four reduced size pages.

1 A. Yep. I do see it. "What If My Wages Are Not Reported
2 Correctly."
3 Q. That's the one.
4 A. That actually has to do with your monetary
5 determination, not earnings that you're reporting to the
6 department.
7 Q. "What If My Wages Were Not Reported Correctly." That
8 doesn't talk about the monetary determination, does it in the
9 title?
10 A. Not in the title but the very first sentence says:
11 "Review your monetary determination carefully. If
12 wages have been reported incorrectly you must call the
13 department or local office."
14 Q. Okay. So I'm looking at the title and I'm looking at
15 the first sentence and it appears to me that there are
16 contradictions. Would you agree with that?
17 A. Maybe an misinterpretation of what it's saying but it's
18 not a contradiction because they're talking about monetary
19 determinations.
20 Q. All right. Even though the title doesn't say that.
21 Okay. Now I'd like you to go with me and take your time
22 to get there, page 40. 40 of 85. Did you find that one yet?
23 Tell me when you have.
24 A. No. Sorry.
25 Q. No problem. Take your time.

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1 A. 40. Oh, that one is that direction.
2 Q. It looks like it's a bunch of notes.
3 A. Yeah.
4 Q. Claimant's notes.
5 A. Yeah, those are department notes from our iUS system.
6 Q. Okay. D-O-E, I suppose means Department of Employment?
7 A. Yes.
8 Q. Okay. Now look at the very bottom one.
9 A. Okay. Where it's talking about earnings?
10 Q. Well, what does that tell you?
11 A. That he called and had a question about a couple of
12 things. Looks like availability, schooling and then also
13 changing some earnings.
14 Q. Okay. And it says claimant didn't understand question,
15 is that right?
16 A. I'm a -- yeah, as of -- it looks like for the
17 availability and the schooling.
18 Q. Okay. But it specifically says "claimant didn't
19 understand question," is that right?
20 A. Right. Address availability issue and err [sic] DOT
21 schooling as claimant didn't understand question.
22 Q. All right. Now, then you're looking at -- then I want
23 you to go up to "PC from claimant, stated he checked online
24 and the system told him he didn't qualify for benefits, he
25 was denied."

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1 A. Okay.

2 Q. What does that tell you?

3 A. It looks like he thought he should have been paid and he
4 thought he wasn't. But it looks like to me --

5 Q. But was he paid?

6 A. According to the rest of the note, said that he was paid
7 for week ending 12/27 on 12/31.

8 Q. Okay. Now go to the next page, 41. And just below the
9 center here there's an entry from you it looks like of June
10 3rd.

11 A. Mm-hmm.

12 Q. Right? Okay, tell me what -- tell me about that, what
13 are these -- what was this conversation?

14 A. It actually wasn't conversation he left a message saying
15 he got my letter but he -- he didn't understand what the
16 letter was about because he had had people in the office help
17 him with -- with his claim.

18 Q. People in what office?

19 A. I don't know. He just said people in the office. I
20 assumed it was the office that was closest to him.

21 Q. So that would be Water Tower?

22 A. Yeah.

23 Q. Okay. So did you ever follow up with him on that?

24 A. I tried to, yes.

25 Q. Okay.

1 A. On, looks like my note from June 8th, called, left a
2 message, asking for response by June 11th.

3 Q. Consequences given.

4 A. Mm-hmm.

5 Q. What is consequences given mean?

6 A. That means when we call and we ask, you know, we were
7 -- you know, message due by July -- or excuse me, June 11th,
8 2015 by 5:00 p.m., if we don't receive a response, the
9 decision will be made with the information we have on file.

10 Q. Okay. Do you recall telling him that specifically?

11 A. I tell that when all -- about all the messages I leave.
12 Yes.

13 Q. Okay. So it was a voicemail?

14 A. Yes.

15 Q. Okay, good. You didn't actually talk to him?

16 A. I did not, no. And that's what that -- is that left
17 message to return call, that's what that LMTRC means. Sorry,
18 we have a lot of shorthand. I apologize.

19 Q. No, that's fine. I use some myself and nobody would
20 understand it either.

21 [Laughter].

22 Q. Okay, now go if you would please to page 85.

23 A. Okay.

24 Q. And you obviously read this. You considered this as Mr.
25 Christy's response?

1 A. Yes, I did.
2 Q. Okay. Did you read paragraph 19?
3 A. I did.
4 Q. All right. So I want you to tell me from what you know,
5 in the record, where Mr. Christy committed a fraudulent act
6 on the department?
7 A. That -- that you're using that number 19 there, the
8 information you have in there --
9 Q. Not 19 [sic].
10 A. -- to prove fraud under Idaho law.
11 Q. That's exactly right.
12 A. Right. That doesn't necessarily apply to unemployment.
13 And that's not exactly what we use. I guess we -- it's much
14 shorter than that. It's just basically failing to provide
15 accurate information or misrepresenting facts that's material
16 to -- to the claim.
17 Q. All right. Then tell me on what basis you think is in
18 this record that shows that Mr. Christy willfully failed to
19 disclose accurate information based on what his knowledge
20 was?
21 A. It's repeatedly in -- in here and the questions that
22 they are asked, it says, you know, report their earnings --
23 gross earnings. It gives the week, Sunday through Saturday,
24 report your gross earnings before any deductions. There --
25 Q. Where is the -- where is that?

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1 A. That same question is given to them every single week
2 when they file their claim.

3 Q. Where is the word "gross?"

4 A. Oh, it's not in the popped out thing. That's the
5 problem with these. The question isn't showing in the --
6 exhibit page 17.

7 Q. Okay.

8 A. It's the initial questions they are asked.

9 Q. Okay.

10 A. And as soon as they ask did you work for the employer
11 during any part of the week, it gives the week, if they say
12 yes, the question that -- and we did talk about this last
13 time. I remember it.

14 Q. Mm-hmm.

15 A. I should have gotten a copy of that. I apologize.

16 Q. So it's not in the record?

17 A. It's not showing right there.

18 Q. All right. So, and do you remember in Mr. Christy's
19 testimony was that he believed, right or wrong, I'm not
20 asking you to say whether he should've or not, that's another
21 question, but right or wrong Mr. Christy's position has been
22 consistent, has it not, that he believed he was doing what he
23 was told to do. Is that right?

24 A. That's what he said, yes.

25 Q. Okay. And you just totally disregarded that?

1 A. No, I didn't totally disregard it, I just -- there's
2 plenty of information available to claimants to provide the
3 correct information. The handbook talks about report --
4 gross earnings before deductions that were paid on the week
5 they are earned.

6 Q. Okay. But where is that in this record?

7 A. Page 13, bottom left --

8 Q. Page 13.

9 A. -- bottom left.

10 Q. Oh.

11 A. Report all -- reporting work and earnings.

12 Q. Oh. Now what is this?

13 A. This is a copy of actually the slide show that they see
14 when they file their initial claim. There's 18 different
15 slides there; in order to file a claim you have to go through
16 this and see --

17 Q. Is this a PowerPoint or what?

18 A. It attached to the claim. I guess you could call it a
19 PowerPoint. It's embedded within the claims filing process.
20 They are first asked, you know, their work history
21 information, their -- the demographic information and as
22 they move along filing the claim, the slides are embedded
23 inside of that claims filing process and they have to go
24 through them in order to get to the end of the claim filing
25 process.

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1 Q. Okay.

2 A. And it's also mentioned in the handbook, report all
3 earnings before any deductions.

4 Q. Is the handbook here?

5 A. Yes.

6 Q. Where is that?

7 A. That would be page 3.

8 Q. Page 3.

9 A. Exhibit page 3. This is part of that how do I report my
10 earnings. The bottom right hand side there, which is really
11 fuzzy to read but --

12 "must report all your earnings for the week you
13 worked, not the week you were paid. Keep track of each
14 week hours and earnings. Report all earnings from all
15 employers before any deductions."

16 Q. Okay. Now I did see the word "gross" there, did you?

17 A. I'm sorry. "All earnings before any deductions."

18 Q. Okay. Do I understand then that you totally discounted
19 any possibility that Mr. Christy simply made a mistake?

20 A. I did not discounted, no.

21 Q. You didn't give it any credibility though?

22 A. I do believe that, but I also believe that there's
23 plenty of information where he could have provided the
24 accurate information and he did not.

25 Q. All right.

1 A. Because once you do report your earnings and you get
2 paid, if it's not correct then it's easy to pick up the phone
3 and call us and we can fix it.

4 Q. If he understands that's what he did?

5 A. You should be checking every week. When you're filing
6 unemployment it is your responsibility to check and make sure
7 that what you reported is accurate.

8 Q. Not arguing that. What I'm asking is, you're asking the
9 Judge here to make a determination based on the record that
10 Mr. Christy willfully made a false statement. And we've
11 talked about, and it's been in the record at a prior hearing
12 and at this hearing that willfully making a false statement
13 isn't necessarily founded on mistake. As a matter of fact it
14 is not. You remember -- you remember us discussing that very
15 point, don't you?

16 A. Yes.

17 Q. All right. And you just said that you yourself believe
18 that's what happened, right?

19 A. That he made a mistake?

20 Q. Yeah.

21 A. He did make a mistake if -- because the information is
22 incorrect.

23 Q. I understand that and you -- but a mistake isn't
24 fraudulent is it?

25 A. Was that -- I'm sorry was that a question or?

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1 Q. It was to me. That's what I asked.

2 A. Sorry.

3 HEARING OFFICER RICHMOND: What was the question?

4 THE WITNESS: I'm sorry. I didn't hear the
5 question.

6 **BY MR. CLARK:**

7 Q. Is it making -- let's try it again. Is making a mistake
8 fraudulent?

9 A. Not necessarily, no.

10 Q. Okay. I think that's a fair answer.

11 MS. REED: Your Honor, doesn't all of this call for
12 a legal conclusion. This whole line of questioning now. I
13 don't really have -- it seems to me that some of this is, you
14 know, is a question to be decided by Your Honor and not a
15 line of questioning for the witness.

16 MR. CLARK: I just -- I beg to disagree, Your
17 Honor, that this is a matter of law. This is a question of
18 fact.

19 HEARING OFFICER RICHMOND: Let me -- I want to -- I
20 want to make sure that we're going down the right path here
21 and I do appreciate the objection, Ms. Reed, but let me --
22 while we have a break in questioning and testimony, let me
23 just ask -- and I probably should have done this at the
24 get-go but, Mr. Clark, I reviewed your protest. I want to
25 ask, I have the employer here, I asked 'em to be here, is the

1 claimant disputing now that Ms. Roop has gone in and adjusted
2 the numbers based upon the employer's timecards, is there
3 going to be any issues with the employer, because I don't
4 have any questions for the employer and they may not need to
5 be here if the claimant is only arguing the fraud issue.

6 MR. CLARK: I don't think they need to be here.

7 HEARING OFFICER RICHMOND: Okay. So you're not
8 going to -- if I dismiss them you're not going to go into a
9 closing statement that the employer somehow misreported
10 earnings?

11 MR. CLARK: Not at all.

12 HEARING OFFICER RICHMOND: Okay. Ms. Reed, I do
13 appreciate the objection. I was looking for a way to get in
14 and kind of bring this issue up. You guys are welcome to
15 stay. I do -- I'm going to sustain the objection and I'll
16 talk to Mr. Clark a little bit about that in a moment. But
17 with respect to -- I just didn't want you guys to have to be
18 here much longer if you were going to be necessary. I don't
19 have any questions for you. If you have something you want
20 to add, you'll be allowed to stay and make those comments,
21 but if you don't have anything I'm willing to dismiss the
22 employer.

23 Ms. Reed, do you have a comment on that?

24 MS. REED: I do not, Your Honor. I appreciate -- I
25 appreciate that.

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HEARING OFFICER RICHMOND: All right.

Ms. Roop, do you have any objection to that?

MS. ROOP: No.

HEARING OFFICER RICHMOND: All right. Ms. Reed, Ms. McFadden, thank you for being here. You are dismissed from this proceeding. You will get a copy of the decision when I issue it. Okay?

MS. REED: Thank you, Your Honor.

HEARING OFFICER RICHMOND: All right. Thank you.

MS. REED: Bye.

HEARING OFFICER RICHMOND: Bye-bye.

* * * * *

(Ms. Reed & Ms McFadden Were Excused from the Hearing)

* * * * *

OPERATOR: Angela Reed.

MR. CLARK: Was that -- did she come back on?

HEARING OFFICER RICHMOND: Nope. No, she's leaving.

Hold on.

OPERATOR: Is now exiting.

HEARING OFFICER RICHMOND: There we go.

MR. CLARK: Ah. Okay.

HEARING OFFICER RICHMOND: All right. Mr. Clark, I don't necessarily -- I understand Ms. Reed's objection. I just want to make sure that again, the issue -- the issue based on your protest is the department's determination that

1 this may have been of fraud or willful misrepresentation, is
2 that correct?

3 MR. CLARK: It is.

4 HEARING OFFICER RICHMOND: All right. If you want
5 to continue with your questions that's fine.

6 MR. CLARK: I think she's probably answered all of
7 them I have.

8 HEARING OFFICER RICHMOND: Okay.

9 Mr. Roop, was there anything else you wanted to
10 add?

11 MS. ROOP: No. Thank you.

12 HEARING OFFICER RICHMOND: Okay.

13 Mr. Clark, do you have questions for Mr. Christy?

14 MR. CLARK: I do.

15 HEARING OFFICER RICHMOND: All right. Do you want
16 to go ahead and proceed with those?

17 MR. CLARK: Yes, I do. Thank you.

18 **EXAMINATION OF JIMMY CHRISTY**

19 **DIRECT EXAMINATION**

20 **BY MR. CLARK:**

21 Q. Mr. Christy, you've been here all morning have you not?

22 A. Yes, sir?

23 Q. And you participated in working on the response that we
24 made to Ms. Roop?

25 A. Yes, sir.

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1 Q. All right. And you've heard about the conversation at
2 Water Tower?
3 A. Yes.
4 Q. You've heard us talk about that?
5 A. Yes, sir.
6 Q. Now, so it's on the record in this case, I'd like you to
7 tell me what was that?
8 A. The question is when I went down to Water Tower --
9 Q. Yes.
10 A. -- for assistance for help because I didn't understand?
11 Q. When did you go?
12 A. I went there several times, but I -- let me think -- I
13 don't know what the date -- I'm trying to remember the date.
14 Q. Between Christmas and New Year's?
15 A. Yeah. About there.
16 Q. Okay. And why did you go?
17 A. Well, Idaho Labor required to fill out job apps, so I
18 did that and also when I went down to fill out the job apps I
19 asked a question about the payrolling and the difference in
20 -- between Grasmick payroll and what the Department of Labor
21 wanting me to file and that was the question I was confused
22 on and I didn't understand so I asked for help. I think the
23 man was named John -- I -- just I knew him as John.
24 Q. John?
25 A. John.

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1 Q. And he's with the Department at the Water Tower office?
2 A. Yes.
3 Q. All right.
4 A. If I saw his face I can recognize him.
5 Q. Okay. And -- well, let's just see if we can identify
6 him a little bit. How old do you think he was?
7 A. Probably in his mid-50s.
8 Q. Okay. What did you ask him?
9 A. I asked him the discrepancy about the reporting on what
10 -- my weekly payment with Grasmick and with the Department,
11 how do I enter that when I worked this day and is not for
12 that week. The discrepancy was that the time the Department
13 wants me to write and versus Grasmick, I was confused on it
14 because it overlaps.
15 Q. And that's because of the Saturday issue?
16 A. Yeah.
17 Q. All right. Did you and he enter into a discussion about
18 whether you were supposed to report gross earnings or net
19 earnings?
20 A. When I brought the -- when I went down and I asked him,
21 he informed me that I needed to pay what I received on my
22 paystub, my check. That's what I understood from him.
23 Q. Received?
24 A. Yes. Well, I took the check, I told him that the check
25 I had, this is what I'm supposed to enter. He helped me go

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1 through the system of entering it and he asked me questions
2 that I answered this is what I got, so he helped me enter it
3 and he was showing me on the system how to -- how to enter it
4 cause that -- that was in July.

5 Q. Do you recall how long this meeting took place?

6 A. With all the requirement I was supposed to do, the CHOR
7 [phonetic] system that the Idaho labor did, I was probably
8 there about an hour and 30 minutes because I was there for
9 other business with the Idaho Department because I was
10 required to redo a resume, I had to do that there and some
11 other things that they want me to do. And I had to enter
12 there my resume on jobs the Idaho Department had for me to
13 enter.

14 Q. Okay.

15 A. So I asked for assistance -- for help for that.

16 Q. Okay. So after that day did you report gross or net
17 earnings?

18 A. I report what my check was.

19 Q. What your check was. Is that what you understood you
20 were supposed to do?

21 A. Yes, sir.

22 Q. Okay. So as far as intending to misrepresent your
23 earnings, did you do this?

24 A. No, I did not.

25 Q. Okay. You probably understand by now, after going

1 through this twice that that was a mistake?

2 A. Yes, sir.

3 Q. Okay. So why do you think this happened?

4 A. The confusing on the report from Idaho Labor what they
5 want and what I -- my process of thinking, what I'm supposed
6 to do, and the confusion that I had that I asked for help
7 because I didn't know the exact -- what do they want to do,
8 I wasn't --

9 Q. Okay. Do you recall reading the handbook?

10 A. Yeah, you had to -- you had to go through it but I was
11 still -- had questions on it because what I interpret and
12 what I read was two different things. I couldn't understand
13 what I was reading.

14 Q. Okay.

15 A. That's why I went and asked for help because it didn't
16 make sense to me.

17 Q. Okay. Mr. Christy, do you have problems with numbers?

18 A. Yes.

19 Q. What kind of problems do you have?

20 A. Well, I'm diagnosed as I have a -- like dyslexia in
21 numbers. I get them backwards.

22 Q. Okay. Do you have that same problem with words?

23 A. Yes.

24 Q. Okay. Do you have reading difficulties?

25 A. Yes.

1 Q. And how long have you have those?
2 A. All my life. Since high school, junior high,
3 elementary. I have --
4 Q. Your whole school life?
5 A. Yeah, I had RR studies, extra help.
6 Q. You had what studies?
7 A. In Chicago they call it RR studies for like reading and
8 English [unintelligible] passes. An extra class was their
9 hour.
10 Q. Okay.
11 A. I wasn't very good at English. I was spelling but I
12 wanted to pass so my parents put me in the zero hour class
13 because RR studies so they can help you learn English, write
14 English, mathematics and stuff like that. Just extra work so
15 I could comprehend things better.
16 Q. Okay. Was English your native language?
17 A. No.
18 Q. What was your native language?
19 A. Tagalog.
20 Q. I'm sorry?
21 A. Tagalog. It's a Filipino language, called Tagalog.
22 Q. Okay.
23 A. I didn't speak English until I was like 7 years old.
24 Q. Okay. When did you learn how to read it?
25 A. A while, it took a long time, probably -- I mean it was

1 hard. It was difficult growing up, so.

2 Q. Okay. You've been working on it since?

3 A. Still today.

4 Q. Okay. So are you willing to tell the Judge, as we sit
5 here right now that you did what you thought you were
6 supposed to do?

7 A. That is correct.

8 Q. Okay.

9 MR. CLARK: I have no further questions of this
10 witness.

11 HEARING OFFICER RICHMOND: All right. I have a
12 couple questions.

13 **CROSS-EXAMINATION**

14 **BY HEARING OFFICER RICHMOND:**

15 Q. Mr. Christy, just so I am -- I am again clear on your
16 testimony. Mr. Clark and Ms. Roop talked about several
17 documents in this record that were provided to you prior to
18 this, prior to you reporting your earnings and one of them is
19 the brochure that goes out and Mr. Clark and Ms. Roop
20 discussed it where it says report all earnings from all
21 employers before any deductions. And then they went on to
22 talk about a slide that talks about, on page 13, report all
23 gross wages before deductions that are paid and then it gives
24 an example if you work \$10 -- make \$10 an hour and worked 14
25 hours you report 140. It doesn't talk about net -- or it

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1 gross in that slide and that's the information provided by
2 the Department in this case. But then is it your testimony
3 that you went in and were specifically told to do something
4 different from what these documents said?

5 A. Yes, sir, by John. Because that was the problem when I
6 was reading I didn't understand. I went there to ask the
7 question and they assist me. When I asked John how to do
8 this he kept -- it was more pressure with me because I wasn't
9 catching on.

10 Q. Okay. So then also on one of these documents, page 40,
11 it shows that you went in on -- or you made a phone call on
12 December 19th, talked to someone with the last name Wrangle
13 [phonetic], and there -- she or he changed your earnings as
14 you were reporting an extra day, explained to you to figure
15 your earnings from Sunday to Saturday. They noted that you
16 understood that, is that correct?

17 A. I would say yes, at the time because when she -- I was
18 on the phone on the system at home, she was explaining to me
19 how to do that.

20 Q. But she --

21 A. That was --

22 Q. -- there was some discussion of earnings there because
23 she said she corrected your earnings, is that correct?

24 A. Yeah, because John wasn't very helpful so they gave me
25 another person.

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1 Q. Okay.

2 A. So -- and then the time I -- I still have -- I was still
3 confused about the time line between Grasmick payroll, that
4 still was just confusing me because the overlap. I couldn't
5 -- I couldn't process it.

6 Q. Between --

7 A. What I'm saying like -- so I understood the part of when
8 it said how many hours I worked, so I put down \$10 for 10
9 hours, but I never had access -- like Grasmick, they didn't
10 give me the exact hours so I estimated what I thought I
11 worked. Like -- like if I -- like one day one of the reports
12 that was incorrect that I -- I had an error in is when I did
13 that extra day. I forgot to add that and I think that was
14 the day when I called them and I said hey, I called them and
15 said hey, I worked an extra day, I just want to report it and
16 let you know that I don't think I reported it right.

17 Q. And that's when they corrected it?

18 A. Yes, sir. That's what I believe, sir.

19 Q. Okay. Now have you spoken to this person at Water Tower
20 since this misrepresentation issue came to the forefront?

21 A. No, I quit going and I have Blair Clark's office assist
22 me in this activity.

23 Q. Okay. Did your counsel ever ask you to find out who
24 this person was so we could get some -- get some information
25 from the department regarding what you were told?

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1 A. No, sir.

2 Q. Okay.

3 A. Not that I recall.

4 Q. All right.

5 HEARING OFFICER RICHMOND: Ms. Roop, do you have
6 any questions for Mr. Christy?

7 MS. ROOP: No, I don't.

8 HEARING OFFICER RICHMOND: All right. Thank you.
9 Mr. Clark, any redirect for Mr. Christy?

10 MR. CLARK: I do not.

11 HEARING OFFICER RICHMOND: Thank you. One moment.

12 (Pause in the Proceedings)

13 HEARING OFFICER RICHMOND: Ms. Roop, is there any
14 final rebuttal or clarification or anything new we need to
15 discuss from the Department?

16 MS. ROOP: No, I think everything has been covered.

17 HEARING OFFICER RICHMOND: Thank you. You'll be
18 given an opportunity to make a closing statement here shortly
19 if you need to.

20 Mr. Clark, any other rebuttal or testimony or
21 anything else before we moved to closing?

22 MR. CLARK: I do not.

23 HEARING OFFICER RICHMOND: All right. Thank you.

24 I'm going to go to closing statements. Ms. Roop,
25 do you have a closing statement for the Department or does

1 the Department rest?

2 MS. ROOP: The Department is going to rest.

3 HEARING OFFICER RICHMOND: All right. Thank you.

4 Mr. Clark, do you have a closing statement or does
5 the claimant rest?

6 MR. CLARK: Very shortly, Your Honor.

7 HEARING OFFICER RICHMOND: Thank you.

8 **CLOSING ARGUMENT BY MR. CLARK**

9 MR. CLARK: Most of our positions on this matter
10 are set forth in the appeal document itself and my letter to
11 the Department of August 20th, including our opinion on what
12 the proper legal standard here is. I went back this morning
13 and I looked up again, just to make sure that what we were
14 talking about was still right as far as the Decision,
15 Skyline Mobile Homes and such; and McNulty versus Sinclair,
16 all those, all those are still prime. What we've seen I
17 think are, a couple of cases that talk about where the
18 employee says that he was laid off, kind of forgot to tell
19 you people that he quit, which obviously is the big
20 difference and that was clearly held to be a
21 misrepresentation because one makes you eligible and one
22 makes you not.

23 But this situation here, and I think Ms. Roop is
24 exactly correct, she understands that what we're talking
25 about here is a mistake. We're talking a mistake from a

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1 gentleman who is not a first language English speaker or
2 writer, who's had dyslexic problems, who believed what he was
3 told, whether he was told right or whether he misinterpreted
4 it, which is altogether possible. I can see John pointing to
5 his paycheck and saying what you've got and meaning gross but
6 Jimmy thinking it was net. I think that maybe is what's
7 happened here. Ms. Roop herself said that what happened here,
8 in her opinion, was a mistake.

9 The problem that I think we have is a lot of
10 administrating adjudicators, and I mean no disrespect by
11 doing that, they hear so many of these that it's one or the
12 other, either you did it or you didn't. There is no gray
13 area whatever. And that's unfortunate because that's not
14 what the law is. We went through the law in what is a
15 willfully false statement and a statement that's made under a
16 mistake is not willfully false. As a matter of law it is not
17 willfully false by definition. Whether you want to call it
18 the nine elements of fraud or whether you just want to
19 concentrate on the first and second elements of the nine
20 elements of fraud you still have to show that there was a
21 willfully false statement.

22 I really wish the Department wouldn't use words
23 like fraud because once they do it comes to a whole bad
24 conclusion that -- it's a damning word to be blunt and it
25 should be, but fraud is fraud. Mistake is not fraud, ever.

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1 And what we have here, whether you want to call it simply a
2 willful misstatement or whether you want to call it fraud, it
3 has to be based not on a mistake. It has to be based on the
4 claimant doing something that he knows is wrong, saying
5 something that he knows is wrong, intending the recipient,
6 Ms. Roop, whoever, John, to rely on it. That's true whether
7 you're looking at the common law nine elements of fraud or
8 whether you're looking at the vernacular that unfortunately
9 is used. We don't have that here. What the record here
10 shows is the mistake.

11 I think it's unfortunate that Ms. Roop didn't have
12 a chance to talk to Mr. Christy personally. I wish she would
13 have because if she would have followed up on why did you
14 think this was a mistake and she would've heard the
15 explanation that you did today about, frankly, he didn't
16 understand it right. He didn't understand it right, like you
17 or I might have, but that's not the test. The test is did
18 he. And the uncontradicted testimony in this record is that
19 he didn't. Right or wrong, he didn't. And that can't be --
20 either definition of fraud that can't be a justification for
21 a penalty. Period. And that's where I think our protest is
22 valid.

23 Thank you, Your Honor.

24 HEARING OFFICER RICHMOND: All right. Thank you.

25 All right, I'm going to take the matter under

1 advisement. I do appreciate the testimony and argument
2 today. I'm going to work on this over the next few days.
3 I'll have something out in writing within 10 days. I will
4 mail my decision to all of the parties listed on the notice.
5 I will attach to my decisions appeals information if any of
6 those parties wish to appeal. But again until you hear from
7 me in writing thank you all for being here. Everyone enjoy
8 your afternoon. Thank you.

9 MR. CLARK: Thank you, Your Honor.

10 MS. ROOP: Thank you.

11 HEARING OFFICER RICHMOND: Thank you.

12 MR. CLARK: Thank you.

13 PROCEEDINGS CONCLUDED

14 * * * * *

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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IDAHO DIVISION
P.O. BOX 33
ISSAQUAH, WASHINGTON 98027-0002
(208) 989-3455
gayle@nwtranscripts.com

/s/ Gayle M. Lutz
FEDERALLY CERTIFIED MANAGER/OWNER

Gayle Martin-Lutz
TRANSCRIBER

2/8/16
DATE

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

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COURT OF APPEALS

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JIMMY L. CHRISTY JR.,

Claimant-Appellant,

v.

GRASMICK PRODUCE, Employer,
CONSOLIDATED ELECTRICAL,
Employer, MR. MUDD CONCRETE
CORPORATION, Major Base Employer,
IDAHO STATE PENITENTIARY,
Cost Reimbursement Employer,

Employers-Respondents,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 43968

CERTIFICATE OF APPEAL
OF JIMMY L. CHRISTY, JR.

Appeal From: Industrial Commission Chairman R.D. Maynard presiding.

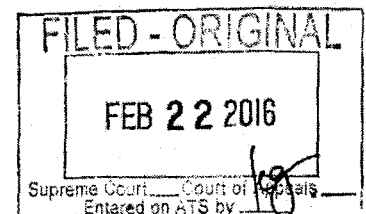
Case Number: IDOL # 421003924-2015

Order Appealed from: DECISION AND ORDER ENTERED JANUARY 7, 2016

Attorney for the Appellant: D BLAIR CLARK
1513 TYRELL LANE STE 130
BOISE ID 83706

Employers: GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

CERTIFICATE OF APPEAL OF JIMMY L. CHRISTY, JR. - 1



CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038

Major Base Employer: MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714

Cost Reimbursement Employer: IDAHO STATE PENITENTIARY
STATEHOUSE MAIL
BOISE ID 83720-0001

Representative/IDOL: DOUG WERTH
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
BOISE ID 83735

Appealed By: Jimmy L. Christy, Jr.,
Claimant / Appellant

Appealed Against: Grasmick Produce, Consolidated Electrical, Mr. Mudd Concrete
Corporation, and Idaho State Penitentiary,
Employers / Respondents

Notice of Appeal Filed: February 17, 2016

Appellate Fee Paid: Check in the amount of \$94.00 to follow.

Name of Reporter: M DEAN WILLIS
PO BOX 1241
EAGLE ID 83616

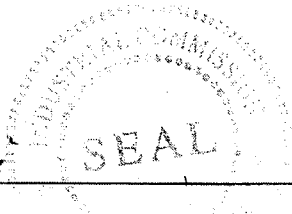
Transcript: Transcript will be filed with Agency Record.

Dated: February 19, 2016



KC Colaianni

Assistant Commission Secretary



CERTIFICATE OF APPEAL OF JIMMY L. CHRISTY, JR. - 2


CERTIFICATION

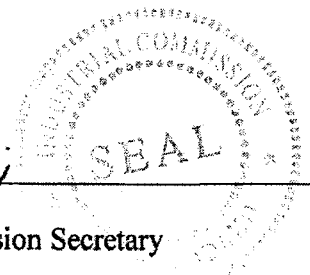
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I, KC Colaianni, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal filed February 17, 2016; Decision and Order filed January 7, 2016; and, the whole thereof, Docket Number 421003924-2015 for Jimmy L. Christy, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 19th day of February, 2016.


KC Colaianni
Assistant Commission Secretary



Supreme Court No. 43968

CERTIFICATION – JIMMY L. CHRISTY, JR.

FILED - ORIGINAL
FEB 22 2016
Supreme Court _____ Court of Appeals _____ Entered on ATS by <u>kg</u>

CERTIFICATION OF RECORD

I, KC Colaianni, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits admitted in this proceeding are correctly listed in the List of Exhibits (i). Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED this 8th day of April, 2016.

KC Colaianni
KC Colaianni
Assistant Commission Secretary



CERTIFICATION OF RECORD – JIMMY L. CHRISTY, JR.

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

JIMMY L. CHRISTY, JR.,

Claimant/Appellant,

v.

GRASMICK PRODUCE and CONSOLIDATED
ELECTRICAL, Employers; MR. MUDD
CONCRETE CORPORATION, Major Base
Employer; IDAHO STATE PENITENTIARY,
Cost Reimbursement Employer; and IDAHO
DEPARTMENT OF LABOR,

Respondents.

SUPREME COURT NO. 43968

NOTICE OF COMPLETION

TO: Stephen W. Kenyon, Clerk of the Courts; and
D. Blair Clark, Attorney for Claimant/Appellant; and
Grasmick Produce, Consolidated Electrical, Mr. Mudd Concrete Corporation, Idaho State
Penitentiary, Employers/Respondents; and
Douglas Wirth, for Idaho Department of Labor/Respondent.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date,
and, pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been
served by regular U.S. mail upon each of the following:

Address for Attorney for Claimant/Appellant

D BLAIR CLARK
1513 TYRELL LANE STE 130
BOISE ID 83706

Address for Employers/Respondents

GRASMICK PRODUCE
215 EAST 2ND ST
BOISE ID 83714

NOTICE OF COMPLETION – JIMMY L. CHRISTY, JR. - 1

CONSOLIDATED ELECTRICAL
1920 WESTRIDGE DR
IRVING TX 75038

MR MUDD CONCRETE CORPORATION
119 E 46TH ST STE 206
GARDEN CITY ID 83714

IDAHO STATE PENITENTIARY
STATEHOUSE MAIL
BOISE ID 83720-0001

IDAHO DEPARTMENT OF LABOR
DOUGLAS A WERTH
DEPUTY ATTORNEY GENERAL
317 W MAIN STREET
BOISE ID 83735

You are further notified that, pursuant to Rule 29(a), Idaho Appellate Rules, all parties have *twenty-eight days* from this date in which to file objections to the Record, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record are filed *within the twenty-eight day period*, the Transcript and Record shall be deemed settled.

DATED at Boise, Idaho this 8th day of April, 2016.

INDUSTRIAL COMMISSION

KC Colaianni

KC Colaianni

Assistant Commission Secretary

