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### Ehrlich v. DelRay Maughan, M.D., P.L.L.C. Appellant's Brief Dckt. 45845

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

DENISE M. EHRLICH,  
SSN: [REDACTED]

Claimant/Appellant,

v.

DELRAY MAUGHAN, M.D., P.L.L.C.

Employer/Respondent,

and

ST. LUKE'S REGIONAL MEDICAL CENTER,

Cost Reimbursement Employer/  
Respondent

and

IDAHO DEPARTMENT OF LABOR

**SUPREME COURT NO. 45845**

**BRIEF FOR APPELLANT**

**OCTOBER 1, 2018**

**ON APPEAL FROM THE INDUSTRIAL COMMISSION  
STATE OF IDAHO  
THOMAS E. LIMBAUGH, CHAIRMAN**

**BRIEF FOR THE APPELLANT DENISE M. EHRLICH**

James Mitchell #10450  
James Mitchell Law  
453 W Archerfield St  
Meridian, Idaho 83646  
(208) 713 3848  
Counsel for the Appellant

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## STATEMENT OF THE CASE

### **i. Nature of the case**

Appellant Denise M. Ehrlich (Ehrlich) appeals the decision made by the Idaho Industrial Commission (Commission) affirming a determination made by the Appeals Division of the Idaho Department of Labor (Department). The Department had determined that Ehrlich willfully made a false statement or failed to report a material fact on her claim.

### **ii. Course of the proceedings**

On September 28, 2017 the Department mailed a letter to Ehrlich outlining a discrepancy discovered during an audit between the wages she had reported versus those reported by her employer Delray Maughan, M.D., P.L.L.C. Exhibit, p. 45 of 69. The Department letter requested an explanation of the discrepancy and set a response deadline of October 10, 2017. *Id.* Ehrlich responded by telephone on October 10 and spoke with the Benefit Payment Control Supervisor (BPC). *Id.* at 43. Ehrlich requested additional time to review the discrepancy, and the BPC agreed and set a two day deadline for a response. *Id.* After no response from Ehrlich before the deadline, the BPC on behalf of the Department mailed to Ehrlich an Eligibility Determination and an Overpayment Determination (Determinations) stating the findings of the Department. *Id.* at 46-50. The Department determined that Ehrlich willfully misrepresented her weekly earnings for six benefit weeks, and, as a result, was required to repay benefits, pay a civil penalty, and would be ineligible for benefits for a one year period. *Id.* On October 30, 2017 the Department received a letter from Ehrlich that was deemed a protest of the Determinations and a timely

request for appeal. *Id.* at 51-56. An Appeals Examiner from the Department's Appeals Bureau held a telephonic hearing on November 13, 2017 to address Ehrlich's appeal of the Department's Determinations. Tr, Vol.1, p. 1. The Appeals Examiner affirmed all of the Departments Determinations on the next day, November 14, 2017. R., Vol. 1, p. 1.

Ehrlich timely filed an appeal to the Commission on November 11, 2017. R., Vol. 1, p. 9. An amended appeal with a submission of additional documents and a request for written briefing and hearing was filed on December 8, 2017. *Id.* at 20-31. The Department filed its notice of appearance on the same day. *Id.* at 44. The Commission issued an order denying the request for a hearing and establishing a briefing schedule. *Id.* at 46. The deadline to file the appellant brief lapsed and motions for an extension of the deadline were filed along with a request for reconsideration. *Id.* at 50, 57. The Commission denied these requests and, ultimately, no appellant brief was filed. *Id.* at 54, 62., *Id.* at 66. The Commission filed its decision and order on January 30, 2018. *Id.* at 65. The Commission affirmed the decision of the Appeals Examiner, including the required repayment of benefits, 1 year suspension of benefits, and civil penalty. *Id.* Ehrlich timely filed an appeal to the Idaho Supreme Court on March 13, 2018. *Id.* at 73.

### **iii. Statement of facts**

Ehrlich appeals to the Idaho Supreme Court a decision of the Commission affirming the ruling issued by the Department ruling her ineligible for unemployment benefits. The Department's Appeals Examiner concluded that Ehrlich willfully made false statements for the purpose of obtaining unemployment benefits when she misreported her wages for the weeks ending July 15, 2017, July 22, 2017, August 5, 2017, August 19, 2017, August 26, 2017, and

September 2, 2017. Ehrlich was deemed ineligible for all of the unemployment benefits received for those weeks, as well as the fifty-two (52) week period October 15, 2017 through October 13, 2018. Ehrlich is also ineligible for a waiver, and must repay the benefits she has received and was not entitled.

Ehrlich began receiving unemployment benefits after her separation from ST. Luke's Regional Medical Center. Exhibit., Vol. 1, p. 29. Ehrlich was receiving unemployment benefits concurrently with part time employment at Delray Maughan, M.D., P.L.L.C. *Id.* at 31. Ehrlich did not accurately report her earning in six of her benefit weeks. *Id.* at 30. Ehrlich, for each of the weeks in questions, entered her pay rate rather than total weekly earnings in the report. *Id.* at 43. Ehrlich then took steps to discover the problem and revise her reporting to the Department. *Id.* at 51. This came in the form of a letter written to the Department and received on October 30, 2017. *Id.*

Ehrlich initially responded to a letter from the Department requesting an explanation for the discrepancy in the reporting of her earnings. *Id.* at 43. During that phone conversation she admitted her mistake, and that she had reported her hourly wage rate rather than total wages. *Id.* When the Department representative asked if she had any additional information to provide, Ehrlich responded that she examine her mistake more closely. *Id.* She knew she made a mistake and would need more time to discover the details and correct the reporting. *Id.*

Ehrlich again contacted the Department, albeit untimely, with a letter on October 30, 2017. *Id.* at 51. This letter was construed by the Department as a protest of the determination and a request for an appeal before the Appeals Examiner. *Id.* It contains a detailed analysis of the

misreported weeks as well as an explanation as to why it happened. *Id.* Ehrlich admits that she made a mistake and also offers to repay any overpayments in the Appeals Examiner hearing Tr. Vol. 1, p. 29., L. 5. She also makes a reference to the letter and inquires if the Appeals Examiner has read it. Tr. Vol. 1, p. 29., L. 5. He replied that he read the letter, but preferred live testimony. *Id.*

### ISSUES PRESENTED ON APPEAL

- I. Whether the finding that Ehrlich willfully misrepresented material facts when she reported his earnings in weekly reports to the Idaho Department of Labor was clearly erroneous.

### ARGUMENT

- I. The Commission and Department misevaluated a key piece of evidence by paying little attention to the October 10, 2017 letter sent by Ehrlich. Without acknowledging it as an effort to follow up and ensure reporting was accurate, the decisions mad below are not supported by substantial and competent evidence and are thus clearly erroneous.**

Appellant Ehrlich's misunderstanding of the reporting system is credible and the argument that her misreporting was willful under the Courts standard is without merit. Without a showing of willfulness, she is not in violation under Idaho law. Additionally, since Ehrlich's misreporting was not willful, the Commission's conclusions are not supported by substantial and competent evidence. There is not a scintilla of evidence to support its ruling. Therefore, the decision of the



Department and the Commission are clearly erroneous. The Court should remand this case back to the Commission with instructions to examine this evidence.

Upon reviewing a decision made by the Commission, the Court will have free review over questions of law, but review questions of fact only to determine whether the findings are supported by substantial and competent evidence. *Current v. Wada Farms Partnership*, 407 P.3d 208, 213 (Idaho 2017). Relevant evidence that a reasonable mind might accept to support a conclusion is substantial and competent evidence. *Id.* The Commission's conclusions regarding credibility and weighing of the evidence will not be disturbed unless they are clearly erroneous. *Id.* Substantial evidence is more than a scintilla of proof, but less than a preponderance of the evidence. *Christy v. Grasmick Produce*, 395 P.3d 819 (Idaho 2017). It is relevant evidence that a reasonable mind might accept to support a conclusion. *Id.*

A claimant of unemployment benefits shall not be entitled to benefits for a period of fifty two (52) weeks if it is determined that the claimant has willfully made a false statement or failed to report a material fact in order to obtain benefits. I.C. § 72-1366(12). The claimant shall also repay any sums received for any week for which the claimant received benefits as a result of willfully making a false statement or willfully failing to report a material fact. *Id.* The Department shall assess a monetary penalty of twenty five percent (25%) of any resulting overpayment for the first determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department. I.C. § 1369(2)(a). Evidence is substantial and competent to support of finding of willingness, more than a scintilla of proof and thus making a decision not clearly erroneous, when an alleged

misunderstanding lacks credibility. *Current* at 900. A lack of credibility can be found when a claimant was properly informed about the obligation of reporting earnings, but fails to follow up and ensure that reporting was accurate. *Id.*

In the *Current* case, the appellant argued that willingness portion of the Idaho statute had not been satisfied as it pertained to a willfully making a false statement or willfully failing to report a material fact, and, therefore, there was insufficient substantial and competent evidence to support the determination of the Commission. *Current* at 898. *Current* was an unemployment benefit claimant that was receiving benefits while working at Wada Farms. *Id.* He was estimating his earnings each week and reporting them to the Department. *Id.* The Department discovered the discrepancy and determined that *Current* had willfully misrepresented material facts when he underreported his earnings. *Id.* The determination stated that *Current* would not be eligible for benefits for fifty two weeks, must repay benefits that he received to which he was not entitled, and issued a civil penalty. *Id.* at 896. He claimed that the underreporting was an honest mistake, but he did not take the necessary steps to follow up and correct his earnings. *Id.* The Department and the Appeals Examiner were not persuaded by this argument. *Id.* *Current* eventually appealed the Department's decision to the Commission, and the Commission affirmed the findings of the Appeals Examiner. *Id.* at 897. The Commission found that *Current* deliberately elected not to seek clarification from the Department in regard to reporting his earning and this was sufficient to indicate the willingness necessary under Idaho law. *Id.*

*Current* appealed the decision of the Commission to this Court. *Id.* The appellant argued that was not substantial and competent evidence to support the conclusion of the Commission

and thus the decision was clearly erroneous. *Id.* at 898. The Court held that the Commission's ruling was not clearly erroneous and affirmed the decision. *Id.* at 900. There was more than a scintilla of evidence to show willingness, so the Commission's findings were supported by substantial and competent evidence. *Id.* Current failed to follow up and ensure that his reporting was accurate after he was properly informed about the obligation to reporting earnings accurately. *Id.* The Court found that his alleged misunderstanding of the reporting system lacked credibility, and this was enough to show the requisite willingness under Idaho statute. *Id.*

Unlike the appellant in the *Current* case, Ehrlich did follow up with the Department and made an effort to explain her error and correct the misreporting. Similar to Current, Ehrlich was receiving unemployment benefits concurrently with part time employment at Delray Maughan, M.D., P.L.L.C. Also similar to Current, Ehrlich did not accurately report her earning in six of her benefit weeks. Her mistake was comparable to Current's estimation of his earnings. Ehrlich, for each of the weeks in questions, entered her pay rate rather than total weekly earnings in the report. The Department discovered the discrepancy through an audit. They sent a letter requesting an explanation, again similar to the circumstances in the *Current* case. However, where Current failed to follow up and make an effort to correct his mistake, Ehrlich took steps to discover the problem and revise her reporting to the Department.

Ehrlich responded to the letter from the Department requesting an explanation for the discrepancy in the reporting of her earnings. During that phone conversation she admitted that she had made a mistake, and that she had reported her hourly wage rate of \$20 per hour rather than total wages. When the Department representative asked if she had any additional

information to provide, Ehrlich responded that she examine her mistake more closely. In essence, she knew she made a mistake and would need more time to discover the details and correct the reporting. Unlike Current, Ehrlich did take additional steps to follow up with the Department and ensure that her reporting was accurate.

Ehrlich again contacted the Department, albeit untimely, with a letter on October 10, 2017. This letter was construed by the Department as a protest of the determination and a request for an appeal before the Appeals Examiner. Ehrlich made no such assertions in this letter. The word “protest” is not even present in the letter and the word “appeal” only appears in the address. She sent it in an effort to explain why her earnings had been misstated in an ongoing effort to follow up and ensure that the reporting was accurate. It contains a detailed analysis of the misreported weeks as well as an explanation as to why it happened. Evidence of her efforts is also present in the phone conversation and telephone hearing with the Appeals Examiner. Ehrlich admits that she made a mistake and also offers to repay any overpayments. She also makes a reference to the letter and inquires if the Appeals Examiner has read it. He replied that he read the letter, but preferred live testimony. Ehrlich was clearly confused by this position because it was written in an effort to explain the discrepancy and ensure that the reporting was accurate. Much of the content of the letter was not revealed by the witness statement, a mistake common to Pro Se litigants unfamiliar with the legal system.

By not recognizing it for what letter actually was, an effort to follow up and ensure accurate reporting, and giving little to no attention to it during the hearing, the Appeals examiner ignored a key piece of evidence. The letter demonstrates Ehrlich’s effort to follow up and correct

her reporting. Since she did indeed make an effort to follow up and correct her earnings reports, her misunderstanding of the reporting system does not lack credibility. Ehrlich's mistake is credible and fatally weakens the argument that her misreporting was willful under the Courts standard. Without a showing of willfulness, she is not in violation under Idaho law. Additionally, since Ehrlich's misreporting was not willful, the Commission's conclusions are not supported by substantial and competent evidence, there is not a scintilla of evidence to support its ruling and, therefore, the decision of the Department and the Commission are clearly erroneous. The Court should remand this case back to the Commission with instructions to examine this evidence.

### **CONCLUSION**

Ehrlich's mistake in reporting of her earnings is credible and this undercuts the assertion that her misreporting was willful under the Courts standard. Without a showing of willfulness, she is not in violation under Idaho law. Since Ehrlich's misreporting was not willful, the Commission's conclusions are not supported by substantial and competent evidence. There is not a scintilla of evidence to support its ruling and the decision of the Department and the Commission are clearly erroneous. The Court should remand this case back to the Commission with instructions to examine this evidence.

Respectfully submitted,



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James Mitchell #10450  
James Mitchell Law

453 W Archerfield St  
Meridian, Idaho 83646  
(208) 713 3848  
Counsel for the Appellant

**CERTIFICATE OF SERVICE**

I hereby certified that on the 1st day of October, 2018, a true and correct copy of the foregoing was served on the following:

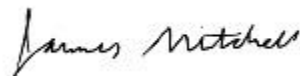
DELRAY MAUGHAN MD PLLC	<input type="checkbox"/>	E-File/E-Service
13900 W WAINWRIGHT 101	<input type="checkbox"/>	Hand-Delivered
BOISE ID 83713-5028	<input checked="" type="checkbox"/>	US Mail
	<input type="checkbox"/>	Facsimile

ST LUKES REGIONAL MEDICAL CENTER	<input type="checkbox"/>	E-File/E-Service
400 S BROADWAY	<input type="checkbox"/>	Hand-Delivered
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James Mitchell  
Attorney at Law