

2009

# Kivalu v. Department of Workforce Services : Brief of Respondent

Utah Court of Appeals

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Taniela Fakalolo Kivalu; Pro Se.

Geoffrey Landward; Attorney for Respondent.

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# IN THE UTAH COURT OF APPEALS

TANIELA F. KIVALU.,

Petitioner,

Case No. 2009-01583-CA

v.

WORKFORCE APPEALS BOARD  
OF THE UTAH DEPARTMENT OF  
WORKFORCE SERVICES,

Priority No. 7

Respondents.

## BRIEF OF RESPONDENT

Petition for Review of a Decision of the  
Workforce Appeals Board of the  
Department of Workforce Services,  
State of Utah

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491 NORTH 750 EAST  
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Services

FILED  
UTAH APPELLATE COURTS

MAR 08 2010

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## **JURISDICTION OF THE COURT OF APPEALS**

This Court has jurisdiction of this Petition for Review pursuant to Article 8, §3 of the Utah Constitution; Utah Code Ann., §§35A-4-508(8)(a), 78-2a-3(2)(a), 63G-4-403; and Rule 14 of the Rules of Appellate Procedure.

## **ISSUES PRESENTED FOR REVIEW**

Did the Petitioner knowingly withhold material information in order to obtain benefits to which he was not entitled?

## **STANDARD OF REVIEW**

This court will reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." *Drake v. Industrial Comm'n*, 939 P.2d 177, 181 (Utah 1997). This court will not disturb the Board's conclusion regarding application of law to facts unless it "exceeds the bounds of reasonableness and rationality." *Nelson v. Department of Emp. Sec.*, 801 P.2d 158, 161 (Utah Ct. App. 1990).

Petitioner, Taniela F. Kivalu, ("the Claimant") does not substantively contest the Respondent's ("the Board") underlying factual findings.

The Claimant failed to meet his burden of marshaling the evidence as required under *Heinecke v. Department of Commerce*, 810 P.2d 459, 464 (Utah Ct. App. 1991).

## **STATUTES AND REGULATORY PROVISIONS AT ISSUE**

The statutes and rules which are determinative in this matter are set forth verbatim in Addendum A, and include the following:

§35A-4-405(5), Utah Code Annotated  
§35A-4-508, Utah Code Annotated  
63G-4-403, Utah Code Annotated  
§78A-4-103, Utah Code Annotated  
R994-406-401-403, Utah Admin. Code

## **STATEMENT OF THE CASE**

### **A. Nature of the Case, Course of Proceedings, and Disposition Below.**

The Claimant, Taniela F. Kivalu, filed a claim for unemployment insurance benefits with the State of Utah on June 26, 2008. (Record, 001-004). He continued to receive unemployment benefits through October 18, 2008. (R, 005-006).

Upon receiving information from one of the Claimant's employers, the Department of Workforce Services determined the Claimant had knowingly misreported or failed to report that he was working and earning wages while receiving unemployment insurance benefits. The Department issued a decision on December 24, 2008, disqualifying the Claimant from receiving benefits for the weeks in which the misrepresentations occurred and for 49 additional weeks commencing December 28, 2008, and ending December 5, 2009. The Department's decision established an overpayment in the amount of \$5,124 for benefits received, plus a civil penalty in the amount of \$5,124, representing amounts received as a direct result of fraud as required by law, for a total of \$10,248 due and payable to the Department. (See Department decisions at Addendum B)



The Claimant appealed the Department's decision to an administrative law judge (ALJ) on December 29, 2008, and an evidentiary hearing was scheduled for January 26, 2009. The Claimant failed to confirm participation in the scheduled hearing and the ALJ issued a default order on January 22, 2009. The Claimant filed a request to reopen the hearing on January 26, 2009, and a second hearing was scheduled for March 3, 2009. The Claimant again failed to confirm participation in the scheduled hearing and the ALJ issued a default order on March 3, 2009. The Claimant filed a request to reopen the hearing on March 5, 2009, and a third hearing was scheduled for April 1, 2009. The ALJ held a full evidentiary hearing on April 2, 2009, and issued a decision which affirmed the Department's decision to deny benefits, disqualify the Claimant, and establish an overpayment and penalty. (See Addendum C)

The Claimant appealed the ALJ's decision to the Board. The Board issued its decision on May 21, 2009, affirming the ALJ's decision in its entirety. (See Addendum D) On June 1, 2009, the Claimant filed a request for reconsideration which the Board denied on June 25, 2009. The present petition for review ensued.

**B. Statement of the Facts.**

The Claimant opened a claim for unemployment benefits in Utah on June 26, 2008, with an effective date of June 22, 2008. (R, 001-004). When the Claimant opened his unemployment claim, he certified he understood that the law provides penalties for false statements to secure benefits. (R, 001). The Claimant then filed for unemployment benefits every week from June 22, 2008, to December 20, 2008. (R, 005-008).

Every claimant who is receiving benefits is sent a Claimant Guide, which contains instructions about the claimant's responsibilities regarding his acceptance of unemployment benefits, including properly reporting work and earnings. The Claimant stated that he received the Claimant Guide during the week ending July 5, 2008. (R, 6).

Each week the Claimant filed for benefits, the Department's automated system asked, "during the week, did you work?" The Claimant can answer only "yes" or "no." During the first few weeks the Claimant filed for benefits he properly reported he had not worked. (R, 006). The Claimant accepted full-time employment with Maxim Health Care Service on July 20, 2008. (R. 013). The Claimant filed his weekly claim for the week ending July 26, 2008, and properly answered "yes" when he was asked if he had worked that week. However, although the Claimant continued to work for Maxim Health Care, the Claimant answered "no" when asked if he had worked in each of the weeks from August 2, 2008, through October 18, 2008. (R, 005-006, 007-009, 013-014).

Because the Claimant answered "no" to those weeks in question, the automated system did not ask if he had earnings. As a result, the Department was unaware of the Claimant's work and earnings for those weeks and paid the Claimant benefits to which he was not entitled. (R, 007-008).

### **SUMMARY OF ARGUMENTS**

The Utah Department of Workforce Services correctly determined that the Claimant knowingly withheld material information regarding his work and earnings in order to obtain unemployment benefits to which he was not entitled. There is substantial

evidence to support the Board's finding that the Claimant committed fraud. The Claimant obtained employment and had earnings, but reported that he had not worked or had earnings while filing for his weekly benefit amounts. As a result of the Claimant's misinformation, the Department awarded incorrectly awarded benefits to the Claimant.

In addition, the Claimant failed to marshal the evidence on appeal.

### **ARGUMENT**

#### **I. THE BOARD REASONABLY AND RATIONALLY CONCLUDED THE CLAIMANT COMMITTED FRAUD BECAUSE THE SUBSTANTIAL EVIDENCE SHOWED THE CLAIMANT KNOWINGLY REPORTED TO THE DEPARTMENT INACCURATE WORK AND EARNINGS DURING THE WEEKS IN QUESTION.**

The substantial evidence demonstrates the Claimant was working and earning wages during weeks he filed for and collected unemployment insurance benefits. By filing weekly benefit claims and failing to report work and earnings, the Claimant willfully and knowingly defrauded the Department.

Claimants for unemployment benefits who file based on false information or material omissions, and who consequently receive benefits to which they are not entitled, are required to repay the benefits they inappropriately received. Utah Code Ann. § 35A-4-405(5)(c) (Supp. 2009). Additionally, the Department must assess a civil penalty equal to the benefits the claimant received "by direct reason of his fraud." *Id.* § 35A-4-405(5)(c)(ii).

To establish fraud, the Department must establish three elements: materiality, knowledge, and willfulness. Utah Admin. Code R994-406-401(1). Materiality is established when a claimant makes a misrepresentation for the purpose of obtaining any benefit to which the claimant is not entitled. *See id.* R994-406-401(1)(a). Knowledge is established when the claimant knew or should have known that the information submitted to the Department was incorrect, or that she failed to provide required information. *See id.* R994-406-401(1)(b). Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. *Id.* R994-406-401(1)(c).

Importantly, these elements establish fraud for the purposes of assessing the civil fraud penalty; these elements do not require a specific intent to defraud. *See id.* R994-406-401(3). The Utah Supreme Court instructed that a claimant shows intent to defraud by unemployment claims which contain false statements or omit material facts. *Mineer v. Board of Review*, 572 P.2d 1364 (Utah, 1977) (as cited with approval in *Taylor v. Department of Employment Sec., Indus. Comm'n*, 647 P.2d 1, 2 (Utah, 1982)). "The filing of such claims evidences a purpose or willingness to present a false claim in order to obtain unlawful benefits and hence are manifestations of intent to defraud." *Id.* at 2.

In this case, the Board reasonably and rationally concluded the Claimant defrauded the Department by filing for and receiving benefits to which he was not entitled. The substantial evidence demonstrates the Claimant engaged in conduct that meets all three elements of fraud.

The Claimant opened a claim for benefits on June 26, 2008. As instructed, the Claimant began filing his weekly claims for benefits, which is required to determine ongoing eligibility for unemployment benefits. Most claimants, including the Claimant, use a Teleclaim system or the Internet filing system whereby they are asked questions regarding eligibility. Responses are recorded by pressing corresponding buttons on the telephone. One of the questions asked every week is whether the Claimant worked during the week. Each claimant must answer "yes" or "no."

On July 20, 2008, the Claimant obtained employment with Maxim Health Care. Consequently, the Claimant was obligated to report his work and earnings from Maxim Health Care for each week he filed for benefits. During the period from August 2, 2008, to December 20, 2008, the Claimant filed for unemployment insurance benefits and failed to report his work and earnings. As a result, the Claimant received \$5,124 in unemployment benefits during that time period. Had the Claimant accurately and truthfully answered the questions on the filing system, he would not have been paid unemployment benefits for those weeks. The Claimant made a misrepresentation for the purpose of obtaining any benefit to which the claimant is not entitled. The element of materiality is established.

The Claimant knew that he was submitting false information to the Department when he filed his claim for benefits. The questions the Claimant was answering were not ambiguous or complicated; the system simply asked "during the week, did you work?" The Claimant knew he was working and was getting paid during the period of time. The

fact that the Department asked the Claimant whether he worked should have alerted the Claimant to the Department's desire for that information. Additionally, the Claimant stated that he had received the Claimant Guide which instructs the Claimant to report all work and earnings, regardless of whether it is part-time, full-time, temporary, or even volunteer. The Claimant could have also contacted a Department representative to seek clarification.

The Claimant argues in his petition that he was granted a deferment while he attended school during this period. The Claimant believes that he was not obligated to report his work and earnings while under a deferment. Although the Department did not grant the Claimant an education deferment as he alleges, even if it had, the deferment only applies to the Claimant's work search obligations. In other words, claimants who have an education deferment are not obligated to make two or more new job contacts per week. All claimants, regardless of deferment, are obligated to report any work and earnings without exception. Indeed the most basic tenet of unemployment insurance compensation is that it is only for those individuals who are in fact unemployed. Even if the Claimant was attending school and was granted a deferment, when he obtained employment he became ineligible for benefits.

The Claimant also argues that he did not receive the Claimant Guide in a timely manner and was instructed to not report until he did receive it. The Claimant informed the Department, however, that he received the Claimant Guide during the week ending July 5, 2008. (R, 6). Additionally, the notion that a Department representative would

instruct the Claimant to file for weekly benefits but not report work and earnings is simply implausible. But setting aside the fact that the Claimant received the Claimant Guide and also talked with a Department representative, the Claimant was simply asked whether he worked during the week; for the Claimant to answer anything but "yes" required him to misstate the truth. That should have at least encouraged the Claimant to seek clarification before submitting blatant inaccuracies in his weekly claim.

Even more perplexing is why the Claimant correctly reported his work and earnings the first week he started his employment, but then misstated his work and earnings every week thereafter. Clearly, the Claimant understood how to file his claims accurately and understood his obligation to report his work and earnings. That he was able to do so accurately undermines any argument on appeal that he did not understand his obligations. The element of knowledge is established.

The Claimant's actions were clearly willful; his claim for unemployment benefits contained false information and failed to set forth material facts. The Claimant had the responsibility to provide accurate information to the Department and knew or should have known that his failure to do so would result in an overpayment and possible finding of fraud. The Claimant's failure to report his work and earnings was a willful and deliberate omission of information made for the purpose of obtaining unemployment insurance benefits to which he was not entitled.

The substantial evidence shows the presence of the three elements of fraud: materiality, knowledge, and willfulness. The Board had sufficient evidence to conclude

the Claimant made willful misrepresentations rising to the level of fraud. The Board's decision to affirm the Administrative Law Judge's finding of fraud and resulting overpayment and disqualification was reasonable and rational.

The Claimant, in his brief, raises several issues that have no bearing on the Board's decision. Therefore, the Board will not substantively address those in its brief.

**II. THIS COURT SHOULD DISMISS THE PETITION FOR REVIEW BECAUSE THE CLAIMANT FAILED TO MARSHAL THE EVIDENCE IN SUPPORT OF HIS APPEAL.**

In finding that the Claimant committed unemployment insurance fraud, the Board relied on the provisions of the Utah Employment Security Act and Utah case law. In order to successfully challenge this finding, the Claimant "must demonstrate that the findings are not supported by substantial evidence when viewed in light of the whole record before the court." The court should reject Claimant's petition for his failure to marshal the evidence in support of his conclusion that the findings were incorrect. The burden is an extremely heavy one and the Claimant has presented no evidence or arguments sufficient to overcome this burden.

In *Crockett v. Crockett*, 836 P.2d 818 (Utah Ct. App. 1992), this court refused to entertain the appellant's factual challenges since the appellant failed to meet its marshaling burden:

[The Appellant] has neither marshaled the evidence in support of the finding nor demonstrated that the finding is clearly erroneous, but instead cites only evidence that supports the outcome she desires. See *Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 800 (Utah 1991) (citing only evidence



favorable to one's position "does not begin to meet the marshaling burden. . . ."). **We therefore assume that the record supports the finding of the trial court.** *Id.* at 820. [Emphasis added]

This court expanded upon the appellant's burden to marshal the evidence in *Oneida/SLIC v. Oneida Cold Storage and Warehouse, Inc.*, 872 P.2d 1051 (Utah Ct. App. 1994):

Utah appellate courts do not take trial courts' factual findings lightly. We repeatedly have set forth the heavy burden appellants must bear when challenging factual findings. *Id.* at 1052.

The court reasoned that to successfully appeal a trial court's findings of fact, "appellate counsel must play the devil's advocate. '[Parties] must extricate [themselves] from the client's shoes and fully assume the adversary's position.'" *Id.* at 1053, citing *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991). The Court further explained that proper marshaling requires the challenger to:

. . . present in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which *supports* the very findings the appellant resists. *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991)

Then, after an appellant has established ". . . every pillar supporting their adversary's position, they then 'must ferret out a fatal flaw in the evidence' and show why those pillars fail to support the trial court's findings." *Id.* at 1314. The Claimant must show the trial court's findings are "so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous.'" *Bartell*, 776 P.2d at 886 (quoting *Walker*, 743 P.2d at 193). *Oneida* at 1053.

The Claimant has made no attempt to meet his marshaling burden. He has pointed to no evidence in the record to show that the findings of the Board are so "against the clear weight of the evidence" that they are "clearly erroneous." The record below is supported by the evidence and entitled to a presumption of validity. *See also Grace Drilling Company v. Board of Review*, 776 P.2d 63 (Utah Ct. App. 1989) (holding a party challenging the Board's findings of fact must marshal all of the evidence supporting the findings and show that despite the . . . contradictory evidence, the findings are not supported by substantial evidence. *Id.* at 67-68.).

The Claimant failed to "present in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which *supports* the very findings the appellant resists." The Claimant did not meet his marshaling burden.

## CONCLUSION

The Claimant committed unemployment insurance fraud when he willfully and repeatedly made a false and reckless report to the Department. The Claimant failed to report his work and earnings to receive benefit payments to which he was not entitled. The substantial evidence shows the elements of fraud – materiality, knowledge, and willfulness – were met. The Board's decision to affirm the ALJ's decision assessing a fraud overpayment and disqualification was rational and reasonable. For these reasons, this Court should affirm the Board's decision.

Respectfully submitted this 8 day of March, 2010.

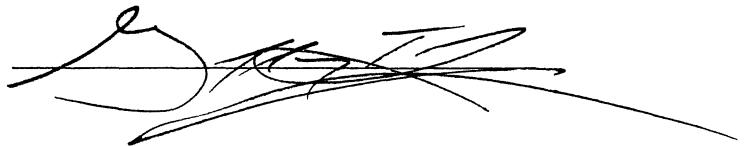
A handwritten signature in black ink, appearing to read "Geoffrey T. Landward", written over a horizontal line.

GEOFFREY T. LANDWARD  
Attorney for Respondent  
Workforce Appeals Board  
Department of Workforce Services

## CERTIFICATE OF MAILING

I CERTIFY that I mailed two copies of the foregoing Respondent's Brief, postage prepaid, to the following this 8 day of March, 2010:

TANIELA F KIVALU  
PETITIONER PRO SE  
491 NORTH 750 EAST  
OREM UT 84097

A handwritten signature in black ink, appearing to be "D. Kivalu", written over a horizontal line.

**35A-4-405. Ineligibility for benefits.**

Except as otherwise provided in Subsection (5), an individual is ineligible for benefits or for purposes of establishing a waiting period:

...

(5)(c) (i) Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment.

(ii) The overpayment is the amount of benefits the claimant received by direct reason of fraud.

(iii) The penalty amount shall be regarded as any other penalty under this chapter.

(iv) These amounts shall be collectible by civil action or warrant in the manner provided in Subsections **35A-4-305**(3) and (5).

**35A-4-508. Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.**

(8)(a) Within 30 days after the decision of the Workforce Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the Workforce Appeals Board for the review of its decision, in which action any other party to the proceeding before the Workforce Appeals Board shall be made a defendant.

### **63G-4-403. Judicial review -- Formal adjudicative proceedings.**

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

**78A-4-103. Court of Appeals jurisdiction.**

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;



**R994-406-401. Claimant Fraud.**

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card issued by the Department (EPPICard or card). Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

...

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

UNEMPLOYMENT INSURANCE  
DECISION OF ELIGIBILITY FOR  
UNEMPLOYMENT INSURANCE BENEFITS



DATE MAILED: 12/24/08

SSN: XXX-XX-X168

TANIELA F KIVALU  
491 N 750 E  
OREM UT 84097-4238

FRWE

After a thorough review of the available information presented to the Department, it is concluded that you were working and had earnings while receiving unemployment insurance benefits and knowingly misreported or failed to report these earnings.

You will receive a separate notice indicating any overpayments and penalties associated with this disqualification.

You are disqualified from receiving unemployment benefits or waiting week credit for 49 weeks effective December 28, 2008 through December 5, 2009 and until the overpayment and penalty amounts are repaid in full as provided under Section A-4-405(5) of the Act. (See reverse) The disqualification time period is determined by the number of weeks in which the misrepresentation(s) or omission(s) occurred.

**RIGHT TO APPEAL:** If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO Box 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or online at [www.jobs.utah.gov](http://www.jobs.utah.gov). Your appeal must be in writing and must be received or postmarked on or before January 8, 2009. An appeal received or postmarked after January 8, 2009 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing. See attached information for a more detailed explanation of the law provisions.

**UTAH CLAIMS CENTER PHONE NUMBERS:** S.L.: 526-4400, Ogden: 612-0877, Provo: 375-4067, Out of Area: (888) 848-0688.

PREPARED BY: V Iturbe

EMP.#: 9160

DO NOT WRITE BELOW THIS LINE



\*5600660\*

020

UNEMPLOYMENT INSURANCE  
UNEMPLOYMENT BENEFIT OVERPAYMENT NOTICE



DATE MAILED: 12/24/08

SSN: XXX-XX-X168

TANIELA F KIVALU  
491 N 750 E  
OREM UT 84097-4238

FR

**NOTICE OF UNEMPLOYMENT BENEFIT OVERPAYMENT**

You are considered to have knowingly withheld material information or failed to report information in order to receive unemployment benefits to which you were not entitled. This has created an overpayment of \$5124.00 and a penalty of \$ 5124.00 that must be repaid before you are eligible for any future benefits or waiting week credit as provided under Section 35A-4-405(5) of the Utah Employment Security Act. The total overpayment and penalty amount is due and payable immediately to: The Unemployment Compensation Fund; %Benefit Collections: P.O. Box 45288; Salt Lake City UT 84145-0288. Record your Social Security number on your check or money order. Do not send cash.

Any payments currently due will be reclaimed to reduce the total overpayment. Recovery of overpayments will be enforced by all lawful means such as sheriff's sale, garnishment of wages or bank account, recovery of state tax refunds, etc. If you are unable to immediately pay the total amount, contact the Collections Department and make arrangements for possible repayment on an installment basis. In Salt Lake County call 526-9235. Within Utah, but outside Salt Lake County, call (800) 222-2857. Outside of Utah call (801) 526-9235. You can also arrange to pay by MasterCard or VISA credit or debit card.

The overpayment(s) above may not include credits or offsets applied to repay this overpayment nor does it include any previous overpayment balance you may have.

**RIGHT TO APPEAL:** If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO Box 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or online at [www.jobs.utah.gov](http://www.jobs.utah.gov). Your appeal must be in writing and must be received or postmarked on or before January 8, 2009. An appeal received or postmarked after January 8, 2009 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing.

DO NOT WRITE BELOW THIS LINE



\*5602034\*

Exhibit 20

021

UNEMPLOYMENT INSURANCE  
UNEMPLOYMENT BENEFIT OVERPAYMENT NOTICE



AH CLAIMS CENTER PHONE NUMBERS: S.L.: 526-4400, Ogden: 612-0877, Provo: 375-4067, Out of Area:  
8) 848-0688.

PR. V Iturbe

EMP.#: 9160

DO NOT WRITE BELOW THIS LINE



\*5602034\*

Exhibit 24

022

APPEALS UNIT  
Decision of Administrative Law Judge  
Order of Default

TANIELA F KIVALU  
491 N 750 E  
OREM UT 84097-4238

S.S.A NO: 576-11-4168 CASE NO: 08-A-10849  
APPEAL FILED: December 29, 2008  
HEARING DATE: January 26, 2009

Although duly notified by mail to the last-known address of the date, time, and place of hearing, the claimant failed to participate in the *hearing by not following the instructions in the hearing notice to provide a telephone number at least 24 hours prior to the scheduled hearing start time (or by the business day preceding the hearing if the hearing was scheduled for a Monday or a day after a holiday.)*

DECISION:

After considering all available evidence in connection with the appeal, the judge enters an Order of Default affirming the previous decision for the reasons given in that decision pursuant to Section 63-46b-11 of the Utah Administrative Procedures Act.

M. M.  
Administrative Law Judge  
DEPARTMENT OF WORKFORCE SERVICES

DATE ISSUED: January 22, 2009

This decision will become final unless, within ten calendar days from the date of this decision, a written request for a new hearing is made to: Appeals Unit, PO Box 45244, Salt Lake City, UT 84145-0244; FAX 801-526-9242; or online at <http://www.jobs.utah.gov/appeals>. This request must set forth the grounds for missing the original hearing.

GG

HUTCH FALE  
2520 N UNIVERSITY AVE STE 201  
OREM UT 84604

APPEALS UNIT  
Decision of Administrative Law Judge  
Order of Default

TANIELA F KIVALU  
491 N 750 E  
OREM UT 84097-4238

S.S.A NO: 576-11-4168

CASE NO: 09-A-01415-R

APPEAL FILED: January 26, 2009

HEARING DATE: March 3, 2009

Although duly notified by mail to the last-known address of the date, time, and place of hearing, the claimant failed to participate in the *hearing by not following the instructions in the hearing notice to provide a telephone number at least 24 hours prior to the scheduled hearing start time (or by the business day preceding the hearing if the hearing was scheduled for a Monday or a day after a holiday.)*

DECISION:

After considering all available evidence in connection with the appeal, the judge enters an Order of Default affirming the previous decision for the reasons given in that decision pursuant to Section 63-46b-11 of the Utah Administrative Procedures Act.

Bryan W. Call  
Administrative Law Judge  
DEPARTMENT OF WORKFORCE SERVICES

DATE ISSUED: March 03, 2009

This decision will become final unless, within ten calendar days from the date of this decision, a written request for a new hearing is made to: Appeals Unit, PO Box 45244, Salt Lake City, UT 84145-0244; FAX 801-526-9242; or online at <http://www.jobs.utah.gov/appeals>. This request must set forth the grounds for missing the original hearing.

BC

**DEPARTMENT OF WORKFORCE SERVICES  
APPEALS UNIT**

**Decision of Administrative Law Judge**

TANIELA F KIVALU  
491 N 750 E  
OREM UT 84097-4238

**S.S.A. NO:** XXX-XX-4168

**CASE NO:** 09-A-03549-R

**APPEAL DECISION:** The request to reopen the January 26, 2009, hearing is granted.  
The request to reopen the March 3, 2009, hearing is granted.  
The fault overpayment of \$5,124 and the fraud penalty of \$5,124 are affirmed,  
for a total overpayment of \$10,248.  
The 49 weeks of disqualification are affirmed.

**CASE HISTORY:**

Original Hearing Date:	January 26, 2009
Date of Appeal Decision:	January 22, 2009
Request for Reopening Dated:	January 26, 2009
Second Hearing Date:	March 3, 2009
Date of Appeal Decision:	March 3, 2009
Request for Reopening Dated:	March 6, 2009
Appearances:	Claimant/Department
Issues to be Decided:	R994-508-117 and R994-508-118 - Failure to Appear
	35A-4-207 - Eligibility for Benefits
	35A-4-405(5) - Fraud
	35A-4-406(4) - Fault Overpayment

The original Department decisions denied unemployment insurance benefits for the weeks ending August 2, 2008, through October 18, 2008, on the grounds the Claimant failed to accurately report his work and earnings and, therefore, knowingly withheld material information in order to receive benefits to which he was not entitled. The Claimant was further disqualified for 49 weeks, beginning December 28, 2008, and ending December 5, 2009. This decision also created an overpayment in the amount of \$5,124, representing the amount received as a direct result of fraud, and a civil penalty of \$5,124, resulting in a total overpayment of \$10,248.

**APPEAL RIGHTS:** The following decision will become final unless, within **30 days** from **April 2, 2009**, further written appeal is received by the Workforce Appeals Board (PO Box 45244, Salt Lake City, UT 84145-0244; FAX 801-526-9244; or online at <http://www.jobs.utah.gov/appeals>) setting forth the grounds upon which the appeal is made.

**FINDINGS OF FACT:****Failure to Appear to January 26, 2009, Hearing**

On Thursday, January 15, 2009, the Department mailed the notice of hearing to the Claimant for a hearing to be held on Monday, January 26, 2009. The notice of hearing contained the following information:

**\*\*\*\* READ CAREFULLY! YOU MUST FOLLOW THE INSTRUCTIONS BELOW \*\*\*\***

**Call 801-526-9300 or 1-877-800-0671 immediately to indicate whether you are going to participate in the hearing and to provide a telephone number where you may be reached for the telephone hearing. If you filed the appeal, or missed a hearing and are not requesting a new hearing, your case will be scheduled for the time and date listed above, provided you call at least 24 hours prior to the hearing time to confirm your participation. If your case is scheduled for a Monday or a day after a holiday, you must provide your telephone number before 3 p.m. (Mountain Time) of the business day preceding the weekend or the holiday.**

**Failure to call as instructed prior to the tentatively scheduled hearing time will result in cancellation of your appeal request and the hearing time being assigned to another appellant. If your case is dismissed for failing to provide your telephone number as instructed prior to the hearing time and you desire a hearing, you must submit a written request for a hearing.**

**\* Our business hours are: Monday through Thursday, 7:00 a.m. through 6:00 p.m. We are not open for business on State or Federal holidays.**

An Order of Default was mailed to the Claimant on Thursday, January 22, 2009, advising that the appeal had been dismissed because he had not followed the instructions listed above. On January 26, 2009, the Claimant submitted a request that the appeal hearing be reopened. He failed to follow the instructions above because he did not receive the notice of hearing until after 5:30 p.m. on the Thursday prior to the hearing.

**Failure to Appear to March 3, 2009, hearing**

The Claimant followed the instructions listed above for a hearing scheduled for Thursday, February 19, 2009. He contacted the Judge assigned to the case and advised that he had surgery scheduled for the day before the hearing and requested a continuance. The Judge granted a continuance to March 3, 2009. The Claimant was unable to appear at that time due to a rehabilitation appointment. The Judge advised the Claimant that he was dismissing the appeal and instructed him to request reopening when he was able to appear. The Claimant filed the request on March 6, 2009.

**Fraud Overpayment**

The Claimant filed a claim for unemployment insurance benefits against the state of Utah effective June 26, 2008. His weekly benefit amount for the claim is \$427. When filing his weekly claim for the benefit week ending July 5, 2008, the Claimant reported to the Department that he received the *Claimant Guide*:



*Unemployment Insurance Benefits.* The Claimant filed a weekly claim for benefits for the week ending July 26, 2008. He answered, "Yes," in response to the question, "During the week, did you work?" and reported earning \$760. He was not paid any benefits that week.

The following week and every week thereafter through the benefit week ending December 6, 2008, the Claimant answered, "No," in response to the question, "During the week, did you work?" He received \$427 in benefits each week through the benefit week ending October 18, 2008. The Claimant was denied benefits beginning October 19, 2008, for another reason and did not receive unemployment insurance benefits after that time. After exhausting his initial claim for benefits, the Claimant opened an extended claim for benefits on October 27, 2008. He did not report working for Maxim Health Care Service when filing the extended claim for benefits.

The Claimant actually began working for Maxim Health Care Service on July 20, 2008. The following chart shows the hours the Claimant worked, what he earned, what he reported earning, what he received in benefits, what he should have received in benefits, and the resulting overpayment. Fractions of dollars are excluded as they are disregarded by the Department.

Benefit Week Ending	Hours Worked	Amount Earned	Amount Reported	Benefits Received	Benefits Entitled to Receive	Overpayment
July 26, 2008	40	\$760	\$760	\$0	\$0	\$0
August 2, 2008	48	\$988	\$0	\$427	\$0	\$427
August 9, 2008	30	\$570	\$0	\$427	\$0	\$427
August 16, 2008	42	\$817	\$0	\$427	\$0	\$427
August 23, 2008	40	\$760	\$0	\$427	\$0	\$427
August 30, 2008	30	\$570	\$0	\$427	\$0	\$427
September 6, 2008	38	\$722	\$0	\$427	\$0	\$427
September 13, 2008	37	\$703	\$0	\$427	\$0	\$427
September 20, 2008	36	\$684	\$0	\$427	\$0	\$427
September 27, 2008	36	\$684	\$0	\$427	\$0	\$427
October 4, 2008	36	\$684	\$0	\$427	\$0	\$427
October 11, 2008	36	\$684	\$0	\$427	\$0	\$427
October 18, 2008	35	\$665	\$0	\$427	\$0	\$427
<b>Total:</b>	<b>484</b>	<b>\$9,291</b>	<b>\$760</b>	<b>\$5,124</b>	<b>\$0</b>	<b>\$5,124</b>

**REASONING AND CONCLUSIONS OF LAW:****Failure to Appear to the January 26, 2009 hearing**

The unemployment insurance rules pertaining to Section 35A-4-406(3) of the Utah Employment Security Act provide, in pertinent part:

**R994-508-118. What Constitutes Grounds to Reopen a Hearing.**

- (1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

The Administrative Law Judge finds that the facts warrant a reopening of the hearing because the Claimant did not receive the notice in time to call in appropriately.

**Failure to Appear to the March 3, 2009 hearing**

The Administrative Law Judge finds that the facts warrant a reopening of the hearing because the Claimant was prevented from appearing due to a medical condition.

**Fraud Overpayment**

The unemployment insurance rules pertaining to Section 35A-4-207 of the Utah Employment Security Act provide, in pertinent part:

**R994-207-102. General Requirements for Eligibility.**

- (1) A claimant is unemployed and eligible for benefits if all of the following conditions are shown to exist:

- (a) Less Than Full-Time Work.

The claimant worked all the hours that were reasonable for him to work and the total number of hours was less than full-time. He must not regulate the type or amount of duties or number of hours spent in a remunerative enterprise for the purpose of qualifying for benefits. Full-time work will generally be considered to be 40 hours a week, but may be the number of hours established by schedule, custom, or otherwise as constituting a week of full-time work for the kind of service the claimant performs.

- (b) Income Less Than WBA.

The claimant earned less than the weekly benefit amount (WBA) established for his claim.

## (c) Available for and Seeking Other Full-time Work.

The claimant in addition to the subject work, must be available for and actively seeking full-time suitable work for another employer as defined by the suitable work test, Subsection 35A-4-405(3) and Section R994-405-309. A failure to make an active search for work will evidence a contentment with his current status and a conclusion that he is "not unemployed" shall be made. The efforts of a claimant to seek work should be distinguished from those directed towards obtaining work for himself as an individual and those directed toward obtaining work or customers for his corporation or business. Efforts to obtain work for the business or corporation are evidence of continuing responsibilities but are not evidence of an individual's active search for other employment as required for eligibility. A claimant who has marketable skills including: bricklaying, plumbing, and office manager, must be willing to seek and accept such work. He may not restrict himself to availability for the type of work he is currently performing on a less than full-time basis. The claimant's past work history is evidence of the effect of such employment on his attachment to the labor force. If he is unable or unwilling to accept any, but short term or casual labor because of continuing or pending responsibilities, he is "not unemployed".

During the benefit weeks ending August 2, 2008, through October 18, 2008, the Claimant earned more than his weekly benefit amount and/or worked 40 or more hours. Therefore, benefits are denied those weeks.

Whenever a claimant is paid benefits to which he or she is not entitled, an overpayment is created. It must then be determined if that claimant committed fraud when receiving benefits to which that claimant was not entitled. Section 35A-4-405(5) of the Utah Employment Security Act provides that an individual is ineligible for benefits or for purposes of establishing a waiting period if that individual willfully made a false statement or misrepresentation or knowingly failed to report a material fact to obtain any benefit under the act. The unemployment insurance rules pertaining to this section provide, in part:

**R994-406-401. Claimant Fraud.**

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

## (a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

## (b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department or to ask a Department representative when he or she has a question about what information to report.

## (c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. . . .

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

The Claimant received benefits in the amount of \$5,124 for the weeks ending August 2, 2008, through October 18, 2008, based upon the incorrect information he provided when filing his weekly claims. However, he was not entitled to benefits during that time because he was not unemployed under the meaning of the Act. Claimants are only considered unemployed if they are working less than 40 hours a week and earning less than their weekly benefit amount. The Claimant chose not to report that he worked during the weeks in question. Materiality is established.

The second element of fraud is knowledge. The Claimant knew that he was working for a new employer, even though he was on probationary status. He should have known that he must answer "yes" to the question, "During the week, did you work?" In fact, the Claimant did answer "yes" the first week that he worked, then failed to report working for several months. Further, the Claimant should have known that the information was required by reviewing the information contained in the *Claimant Guide*. Pages 8 and 9 of the *Claimant Guide* (Rev. 1/05) state, in part:

### **Work and Earnings Reporting**

You must report all of your work and earnings for the week in which you work, even if you have not been paid. While claiming benefits it is your obligation to accurately report your gross earnings before taxes or any other deductions.

You must report: Full-time or part-time work. Paid training for any employer. Military reserve or National Guard duty. Work for a non-profit organization or church. Self-

employment. Payment for providing childcare, even in your own home. Work on contract or commission basis. Holiday, severance, or vacation pay. Tips. Farming income.

You must also report: Volunteer work. Cash value of work performed in exchange for anything of value.

**You are responsible for any inaccurate or incomplete information you provide. If you receive more income than you reported, it is your obligation to immediately contact the Claim Center to correct previously reported earnings.**

**Failure to correctly report all work and earnings, including part time or temporary work, could result in overpayments and penalties. (See Fraud.)**

### **Earnings Allowance**

You must report all earnings while claiming benefits. The Department will apply a 30% earnings allowance to calculate your weekly benefit payment. . .

If your earnings equal or exceed your weekly benefit amount or you work 40 or more hours during the week, you will not receive any payment for that week.

Page 13 of the *Claimant Guide* (Rev 1/05), states in part:

### **FRAUD**

You commit fraud if you make false statements, provide false information, or withhold information to obtain benefits for which you are not eligible. Failure to report earnings while filing and failure to report a job separation are examples of fraud.

Only you are authorized to file your claim for benefits. The responsibility for filing weekly claims cannot be delegated to another person, including your spouse. **You will be held responsible for any false information provided.**

Do not allow anyone else to have access to your PIN. Your PIN is your SIGNATURE. . .

The Claimant should have known the information he provided the Department was inaccurate. The Claimant's testimony that he was confused about what he had to report is not credible. The Claimant reported accurately the first week. He could provide no rational explanation for reporting accurately that he was working the benefit week ending July 26, 2008, then failing to accurately report that he was working from that point forward until December 2008. The *Claimant Guide* clearly states that claimants must report all work and all earnings. The Claimant certified that he had received the *Guide* and it specifically advises claimants on the front cover that they are responsible for the information in the *Guide*. Knowledge is established.

The Claimant could have chosen to correctly report that he worked while claiming benefits. The question, "Did you work?" is not ambiguous or unclear. It does not ask if one participated in full-time work. It does

not ask if one participated in temporary or permanent work. It simply and clearly asks if one worked. The Claimant's conduct was not inadvertent, but willful. The fact that he reported that he was working accurately one week, then failed to report accurately for four months unequivocally demonstrates that the Claimant made a conscious decision not to report that he was working. Further, the Claimant's insistence that the question should have been "waived" demonstrates that he was aware that he could not receive benefits while working. Finally, the fact that the Claimant failed to report that he had worked for the Employer when he filed an extended claim for benefits demonstrates an intent to conceal his employment status from the Department. Willfulness is established.

The unemployment insurance rules pertaining to Section 35A-4-405(5) of the Utah Employment Security Act provide, in pertinent part:

**R994-406-403. Fraud Disqualification and Penalty.**

(1) Penalty Cannot be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed. . .

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday following the date the Department fraud determination is made.

(4) Overpayment and Penalty. . . .

(b) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil

penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant received by direct reason of fraud. . .

**R994-406-405. Future Eligibility in Fraud Cases.**

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification period ends, as a claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular benefit year. An overpayment is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

There is no provision in the Utah Employment Security Act which would allow the Judge to reduce or modify the statutory penalty for the fraudulent receipt of unemployment insurance benefits. The Claimant received \$5,124 in benefits as a direct result of the fraud and is subject to a penalty in an equal amount, for a total overpayment of \$10,248. The Claimant is further disqualified from receiving benefits for 49 additional weeks beginning December 28, 2008, the Sunday following the issuance of the original fraud determination.

**DECISION AND ORDER:**

**Failure to Appear to the January 26, 2009, hearing**

The request for reopening of the hearing is allowed in accordance with provisions of Paragraphs R994-508-117 and R994-508-118 of the unemployment insurance rules for Section 35A-4-406(3) of the Utah Employment Security Act.

**Failure to Appear to the March 3, 2009, hearing**

The request for reopening of the hearing is allowed in accordance with provisions of Paragraphs R994-508-117 and R994-508-118 of the unemployment insurance rules for Section 35A-4-406(3) of the Utah Employment Security Act.

**Fraud Overpayment**

The Department's decision denying benefits for the weeks ended August 2, 2008, through October 18, 2008, and which disqualified the Claimant for 49 additional weeks beginning December 28, 2008, and ending December 5, 2009, pursuant to Section 35A-4-405(5) of the Utah Employment Security Act is affirmed. The overpayment of \$5,124 and the civil penalty of \$5,124 are affirmed, resulting in a total overpayment

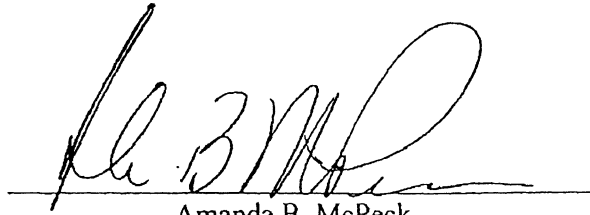
Taniela F. Kivalu

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09-A-03549-R

of \$10,248, which the Claimant must repay to the Department, pursuant to Section 35A-4-406(4) of the Utah Employment Security Act.

If the Claimant is unable to repay the total amount immediately, he should contact the Collections Department at 801-526-9370 or write to PO Box 45288, Salt Lake City, UT 84145-0288.



Amanda B. McPeck  
Administrative Law Judge  
DEPARTMENT OF WORKFORCE SERVICES

Issued: April 2, 2009

ABM/rs



Form BRDEC  
Issue 12

WORKFORCE APPEALS BOARD  
Department of Workforce Services  
Division of Adjudication

TANIELA F. KIVALU, CLAIMANT  
S.S.A. No. XXX-XX-4168

:

:

Case No. 09-B-00377

:

DEPARTMENT OF WORKFORCE  
SERVICES

:

**DECISION OF WORKFORCE APPEALS BOARD:**  
The decision of the Administrative Law Judge is affirmed.  
Benefits are denied.  
The fraud overpayment of \$10,248 remains in effect.

**HISTORY OF CASE:**

In a decision dated April 2, 2009, Case No. 09-A-03549-R, the Administrative Law Judge affirmed the Department decision holding the Claimant knowingly withheld material information from the Department regarding his work and earnings during the weeks ending August 2, 2008, through October 18, 2008, in order to obtain benefits to which he was not entitled. The Administrative Law Judge's decision, therefore, denied benefits for those weeks plus 49 additional weeks from December 28, 2008, until December 5, 2009, and required the Claimant to repay \$10,248 to the Utah Unemployment Compensation Fund.

**JURISDICTION OF WORKFORCE APPEALS BOARD:**

The Workforce Appeals Board has authority to review the Administrative Law Judge's decision pursuant to §35A-4-508(4) and (5) of the Utah Employment Security Act and the Utah Administrative Code (1997) pertaining thereto.

**CLAIMANT APPEAL FILED:** April 6, 2009.

**ISSUES BEFORE THE WORKFORCE APPEALS BOARD AND APPLICABLE PROVISIONS OF THE UTAH EMPLOYMENT SECURITY ACT:**

1. Did the Claimant knowingly withhold material information in order to obtain benefits to which he was not entitled pursuant to the provisions of §35A-4-405(5)?
2. Was the overpayment correctly established pursuant to the provisions of §§35A-4-405(5) and 35A-4-406(4)?

09-B-00377

- 2 -

XXX-XX-4168  
Taniela F. Kivalu**FACTUAL FINDINGS:**

The Workforce Appeals Board adopts in full the factual findings of the Administrative Law Judge.

**REASONING AND CONCLUSIONS OF LAW:**

This case comes before the Board from a decision assessing \$5,124 fraud overpayment along with a \$5,124 civil penalty for a total overpayment of \$10,248, and also disqualifying the Claimant from receiving benefits for 49 weeks. The Administrative Law Judge found the Claimant misreported his work and earnings, failing to report full-time work and the earnings he was receiving from that work while filing for his weekly benefit claims.

On appeal to the Board, the Claimant expends much of his effort addressing whether he was able and available for full-time work, which was the subject of a separate hearing and decision not before the Board at this time. Consequently, the Board will not address the Claimant's arguments on those issues.

Regarding the finding of fraud, the Claimant first states that he did not report his work and earnings because the job he accepted was temporary employment and therefore not reportable. The Claimant does not reference any rule or advice upon which he relied in reaching the conclusion that work and earnings from temporary employment were not reportable to the Department and that he was entitled to receive unemployment benefits while working full-time and receiving full-time wages. The Board can find no instance when that would be acceptable; the Claimant's argument is unpersuasive.

The Claimant next states that he is presently unable to repay the overpayment and is therefore requesting the Board to waive the overpayment amount in consideration of his status as a disabled veteran. While the Claimant's injuries and current health conditions are unfortunate, the Board is not authorized to reduce or waive overpayment and penalty amounts unless the facts in the record do not support a finding of fraud. In this case, no such reversal is warranted based on the evidence. Indeed, it is clear the Claimant worked and had earnings during the period of time he was filing for and receiving benefits. In his weekly filings, the Claimant did not report his work or earnings, though he knew, or should have known, that his employment and earnings were reportable. In fact, the Claimant received and read the *Claimant Guide* and also received instruction from the Department to report all work and earnings. The Claimant has committed fraud; therefore, the Board is unable to comply with the Claimant's request to waive the overpayment and penalty.

The Claimant also complains the Administrative Law Judge failed to inform him of possible criminal charges being filed by the Department and of his Fifth Amendment right to not answer the Judge's questions. It is true the Administrative Law Judge told the Claimant of possible charges and his right to refuse to answer her questions after the hearing was nearly complete. However, that has no bearing on the correctness of the Administrative Law Judge's decision. Moreover, it is unclear if the

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XXX-XX-4168  
Taniela F. Kivalu

Judge's omission has any bearing at all beyond the admissibility of the Claimant's testimony in a criminal proceeding. The Board need not address this issue further.

Lastly, the Claimant alleges the Department violated his right to privacy by disclosing the fraud overpayment to his employer, resulting in his discharge. The Board is unclear as to what right he is referring. Employers who pay the Claimant's wages and unemployment insurance contributions have the right to information regarding claims that affect their contribution rates. The Department must contact the Employer for work and earning information in order to determine whether the Claimant has accurately reported his work and earnings to the Department. The Claimant has not shown the Department exceeded its authority. Nor has the Claimant shown that his complaint on this issue affects the Board's decision either way.

The decision assessing a fraud overpayment and penalty of \$10,248 and a 49-week disqualification is affirmed. The Board adopts the Administrative Law Judge's reasoning and conclusions of law in full.

**DECISION:**

The decision of the Administrative Law Judge denying benefits for the weeks ending August 2, 2008, through October 18, 2008, and disqualifying the Claimant for 49 additional weeks beginning December 28, 2008, and ending December 5, 2009, under the provisions of §35A-4-405(5) of the Utah Employment Security Act, is affirmed.

The overpayment and penalty of \$10,248 established by the Department pursuant to §§35A-4-405(5) and 35A-4-406(4) remains in effect.

**APPEAL RIGHTS:**

Pursuant to §63-46b-13(1)(a) of the Utah Administrative Procedures Act, you may request reconsideration of this decision within 20 days from the date this decision is issued. Your request for reconsideration must be in writing and must state the specific grounds upon which relief is requested. The request must be filed with the Workforce Appeals Board at 140 East 300 South, Salt Lake City, Utah, or may be mailed to the Workforce Appeals Board at P.O. Box 45244, Salt Lake City, Utah 84145-0244. A copy of the request for reconsideration must also be mailed to each party by the person making the request. If the Workforce Appeals Board does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied pursuant to §63-46b-13(3)(b) of the Utah Administrative Procedures Act. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this order. If a request for reconsideration is made, the Workforce Appeals Board will issue another decision. This decision will set forth the rights of further appeal to the Court of Appeals and time limitation for such an appeal.

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XXX-XX-4168  
Taniela F. Kivalu

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued. The Court of Appeals is located on the fifth floor of the Scott M. Matheson Courthouse, 450 South State Street, P. O. Box 140230, Salt Lake City, Utah 84114-0230. The appeal must show the Workforce Appeals Board, Department of Workforce Services and any other party to the proceeding as Respondents. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35A-4-508(8) of the Utah Employment Security Act; §63-46b-16 of the Utah Administrative Procedures Act; and Rule 14 of the Utah Rules of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

**WORKFORCE APPEALS BOARD**

*Harry Vint*

*Bill D. Smith*

*George Enrich*

Date Issued: May 21, 2009

TV/GE/RH/AM/GL/lf

09-B-00377

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XXX-XX-4168  
Taniela F. Kivalu

MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing DECISION to be served upon each of the following on this 21st day of May, 2009, by mailing the same, postage prepaid, United States mail to:

TANIELA KIVALU  
491 N 750 E  
OREM UT 84097

L. Frohlich

Form BRDEC  
Issue 12

**WORKFORCE APPEALS BOARD**  
Department of Workforce Services  
Division of Adjudication

TANIELA F. KIVALU, CLAIMANT  
S.S.A. No. XXX-XX-4168

:

Case No. 09-R-00581

:

RECONSIDERATION

DEPARTMENT OF WORKFORCE  
SERVICES

:

**DECISION OF WORKFORCE APPEALS BOARD:**

Claimant's request for reconsideration is denied.

**HISTORY OF CASE:**

In an Internet appeal filed May 29, 2009, Claimant, Taniela F. Kivalu, requested reconsideration of the decision of the Workforce Appeals Board issued in this case on May 21, 2009. The decision of the Workforce Appeals Board was based on a review of a decision of an Administrative Law Judge after a formal hearing.

**JURISDICTION OF WORKFORCE APPEALS BOARD:**

The Board has jurisdiction to review the request for reconsideration pursuant to Utah Code Annotated §63-46b-13(3) on the grounds that the Board's decision was final agency action within the meaning and intent of that section of law.

**DECISION:**

The claimant's request for reconsideration is denied. The decision of the Workforce Appeals Board dated May 21, 2009, remains in effect.

**APPEAL RIGHTS:**

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued. The Court of Appeals is located on the fifth floor of the Scott M. Matheson Courthouse, 450 South State Street, P. O. Box 140230, Salt Lake City, Utah 84114-0230. The appeal must show the Workforce Appeals Board, Department of Workforce Services and any other party to the proceeding as Respondents. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35A-4-508(8) of the Utah Employment Security Act; §63-46b-16 of the Utah Administrative Procedures Act; and Rule 14 of the Utah Rules

09-R-00581

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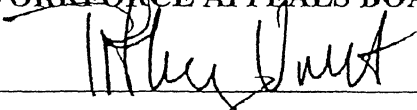
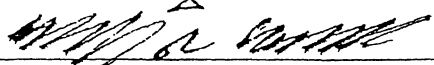
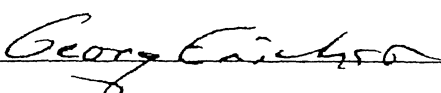
XXX-XX-4168  
TANIELA F. KIVALU

of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

WORKFORCE APPEALS BOARD

Date Issued: June 25, 2009

TV/GE/RH/AM/GL/cd

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

09-R-00581

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XXX-XX-4168  
TANIELA F. KIVALU

MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing DECISION to be served upon each of the following on this 25th day of June, 2009, by mailing the same, postage prepaid, United States mail to:

TANIELA F KIVALU  
491 N 750 E  
OREM UT 84097-4238

*Connie Quinn*



**ADDENDUM E**

Form: 601-I  
Created Dt: 06/26/2008

**Claim for Unemployment Benefits**

SSN: 576-11-4168  
KIVALU, TANIELA F

Claim Information			
SSN	576-11-4168	Original Zip	84097
Name	KIVALU, TANIELA F	Filing Method	W - Web
Other Name		Claim Effective Date	06/22/2008
Address line 1	491 N 750 E	Backdate Reason	None
Address line 2		Work Srch Code	2 Contacts per week
City/ST/Zip	OREM UT 840974238	Work Srch End Date	06/20/2009
Phone Nbr	(801) 400-4640	SSN Verified	Y
Alt Phone	(801) 400-3927	Alien Verified	
E-mail Address		ONET	Managers, All Other
Birth Date	02/21/56 Original: 02/21/56	Claim Taken By	SYS WEB/IVR
Interstate	No	Language	
Res State Code	49 - UT	Straight Utah Claim	
Commuter	No	Reverse CWC	No
Bank Acct Chged	No	Spanish Clmt Guide	No
Drivers License	174624306 Ver: Y	Program Type	Unemployment Insurance
Did the claimant certify that they answered the IVR questions truthfully and correctly? Yes			

Residential Information	
Are you making this phone call from Utah?	-
Do you regularly travel to Utah for work?	-
Have you worked in two or more states?	-
Are you currently looking for work in Utah?	-
During the last 18 months has all employment been in Utah?	Y
Have you been in the military?	N

Statistical Information	
Are you disabled?	N
Ethnic	Non-Hispanic
Race	Native Hawaiian or other Pacific Islander
Years of Education	19

Form: 601-I  
Created Dt: 06/26/2008

## Claim for Unemployment Benefits

SSN: 578-11-4168  
KIVALU, TANIELA F

### Non-Conditional Information

Are you a US Citizen?	Y
Have you been legally authorized to work in this country during the past two years?	Y
Alien Registration Number	
Gender	M
Would you like 10% federal taxes withheld from your UI check?	Y
Would you like 5% state taxes withheld from your UI check?	Y
Have you filed a formal complaint with any former employer requesting reinstatement on your job or back wages?	Y

### Have you: Eligibility Information

Applied for or receiving retirement or disability?	N
Applied for or receiving Social Security benefits?	N
Received worker's comp during the past 3 years?	N
Received or entitled to receive vac/sev pay?	N
Attended school/training or to start within two weeks?	N
Applied for benefits from railroad or other state?	N
Are you self employed, operate a farm, officer of corp?	N
Have you worked any day this week?	Y
Have you worked 40 or more hours this week?	N
Are you able and available for full-time work?	Y
Does any condition prevent you from accepting FT work?	N
Do you obtain work through a union hiring hall?	N
Union Number:	0
Do you have a recall date within 10 weeks?	N
Will you be working at least 40 hours?	-
Number of weeks until you return to full time work:	0
Are you out of work for seasonal cond or lack of tourism?	N
Did you normally work 40 hrs a wk on a seasonal basis?	-
Have you refused any job offers or temporary work?	N

### Employment History (default order is by "End Date")

Employer 1			
Employer ID	3325650	Begin Date	02/05/2008
Employer Name	OREM NURSING AND REHABILITATION	End Date	06/23/2008
DBA Name	OREM NURSING AND REHABILITATION	Sep Reason	DC
Address line 1	PO BOX 65788		
Address line 2		Phone Nbr	(801) 486-2500
City/ST/Zip	SALT LAKE CTY UT 841650788		

Form: 601-I  
Created Dt: 06/26/2008

## Claim for Unemployment Benefits

SSN: 576-11-4168  
KIVALU, TANIELA F

### Employment History (default order is by "End Date")

Employer 2			
Employer ID	9101080	Begin Date	01/03/2008
Employer Name	STATE OF UTAH	End Date	03/15/2008
DBA Name	STATE OF UTAH	Sep Reason	DC
Address line 1	DHRM BENEFITS SPECIALIST		
Address line 2	2120 STATE OFFICE BUILDING	Phone Nbr	(801) 538-9629
City/ST/Zip	SALT LAKE CITY UT 841141206		

Employer 3			
Employer ID	1270152	Begin Date	02/01/2007
Employer Name	TRINITY MISSION HEALTH AND REHAB OF PROVO ET AL	End Date	07/13/2007
DBA Name	TRINITY MISSION HEALTH AND REHAB OF PROVO ET AL	Sep Reason	VQ
Address line 1	%THOMAS AND THORNGREN INC		
Address line 2	PO BOX 280100	Phone Nbr	(615) 242-8246
City/ST/Zip	NASHVILLE TN 372280100		

### Instructions

Your claim is effective 06/22/08.

Su reclamo es efectivo 06/22/08.

You will be mailed a form requiring you to choose a payment method of direct deposit or a debit card. A debit card will be mailed to you. All benefit payments will be deposited into the debit card until direct deposit is authorized. Benefits will be denied if the form is not returned within ten business days.

Recibirá un formulario en el correo requiriendo que usted elija un método de pago de depósito directo o tarjeta de débito. Una tarjeta de débito será enviada a usted. Todos los pagos serán depositados en la tarjeta de débito, hasta que el deposito directo sea autorizado. El no cumplir con este requisito dentro de diez días hábiles resultará en que se le nieguen los beneficios.

The first week you meet all of the eligibility requirements is a waiting week. By law, you are not paid for this week. However, you must file your weekly claim to receive waiting week credit.

La primera semana en la que cumpla con todos los requisitos para que su reclamo sea aprobado, es la semana de espera. Por ley, no se le paga por esta semana. Sin embargo, tiene que registrar su reclamo semanal para recibir el crédito de semana de espera.

You are required to file weekly claims in order to receive unemployment benefits. The preferred filing method is by Internet at [jobs.utah.gov](http://jobs.utah.gov). You can also file by calling the same number you called today. We recommend that you file on Sunday. The system is available 7 days a week, 24 hours a day. Keep the PIN number you established today confidential. If you work while claiming benefits, you must report all gross earnings for the week in which the work is performed, regardless of when you are paid.

Debe hacer su reclamo semanalmente para recibir sus beneficios de desempleo. El método preferible para registrar su reclamo semanal es por medio del Internet al sitio web: [jobs.utah.gov](http://jobs.utah.gov). Si prefiere registrar por teléfono, llame el mismo número que llamó hoy. Recomendamos que usted llame cada domingo. El sistema está disponible 7 días a la semana, 24 horas al día. No comparta su número de clave o pin con nadie. Si trabaja mientras está recibiendo beneficios, debe declarar cualquier empleo o ganancia en la misma semana en la que haya trabajado, sin importar cuando se le pague.

## Claim for Unemployment Benefits

### Instructions

You must be able and available for and actively seeking full time work by making at least 2 new job contacts each week. You must keep a written record of your job contacts. You are required to register for work or show good cause for failing to register within five business days, or benefits will be denied. You must complete the registration at the skills matching level or higher. The preferred method is by Internet at [jobs.utah.gov](http://jobs.utah.gov). You may also register with your nearest employment center at Provo 1550 N 200 W 801 342-2600.

Usted debe ser capaz y disponible para trabajar y estar buscando empleo de tiempo completo activamente por contactar un mínimo de dos compañías nuevas cada semana. Debe mantener una lista de estos contactos. Se le requiere registrarse para trabajar o demostrar causa buena por no registrarse dentro de cinco días hábiles o se le negarán los beneficios. Debe completar su inscripción hasta el nivel de "Skills Matching" o más. El método preferible es por medio del Internet al sitio web: [jobs.utah.gov](http://jobs.utah.gov). o puede registrarse al Centro De Empleo más cerca de usted. Provo 1550 N 200 W 801 342-2600.

You have issues that may affect your eligibility for benefits. You should receive a decision letter or payment within four weeks. Make sure to file your weekly claim while awaiting a decision, or you may not be paid for those weeks.

Su reclamo tiene problemas que pueden afectar su elegibilidad de beneficios. Recibirá una carta de decisión o pago dentro de cuatro semanas. Debe hacer su reclamo semanal mientras que está esperando una decisión o es posible que no será pagado por esas semanas.

You will receive a claimant guide within a week. You will be held responsible for knowing the information in this guide. If you have any questions, call the Claims Center.

Recibirá una guía de desempleo dentro de una semana. Será responsable de entender la información en la guía. Si tiene alguna pregunta, llame el número del Centro de Reclamos.

Claimant Name: TANIELA F KIVALU

Print Date: 01/14/09

Claimant SSN: xxx-xx-x168

Phone Number: (801)400-4640

### Claim Information

Prog	Status	Eff Dt	BYE Dt	WBA	MBA	Wks	BPB Dt	BPE Dt
UI	Eligible	06/22/08	06/20/09	427	6,405	15	01/01/07	12/31/07

### Weekly Filing Details

BWE	Dt Filed	Src	Wrk	Earns	40 (+)	SE/Comm	VQ/DC	Refuse	Schl	AA	WS	Guide	Cert	Deferral	Created By
12/20/08	12/22/08	W	Yes	760	Yes	No	No	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
12/13/08	12/14/08	W	Yes	760	Yes	Yes	No	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
12/06/08	12/07/08	W	No	0	N/A	N/A	N/A	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
11/29/08	12/02/08	W	No	0	N/A	N/A	N/A	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
11/22/08	11/24/08	W	No	0	N/A	N/A	N/A	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
11/15/08	11/18/08	W	No	0	N/A	N/A	N/A	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
11/08/08	11/10/08	W	No	0	N/A	N/A	N/A	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
11/01/08	11/03/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	Yes	Yes	2 Contacts per week	SYS WEB/IVR
10/25/08	10/27/08	T	No	0	N/A	N/A	N/A	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
10/18/08	10/19/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
10/11/08	10/12/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
10/04/08	10/05/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
09/27/08	09/28/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR

# Benefit Weekly Training History

Claimant Name: TANIELA F KIVALU

Print Date: 01/14/09

Claimant SSN: xxx-xx-x168

Phone Number: (801)400-4640

BWE	Dt Filed	Src	Wrk	Earns	40 (+)	SE/Comm	VQ/DC	Refuse	Schl	AA	WS	Guide	Cert	Deferral	Created By
09/20/08	09/21/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
09/13/08	09/14/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
09/06/08	09/07/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
08/30/08	08/31/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
08/23/08	08/24/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
08/16/08	08/17/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
08/09/08	08/10/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
08/02/08	08/03/08	W	No	0	N/A	N/A	No	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
07/26/08	07/27/08	W	Yes	760	Yes	No	No	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
07/19/08	07/20/08	W	No	0	N/A	N/A	N/A	No	Yes	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
07/12/08	07/13/08	W	No	0	N/A	N/A	N/A	No	No	Yes	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR
07/05/08	07/07/08	T	No	0	N/A	N/A	N/A	No	No	Yes	Yes	Yes	Yes	2 Contacts per week	SYS WEB/IVR
06/28/08	07/07/08	T	No	0	N/A	N/A	N/A	No	No	No	Yes	N/A	Yes	2 Contacts per week	SYS WEB/IVR

Utah Department of Workforce Services  
Unemployment Insurance  
**Benefit Summary**

Date: 01/14/09 **ADDENDUM E**

SSN: 576-11-4168

TANIELA F KIVALU  
491 N 750 E  
OREM UT 84097-4238

Program Code: UI      WBA: 427  
BYB Date: 06/22/08      MBA: 6,405  
BYE Date: 06/20/09      Balance: 0  
Claim Status: EL      Amt Pd: 6,405 00  
Fund Code: UI  
Work Search: 2      Ending Dt: 06/20/09

E a	File Date	Week Status	Pay Type	Pay Date	Current Earn	Original Earn	Comp Amt	Clmt Amt	Offset Amt	OP Amt	OP Cls
'08	12/22/08	NP			760	760	0.00	0.00	0.00	0.00	
08	12/14/08	NP			760	760	0.00	0.00	0.00	0.00	
08	12/07/08	DQ			0	0	0.00	0.00	0.00	0.00	
08	12/02/08	DQ			0	0	0.00	0.00	0.00	0.00	
08	11/24/08	DQ			0	0	0.00	0.00	0.00	0.00	
08	11/18/08	DQ			0	0	0.00	0.00	0.00	0.00	
08	11/10/08	DQ			0	0	0.00	0.00	0.00	0.00	
08	11/03/08	DQ			0	0	0.00	0.00	0.00	0.00	
08	10/27/08	DQ			0	0	0.00	0.00	0.00	0.00	
08	10/19/08	EE	DD	10/19/08	665	0	0.00	362.95	0.00	427.00	F
8	10/12/08	EE	DD	10/12/08	684	0	0.00	362.95	0.00	427.00	F
8	10/05/08	EE	DD	10/05/08	684	0	0.00	362.95	0.00	427.00	F
8	09/28/08	EE	DD	09/29/08	684	0	0.00	362.95	0.00	427.00	F
8	09/21/08	EE	DD	09/21/08	703	0	0.00	362.95	0.00	427.00	F
8	09/14/08	EE	DD	09/14/08	722	0	0.00	362.95	0.00	427.00	F
8	09/07/08	EE	DD	09/07/08	570	0	0.00	362.95	0.00	427.00	F
8	08/31/08	EE	DD	08/31/08	760	0	0.00	362.95	0.00	427.00	F
8	08/24/08	EE	DD	08/24/08	817	0	0.00	362.95	0.00	427.00	F
8	08/17/08	EE	DD	08/17/08	570	0	0.00	362.95	0.00	427.00	F
8	08/10/08	EE	DD	08/10/08	988	0	0.00	362.95	0.00	427.00	F
8	08/03/08	EE	DD	08/03/08	760	0	0.00	362.95	0.00	427.00	F

E e	File Date	Week Status	Pay Type	Pay Date	Current Earn	Original Earn	Comp Amt	Clmt Amt	Offset Amt	OP Amt	UP CIs
4/08	07/27/08	EE			760	760	0.00	0.00	0.00	0.00	
3/08	07/20/08	PD	DD	07/20/08	0	0	427.00	362.95	0.00	0.00	
2/08	07/13/08	PD	DD	07/17/08	0	0	427.00	362.95	0.00	0.00	
5/08	07/07/08	PD	DD	07/17/08	0	0	427.00	362.95	0.00	0.00	
8/08	07/07/08	WW			0	0	0.00	0.00	0.00	0.00	



**ADDENDUM E**

Form: 601-I  
Created Dt: 10/27/2008

**Claim for Unemployment Benefits**

SSN: 576-11-4168  
KIVALU, TANIELA F

**Claim Information**

SSN	576-11-4168	Original Zip	84097
Name	KIVALU, TANIELA F	Filing Method	T - IVR
Other Name		Claim Effective Date	10/26/2008
Address line 1	491 N 750 E	Backdate Reason	None
Address line 2		Work Srch Code	2 Contacts per week
City/ST/Zip	OREM UT 840974238	Work Srch End Date	10/24/2009
Phone Nbr	(801) 400-4640	SSN Verified	Y
Alt Phone	(801) 400-3927	Alien Verified	
E-mail Address		ONET	Licensed Practical and
Birth Date	02/21/56 Original: 02/21/56	Claim Taken By	Annette Johnson
Interstate	No	Language	
Res State Code	49 - UT	Straight Utah Claim	
Commuter	No	Reverse CWC	No
Bank Acct Chged	No	Spanish Clmt Guide	No
Drivers License	174624306 Ver: Y	Program Type	EEUC Emergency

Did the claimant certify that they answered the IVR questions truthfully and correctly? Yes

**Residential Information**

Are you making this phone call from Utah?	-
Do you regularly travel to Utah for work?	-
Have you worked in two or more states?	-
Are you currently looking for work in Utah?	-
During the last 18 months has all employment been in Utah?	Y
Have you been in the military?	-

**Statistical Information**

Are you disabled?	Y
Ethnic	Non-Hispanic
Race	Native Hawaiian or other Pacific Islander
Years of Education	18

/2008 12:52 PM State of Utah (SVR2) -&gt; 401 751 6338

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DWS-UI  
FORM 603-M  
REV 08/05UTAH DEPARTMENT OF WORKFORCE SERVICES  
UNEMPLOYMENT INSURANCE SERVICES  
WAGE INFORMATION REQUEST

12/3/08

UT Dept of Workforce Services  
DEC 03 2008

BENEFIT PAYMENT CONTRACT?

MAXIM HEALTH CARE SERVICE  
655 E 4500 S  
SALT LAKE CITY UT 84107-2969

TL

I declare, under penalty of perjury, that the information provided herein is true and correct, as shown on the employment and payroll records of the above-named employer. Failure to Provide this Information May be Deemed as Contempt of Court and I May Be Brought Before a Judge of the District Court in Accordance with the Provisions of Sections 35a-4-502(8), 35a-1-301(1), and 78-32-1, u.c.a. 1953, as Amended.

We need your help to determine if Unemployment Benefits were properly paid and to ensure proper use of your tax dollars.

Claimant: TANIELA F KIVALU

SSN: 576-11-4168

First Day Actually Worked: 7/20/08

Last Day Worked: Currently (12/1/08)

Rate of Pay: \$19 per hour

Type of Work: Nursing home care

Reason for Separation: N/A - Current

Has this individual refused any recall to work or available work? Yes ☐ No ☒ If Yes, Enter Date: \_\_\_\_\_

1) Enter total Hours Worked, which also include payment for: Actual work, Vacation, Severance, Sick, and Holiday Pay. If pay is based on a salary, enter the hours represented by the Gross Earnings.

2) Enter total Gross Earnings, including tips, for the given week. Wages must be reported when worked, NOT when paid. DO NOT ALTER DATES.

Utah law requires claimants to report earnings on a calendar week basis. If you do not accurately provide information in the same format, it will be necessary for us to contact you again for corrections.

Please Fax completed form to (801) 526-9800 with no cover letter or mail in the enclosed self-addressed return envelope. Your cooperation is appreciated.

Please Print Date: 12/3/08

Firm: Maxim Healthcare Services

Completed by: Leslie Cliff

Title: Human Resource

Tel/Ext: 801-685-7070 Fax: 801-685-8988

Signature:

For the Week of	Hours Worked	Gross Earnings
06/22/08 Through 06/28/08	—	—
06/29/08 Through 07/05/08	—	—
07/06/08 Through 07/12/08	—	—
07/13/08 Through 07/19/08	—	—
07/20/08 Through 07/26/08	40	\$760
07/27/08 Through 08/02/08	48	\$988
08/03/08 Through 08/09/08	30	\$570
08/10/08 Through 08/16/08	42	\$817
08/17/08 Through 08/23/08	40	\$760
08/24/08 Through 08/30/08	30	\$570
08/31/08 Through 09/06/08	38	\$722
09/07/08 Through 09/13/08	37	\$703
09/14/08 Through 09/20/08	36	\$684
09/21/08 Through 09/27/08	36	\$684

Utah Department of Workforce Services, Unit BPC, PO Box 143002, Salt Lake City, UT 84114-3002, or Fax (801) 526-9800 or phone 526-9543.



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UT Dept of Workforce Services  
DEC 03 2008  
BENEFIT PAYMENT CONTROL

