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Christy v. Grasmick Produce Respondent's Brief Dckt. 43968

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

JIMMY L. CHRISTY, JR.,)
)
 Claimant/Appellant,)
)
 vs.)
)
 GRASMICK PRODUCE, CONSOLIDATED)
 ELECTRICAL, MR. MUDD CONCRETE)
 CORPORATION, IDAHO STATE)
 PENITENTIARY,)
)
 Employers/Respondents,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR,)
)
 Respondent.)
)

SUPREME COURT NO. 43968

BRIEF OF RESPONDENT
DEPARTMENT OF LABOR

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ON APPEAL FROM THE INDUSTRIAL COMMISSION
 STATE OF IDAHO
 R.D. MAYNARD, CHAIRMAN

IDAHO DEPARTMENT OF LABOR

CLAIMANT JIMMY L. CHRISTY, JR

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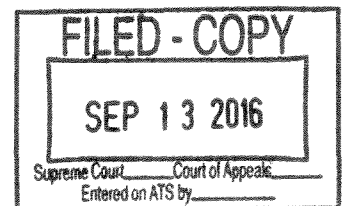
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CONSOLIDATED ELECTRICAL
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JIMMY L. CHRISTY, JR.,)	
)	
Claimant/Appellant,)	SUPREME COURT NO. 43968
)	
vs.)	
)	
GRASMICK PRODUCE, CONSOLIDATED)	BRIEF OF RESPONDENT
ELECTRICAL, MR. MUDD CONCRETE)	DEPARTMENT OF LABOR
CORPORATION, IDAHO STATE)	
PENITENTIARY,)	
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IDAHO DEPARTMENT OF LABOR,)	
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STATEMENT OF THE CASE

A. Nature of the Case

Claimant-Appellant Jimmy L. Christy, Jr. ("Christy") appeals from the decision of the Idaho Industrial Commission ("Commission") finding him ineligible for unemployment benefits based upon his willful underreporting of earnings to the Idaho Department of Labor ("IDOL" or the "Department").

B. Course of the Proceedings

Christy filed his initial application for unemployment benefits relating to this appeal on or about December 10, 2014. Tr. of 7/28/2015, p.43, l.22 – p.44, l.6.

On June 24, 2015, after investigating discrepancies between the earnings reported by Christy and his employers and finding that Christy willfully misrepresented his weekly earnings, IDOL mailed to Christy its determination of ineligibility, which set forth overpayment amounts to be repaid, and imposed civil penalties. Exhibit, pp.48-49 of 85.

Christy appealed from the determination, Exhibit, pp.65-68, and at the telephonic hearing before the Appeals Examiner held July 28, 2015, it came to light that some of the income figures supplied by one of Christy's employer were not accurate. Tr. of 7/28/2015, p.49, l.23 – p.50, l.18; p.51, ll.11-22. As a result, at the suggestion of the Appeals Examiner, Tr. of 7/28/2015, p.50, l.18 – p.51, l.3, the parties stipulated to vacate IDOL's determination and remand so that a decision could be made with the corrected income figures. Tr. of 7/28/2015, p.51, ll.3-11.

On August 12, 2015, IDOL issued a determination based upon the corrected income figures. Exhibit, pp.75-76 of 85; Tr. of 9/16/2015, p.11, ll.16-24. Once again, IDOL found that Christy had willfully misrepresented his earnings, set forth the amounts of overpayments that he must repay, and imposed civil penalties. Exhibit, pp.75-76 of 85.

Christy appealed this determination to the Appeals Examiner by letter dated August 20, 2015. Exhibit, pp.82-85 of 85.

On September 16, 2015, a telephonic hearing was held on Christy's appeal, during which the parties agreed that the testimony and record from the July 28, 2015 hearing (which resulted in the remand) would be considered part of the record of this second appeal. Tr. of 9/16/2015, p.5, l.8 - p.6, l.19; p.8, l.23 - p.9, l.10.

The Appeals Examiner heard additional testimony and issued his decision dated September 18, 2015, which again found Christy had willfully misrepresented his weekly earnings and thus was ineligible for unemployment benefits. R., pp.1-7.

Christy timely appealed to the Commission on September 29, 2015. R., pp.12-14.

IDOL entered its notice of appearance. R., pp.17-18.

The Commission conducted a *de novo* review of the record, R., p.38, and on January 7, 2016, entered its decision finding Christy had willfully failed to report material facts or made false statements in his weekly earnings reports to the Department. R., pp.45-46. Christy was found ineligible for unemployment benefits

for each of the weeks in which earnings were willfully misrepresented. *Id.* The Commission also imposed civil penalties. R., p.48.

On February 17, 2016, Christy timely filed a notice of appeal to the Idaho Supreme Court. R., pp.53-57.

C. Statement of the Facts

For the unemployment reporting weeks at issue, namely IDOL reporting weeks ending January 3, 2015, through March 28, 2015,¹ Christy worked on a part-time basis for Grasmick Produce and was paid at the rate of \$10.00 an hour. Exhibit, p.46 of 85. For the weeks ending March 21, 2015, and March 28, 2015, Christy also worked for Consolidated Electrical for the same hourly wage rate. Exhibit, p.47 of 85.

On or about December 10, 2015, Christy opened a claim for unemployment benefits. Tr. of 7/28/2015, p.43, l.22 – p.44, l.6.

As part of a routine "cross-match audit," an unemployment claims specialist with IDOL compared the weekly earnings reported by Christy to the earnings reported by his employers. Tr. of 7/28/2015, p.19. l.22 – p.20, l.3. This audit disclosed discrepancies between the earnings amounts submitted by Christy and his employers. *Id.*, p.20, ll.3-15. On May 18, 2015, IDOL sent Christy a letter giving him an opportunity to explain why his reported wages differed from what was reported by his employers. *Id.*, p.20, ll.15-17. Christy did not respond to this

¹ See I.C. § 72-1330 (IDOL reporting weeks end on Saturday at midnight).

letter or to a telephone message left for him by the Department. Tr. of 7/28/2015, p.20, l.14 – p.21, l.3.

On June 24, 2015, the unemployment claims specialist mailed to Christy a determination of ineligibility, which found that Christy had willfully misrepresented his weekly earnings. Exhibit, pp.48-49 of 85. Overpayment amounts and civil penalties were assessed. *Id.*

Christy appealed. Exhibit, pp.65-68 of 85. As discussed above in the procedural history, there was a remand, Tr. of 7/28/2015, p.51, ll.3-11, an issuance of a second determination finding willful misrepresentation, Exhibit, pp.75-76 of 85, and a second appeal by Christy. Exhibit, pp.82-85 of 85.

In the proceedings before the Appeals Examiner and the Commission, Christy did not dispute the earnings amounts he reported to IDOL or the corrected earnings amounts that were reported by his employers. Tr. of 9/16/2015, p.26, ll.3-86. Rather, Christy asserted then, as he does now, that the mistakes he made were not willful and that he did not intend to misrepresent his earnings. Tr. of 9/16/2015, p.33, ll.17-25.

The primary basis for Christy's appeal was his claim that an IDOL employee named "John" had told him to report only his net earnings as indicated in his payroll checks: "[John] informed me that I needed to take what I received on my pay stub, my check. That's what I understood from him." Tr. of 9/16/2016, p.32, ll.20-22.

However, there is no mention of this conversation in IDOL's notes

concerning Christy's unemployment claim. Exhibit, pp.78-79 of 85.

During his second appeal, Christy asserted for the first time that he has problems with numbers and does not read well. Tr. of 9/16/2015, p.34, l.18 – p.35, l.2. However, Christy also testified that he attended high school. Tr. of 9/16/2015, p.35, l.4.

The Commission did not find Christy's explanation for his errors to be credible. In addressing the claim by Christy that he was told by "John" at the Department to just enter the net amount of his paycheck, the Commission pointed out that – even if one were to accept as true that Christy was somehow misled by a Department employee – this excuse would justify only four weeks where the net amount of the paychecks and the amounts reported by Christy were substantially similar. R., pp.42-43. These four weeks are highlighted in yellow in the table *infra* at 6. Christy's excuse did not account for the discrepancies in the remaining weeks. R., pp.42-43. Moreover, the Commission pointed out that, with regard to more than a few of the weeks, the discrepancies were substantial, and Christy had no explanation for failing to report two full weeks of wages from Consolidated Electrical earned during reporting weeks ending March 21 and 28, 2015. R., p.43.

To illustrate how Christy's claimed excuse failed to explain the discrepancies for most of the reporting weeks, the table immediately below sets forth columns showing the net amounts of Christy's paychecks, the earnings reported by Christy (supposedly based upon the net amounts of the paychecks), and the gross amounts of the paychecks:

Paycheck Date <i>See Exhibit, pp.71-73 of 85</i>	Reporting Week Ending	Net Amount of Paycheck <i>See Exhibit, pp.71-73 of 85</i>	Earnings from Christy <i>See Exhibit, p.42 of 85</i>	Gross Amount of Paycheck <i>See Exhibit, pp.71-73 of 85</i>
1/2/2015	1/3/2015	72.95	73.00	137.20
1/9/2015	1/10/2015	84.56	80.00	226.80
1/16/2015	1/17/2015	119.53	103.00	220.80
1/23/2015	1/24/2015	62.25	62.00	207.40
1/30/2015	1/31/2015	183.79	180.00	221.00
2/6/2015	2/7/2015	129.85	130.00	242.50
2/13/2015	2/14/2015	151.12	130.00	241.20
2/20/2015	2/21/2015	61.36	65.00	237.80
2/27/2015	2/28/2015	201.74	120.00	259.30
3/6/2015	3/7/2015	166.46	120.00	340.10
3/13/2015	3/14/2015	200.11	120.00	325.40
3/20/2015	3/21/2015	197.32	130.00	614.20 ²
3/27/2015	3/28/2015	88.59	88.00	578.50 ³

The Commission included a similar table in its decision. R., p.43.

The Commission pointed out another inconsistency in Christy's story, namely, that on the one hand Christy asserted his mistakes were made because he was using the net amounts of his paychecks and, on the other hand, Christy asserted that his mistakes for the weeks ending February 28, 2015, and March 14 and 21, 2015, were due to the fact that he forgot to report an extra day in each of these weeks. The Commission explained this inconsistency:

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 the record does not provide a reasonable explanation for the earnings Claimant reported for the

² This amount includes approximately \$422.50 in earnings reported by Consolidated Electrical. Exhibit, p.47 of 85.

³ This amount includes approximately \$400.00 in earnings reported by Consolidated Electrical. *Id.*

majority of the weeks in the audit period.

R., p.44 (emphasis added).

The Commission observed that Christy was apprised on multiple occasions during the unemployment benefits application process that he was to report his gross earnings:

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 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.) This booklet includes a section describing how earnings affect a claimant's weekly benefits. The provision includes the statement that a claimant "must report all amounts earned, even if gross earnings are less than half [the claimant's] weekly benefits payment." (Exhibit: p. 6.)

R., p.44.

Testimony taken during Christy's appeal supports the Commission's findings. It was explained that an applicant had to go through the slide presentation in order to file a claim. Tr. of 9/16/2015, p.23, l.19 – p.24, l.19. The slide entitled "Reporting Work & Earnings" informed Christy that he was to "[r]eport all GROSS wages (before deductions)." Exhibit, p.13 of 85 (emphasis added). The slide even contained an example with the same hourly wage as Christy: "Example: 14 hours of work X \$10/hr = \$140. Report: \$140." *Id.*

The unemployment claims specialist testified further that the booklet, Exhibit, pp.3-7 of 85, directed applicants to "[r]eport all earnings from all employers before any deductions." Tr. of 9/16/2016, p.24, l.21 – p.25, l.9 (emphasis

added).

The screen shots of the slide presentation and the brochure were admitted without objection from Christy. Tr. of 7/28/2015, p.12, l.25 – p.13, l.2.

Also admitted without objection, *id.*, was the confirmation page of Christy's claim for benefits which informed him:

YOU HAVE AGREED TO:

- READ THE CLAIMANT BENEFIT RIGHTS AND RESPONSIBILITIES PAMPHLET that was mailed to you.
- . . .
- REPORT ACCURATELY if you work during the week you claim benefits. Report that you worked, even if you will not earn any pay. . . . Report all gross earnings or potential earnings from work done this week before deductions (Hours multiplied by rate of pay).

Exhibit, p.26 of 85 (emphasis added).

Finally, the Commission found unpersuasive Christy's claim that his underreporting of wages was caused by his supposed mental impairment:

[T]here 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 [IDOL's unemployment claims specialist] on July 7, 2015 explaining the errors Claimant made in his wage reports or the Protest of 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.

R., p.42.

The Commission, in what arguably was a factual and legal stretch, gave

Christy the benefit of the doubt with regard to three reporting weeks:⁴

. . . 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 [sic] 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. . . . 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.

R., p.45. Stated differently, Christy not only failed to follow the multiple instructions he received from IDOL directing him to report his gross wages, but also failed to report even his net wages during the majority of this reporting weeks. His “I thought John told me to report net wages” excuse does not withstand scrutiny.

With regard to the balance of the earnings reporting weeks, the Commission found that Christy willfully underreported his earnings:

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 through March 28, 2015 were obtained through a willful misstatement of material fact.

R., p.46.

Christy appeals from the Commission’s decision. R., pp.53-57.

⁴ The Department is not asserting error on appeal with regard to the findings relating to these three reporting weeks.

ISSUES ON APPEAL

- I. Does substantial and competent evidence support the Commission's finding that Christy willfully misrepresented material facts when he underreported his earnings in weekly reports to the Idaho Department of Labor?

- II. Should this Court deny Christy's request for attorney fees, and instead award the Idaho Department of Labor its attorney fees and costs on appeal pursuant to I.C. § 12-117(1)?

ARGUMENT

I.

Standards of Review

In appeals from the Commission, the Idaho Supreme Court's jurisdiction is limited "to questions of law." Idaho Const., Art. V, § 9.

This Court is "constitutionally compelled to defer to the Commission's findings of fact where supported by substantial and competent evidence." Locker v. How Soel, Inc., 151 Idaho 696, 699, 263 P.3d 750, 753 (2011) (emphasis added), *quoting* Teffer v. Twin Falls School Dist. No. 411, 102 Idaho 439, 439, 631 P.2d 610, 610 (1981); *see also*, I.C. § 72-732(1) (Commission findings must be upheld unless they "are not based on any substantial competent evidence").

"Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion." Cox v. Hollow Leg Pub and Brewery, 144 Idaho 154, 156, 158 P.3d 930, 932 (2007), *quoting*, Edwards v. Independence Services, Inc., 140 Idaho 912, 914, 104 P.3d 954, 956 (2004).

This Court "will not re-weigh the evidence or consider whether it would have reached a different conclusion from the evidence presented." *Id.* In addition, all facts and inferences are viewed in the light most favorable to the facts found by the Commission, and its determinations as to credibility of witnesses and weight of evidence will be upheld unless clearly erroneous. Bell v. Idaho Dept. of Labor, 157 Idaho 744, 746-747, 339 P.3d 1148, 1150-1151 (2014).

Finally, pure questions of law presented on appeal are freely reviewed. McNulty v. Sinclair Oil Corporation, 152 Idaho 582, 585, 272 P.3d 554, 557 (2012).

II.

Substantial and Competent Evidence Supports the Commission's Finding That Christy Willfully Misrepresented Material Facts When He Underreported his Earnings in Weekly Reports to the Idaho Department of Labor

A claimant has the burden of establishing statutory eligibility for unemployment benefits even in those cases involving claims of willful misrepresentation. McNulty, 152 Idaho at 585, 272 P.3d at 557. The personal eligibility conditions of the Employment Security Law provide that a claimant is ineligible for unemployment benefits if "he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits." I.C. § 72-1366(12).

This Court has long held that "willful"

. . . 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.

McNulty, 152 Idaho at 586, 272 P.3d at 558 (emphasis added), *quoting Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 761, 589 P.2d 89, 96 (1979). The "willful" standard of the Employment Security Law is something more than an accident resulting from "negligence, misunderstanding or other cause" and something less

than an allegation of actual fraud in other contexts. Cox v. Hollow Leg Pub and Brewery, 144 Idaho at 157, 159, 158 P.3d at 933, 935.

Significant to the case at bar, case law makes clear that a finding of willfulness will be sustained where the claimant "was properly informed of his reporting obligation and his alleged misunderstanding lacked credibility." Bringman v. New Albertsons, Inc., 157 Idaho 71, 76-77, 334 P.3d 262, 267-268 (2014), reh'g denied (Sept. 30, 2014), *citing* McNulty, 152 Idaho at 587, 272 P.3d at 559. *See also* Current v. Haddons Fencing, Inc., 152 Idaho 10, 13-14, 266 P.3d 485, 488-89 (2011) (observing that Meyer v. Skyline Mobile Homes, *supra*, held that the "factfinder may consider the claimant's explanation unworthy of belief").

A fact is "material" under I.C. § 72-1366(12) "if it is relevant to the determination of a claimant's right to benefits; it need not actually affect the outcome of that determination." Meyer, 99 Idaho at 760, 589 P.2d at 95; *accord*, McNulty, *supra*. "In short, the test for materiality is relevance." Bringman v. New Albertsons, Inc., 157 Idaho at 75, 334 P.3d at 266.

The gross wages earned and hours worked by a claimant are material because they can directly affect the availability and amount of unemployment benefits. Bell v. Idaho Dep't of Labor, 157 Idaho at 747, 339 P.3d at 1151; McNulty, 152 Idaho at 586, 272 P.3d at 558. In holding that gross earnings and hours worked are "material facts," this Court in Bell described the relevance of gross earnings and hours worked under applicable statutes:

Idaho Code section 72-1312(1) conditions the availability of benefits for a particular week on the claimant working less than full-time

during that week. Idaho Code sections 72–1312(4) and 72–1367(4) tie the benefits to which a claimant is entitled during a particular week, if any, to the gross wages the claimant earned during that week.

Bell, 157 Idaho at 747, 339 P.3d at 1151.

Substantial and competent evidence supports the finding that Christy willfully made false statements and willfully failed to report material facts in his weekly earnings reports to IDOL.

Christy was made aware of his reporting requirements. The slide show presentation, the Department's booklet entitled, "Claimant Benefit Rights, Responsibilities and Filing Instructions," and the confirmation page from Christy's on-line application all explained to Christy that he was to report his gross wages (before deductions).

Although Christy's claimed conversation with an IDOL employee named "John" is dubious, the Commission correctly pointed out that, even if these claimed facts were accepted as true, they did not explain the incorrect earnings claimed by Christy in the bulk of the reporting weeks at issue.

It is evident that the Commission did not find Christy's testimony to be credible. The record supports its findings that Christy was made aware of his reporting obligations and that Christy willfully misstated or omitted material facts (i.e., his true gross earnings) when reporting his earnings to the Department. These underreported earnings were "material facts" because they were relevant in determining weekly benefits. See Bell, *supra*; McNulty, *supra*; I.C. § 72-1367(4) (weekly benefits reduced for each dollar earned above one-half the regular weekly

benefit amount).

Bell, *supra*, involved facts similar to those presented here, where this Court reviewed Commission findings that claimant misrepresented his earnings and hours of work. The opinion explained that Bell would have received the pamphlet quoted *supra* in this brief, with identical warnings and other information. The opinion also explained that Bell would have had to certify that he had read the pamphlet. The arguments made by Bell in an attempt to explain away the inaccuracies of his reporting were found wanting just as the excuses proffered by Christy here:

Bell does not explain why he did not personally keep track of the hours he actually worked during the course of a week. While doing so might still have resulted in some inaccuracy, it would have been significantly more accurate than the means by which Bell chose to estimate his weekly gross wages. Assuming that the figures provided by the DOL are accurate, Bell's estimates were often more than just slightly off.

Bell, 157 Idaho at 747-748, 339 P.3d at 1151-1152. Bell had no explanation for his failure to make any attempt to determine his actual gross earnings. This Court found that the Commission's findings of willful misrepresentation were supported by substantial and competent evidence and affirmed its decision.

Like Bell, Christy received the same information and warnings from IDOL concerning the duty to accurately report earnings and to call the Department if any earnings were incorrectly reported. Christy proffered no credible explanation for his reporting failures. Moreover, the inconsistencies within Christy's own testimony undermined his credibility.

The instant case falls squarely within those cases where willfulness findings were upheld when the evidence showed that the claimant "was properly informed of his reporting obligation and his alleged misunderstanding lacked credibility." Bringman v. New Albertsons, Inc., 157 Idaho at 76-77, 334 P.3d at 267-268, *citing McNulty*, 152 Idaho at 587, 272 P.3d at 559.

Before concluding, a few observations should be made concerning arguments raised by Christy in his brief. Christy highlights various excerpts from the testimony of IDOL's unemployment claims specialist during cross-examination as to legal conclusions. From this he argues there was a dearth of evidence supporting a finding of willfulness. What Christy fails to mention, though, is that the underlying facts concerning Christy's misrepresentation of gross earnings were conceded by the parties, and the finding of willfulness was based in large measure upon the weakness of Christy's explanations. Those facts alone are relevant evidence that a reasonable mind might accept in finding Christy's acts and omissions were willful.

Christy also purports to dissect the findings and conclusions of the Appeals Examiner and re-form them into reversible error. These arguments are inapposite because the Commission reviewed this case *de novo*. Consequently, any claimed faulty reasoning of the Appeals Examiner is moot.

Christy creates another straw man argument when he lambasts testimony concerning a "pop-up" in the slide presentation about gross earnings that he would have viewed, and the fact that there was no documentary evidence of the actual

slide or image of the pop-up admitted to support the testimony. What Christy fails to mention, though, are the other slides, the booklet and the confirmation page that all were admitted without objection, which all apprised Christy of his duty to report his gross wages -- that is, his earnings before deductions.

Christy asserts that his protestations of an honest mistake below were uncontroverted and compel a finding in his favor. However, Christy ignores Cox, 144 Idaho at 158, 158 P.3d at 934, where this Court rejected a similar argument by a claimant who asserted the Commission's decision should be overturned because her testimony denied wrongdoing and there was no testimony to directly controvert her denial. Christy's argument also fails to mention -- as the Commission observed -- that even if there was a legal excuse based upon Christy's claimed reporting of net vs. gross income, this excuse did not explain the bulk of the reporting weeks where Christy's stated earnings were far from the mark of even net earnings. This argument also wholly ignores and offers no explanation for Christy's omission of 80 hours of wages at Consolidated Electrical from his reports.

Christy also has no answer to the reasoning of Commission's decision and, in particular, the questions it raised concerning his credibility, other than, perhaps, the weak and essentially unsubstantiated claim that he suffers from mental infirmities relating to his math skills and English comprehension. Finally, Christy argues there has been no evidence of motive or wrongful intent. This argument ignores McNulty, *supra* (willfulness "does not require any intent to

violate law, in the sense of having an evil or corrupt motive or intent").

Christy's underreported his gross earnings. It is beyond cavil that gross earnings are material facts. Bell, supra; McNulty, supra. The Commission based its finding of willfulness upon relevant evidence "that a reasonable mind might accept to support a conclusion." Cox, 144 Idaho at 156, 158 P.3d at 932. Consequently, the Commission's findings that Christy was ineligible for unemployment benefits for the weeks at issue should be upheld.

III.

This Court Should Deny Christy's Request for Attorney Fees, and Instead Award the Idaho Department of Labor its Attorney Fees and Costs on Appeal Pursuant to I.C. § 12-117(1)

Idaho Code § 12-117(1) provides as follows:

Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

A request for attorney fees on appeal must be delineated in the issues section of the party's first brief and must set forth the legal basis for the request. I.A.R. 35(a)(5), -(b)(5), and 44(a).

Christy raised his claim for an award of attorney fees for the first time on appeal. *See R.*, pp.12-14 (notice of appeal to Commission); pp.19-36 (Christy's brief before the Commission). Thus, only a claim for attorney fees on this appeal could

be made.

Christy's request for attorney fees should be denied because neither the Department nor the Commission "acted without a reasonable basis in fact or law" and, it is respectfully submitted, at the end of the day Christy will not be the prevailing party.


Because Christy's appeal does nothing more than ask this Court to reweigh the evidence and supplant the Commission's determinations on credibility -- something settled case law dictates this Court may not do -- this appeal is without reasonable basis in fact or law. Attorney fees and costs should be awarded against Christy pursuant to the authorities cited above.

CONCLUSION

Substantial and competent evidence supports the Commission's finding that Christy's willfully misrepresented his earnings. Its decision finding Christy ineligible for unemployment benefits for the work weeks that he willfully underreported earnings should be affirmed.

Further, because Christy's appeal is without reasonable foundation in fact or law, the Department should be awarded its attorney fees and costs on appeal.

Respectfully submitted,



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Idaho Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 13th day of September, 2016, I served two true and correct copies of the foregoing Brief of Respondent Department of Labor upon each of the following by depositing said copies in the United States mail, first class, postage prepaid:

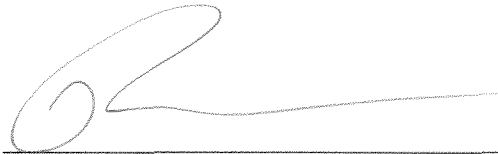
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