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11 U.S.C. § 523(a) (2)
Bankr. R. 7056

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4 State of Oregon Employment v Washington
5 In re Leslie M. Washington

Ad No. 98-3115
Case No. 398-31114

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6 8/7/98

PSH

Unpublished

7 The Oregon Employment Department filed an adversary proceeding against
8 the debtor alleging that she fraudulently obtained unemployment
9 benefits by intentionally misrepresenting her employment status by
10 failing to disclose the fact that she was employed and receiving wages
11 while simultaneously receiving unemployment benefits. The Department
12 asked that the debt owed be declared non-dischargeable under §
13 523(a) (2). The debtor filed a answer in the form of a letter in which
14 she denied receiving unemployment benefits while employed. Thereafter
15 the Department filed a motion for summary judgment to which the debtor
16 did not respond.

17 The Department's motion for summary judgment was supported by the
18 affidavit of the supervisor of the Overpayment Recovery Unit. The
19 court, citing B.R. 7056 held that because the debtor did not file any
20 affidavits controverting the facts contained in the Department's
21 supporting affidavit, those facts must be taken as true.

22 In the affidavit in support of the Department's motion the affiant
23 stated that during a routine audit of persons receiving unemployment
24 benefits the Department discovered that the debtor was employed during
25 the time she was receiving unemployment benefits and had failed to
26 disclose that fact to the Department. The affiant further stated that
thereafter the Department issued an administrative decision in which

1 it found that the debtor "willfully made a misrepresentation and filed
2 to report a material fact to obtain [unemployment] benefits" and that
3 the debtor did not timely appeal that decision.

4 In its motion for summary judgment the Department argued that its
5 administrative decision should be given preclusive effect on the issue
6 of whether the debtor made fraudulent representations with the
7 intention of receiving unemployment benefits. The court agreed. It
8 found that under Oregon law collateral estoppel was applicable to
9 default judgments and administrative decisions. It further found that
10 the issues decided in the administrative proceeding were identical to
11 those upon which the nondischargeability complaint was based and that
12 the debtor had a full and fair opportunity to litigate those issues in
13 the prior proceeding. Thus the Court found that the debt owed to the
14 Department by the debtor was incurred by fraud and was nondischargeable
15 under § 523(a)(2).

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17 P98-7(6)
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case No.
)	398-31114psh7
Lessie M. Washington,)	
)	
Debtor.)	Adversary No.98-3115
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Virlena Crosley, Director,)	
Employment Dept., State of Oregon,)	MEMORANDUM OPINION
)	
Plaintiff,)	
)	
v.)	
)	
Lessie M. Washington,)	
)	
Defendant.)	

The State of Oregon Employment Department (the "Department") alleges that the defendant fraudulently obtained unemployment benefits by intentionally misrepresenting her employment status to the Department through failing to disclose the fact that she was employed and receiving wages while simultaneously receiving unemployment benefits. The Department asks that the debt owed to it, in the amount of \$5,216.07, be declared non-dischargeable under § 523(a)(2)(A). The defendant has sent a letter in response in which she denies having been

1 employed while receiving unemployment benefits. However, she has not
2 responded to the Department's motion for summary judgment.

3 The Department contends that the facts establishing that the
4 obligation is nondischargeable under § 523(a)(2)(A) have previously
5 been established. In support of this argument it has submitted the
6 affidavit of Susan Sjordal, the supervisor of the Overpayment Recovery
7 Unit of the Oregon Employment Department. It asks this court to apply
8 the doctrine of collateral estoppel.

9 Bankruptcy Rule 7056 provides that motions for summary judgment
10 may be supported by affidavits showing that there are no genuine issues
11 of material fact and the moving party is entitled to judgment as a
12 matter of law. The rule provides that:

13 [w]hen a motion for summary judgment is made and
14 supported as provided in [the] rule, an adverse party may
15 not rest upon the mere allegations or denials of the
16 adverse party's pleading, but the adverse party's
17 response, by affidavits or as otherwise provided in this
rule, must set forth specific facts showing that there
is a genuine issue for trial. If the adverse party does
not so respond, summary judgment, if appropriate, shall
be entered against the adverse party.

18 The defendant filed no affidavits controverting the facts contained in
19 the affidavit in support of the Department's motion. The facts recited
20 in that affidavit therefore must be taken as true. Westside Property
21 Owners v. Schlesinger, 597 F.2d 1214, 1223 (9th Cir. 1979).

22 The following facts have been established through Ms. Sjordal's
23 affidavit and the exhibits attached to it. The defendant applied for
24 unemployment benefits in March 1991. The Department granted that
25 application and she began receiving benefits of \$117 per week in
26 October 1991. During a routine audit the Department learned that

1 during the time she was receiving unemployment benefits the defendant
2 was employed by Hesco, Inc. and receiving wages from that company. The
3 audit also disclosed that she had failed to notify the Department of
4 her employment or receipt of wages.

5 In September 1993 after the defendant failed to seek a hearing,
6 the Department issued an administrative decision. It found that she
7 "willfully made a misrepresentation and failed to report a material
8 fact to obtain [unemployment] benefits." A copy of the decision was
9 mailed to the defendant. She did not appeal that decision. Ultimately
10 the Department commenced a state court action based on the
11 administrative decision and obtained a default money judgment against
12 the defendant.

13 The Department argues that its administrative decision should
14 be given preclusive effect on the issue of whether the defendant made
15 fraudulent misrepresentations to the department with the intent of
16 receiving unemployment benefits. It is well settled that a federal
17 court must give to a state court judgment the same preclusive effect
18 as would be given that judgment under the law of the state in which the
19 judgment was rendered. Migra v. Warren City School Dist. Bd. of Educ.,
20 465 U.S. 75, 81 (1984); accord Clark v. Yosemite Community College
21 Dist., 785 F.2d 781, 784 (9th Cir. 1986). Thus, in determining whether
22 collateral estoppel applies the bankruptcy court must look to the law
23 of issue preclusion in the state where the judgment sought to be given
24 preclusive effect was initially entered.

25 Under Oregon law collateral estoppel prevents relitigating an
26 issue decided in a previous action if: (1) the issue decided in the

1 previous action is identical to the one now presented; (2) the prior
2 action resulted in a final judgment on the merits; (3) the party
3 against whom collateral estoppel is sought was a party or in privity
4 with a party to the prior action; (4) the issue for which collateral
5 estoppel is sought was essential to the prior judgment; and (5) the
6 party against whom collateral estoppel is sought had a full and fair
7 opportunity to litigate the issue in the prior action. See State Farm
8 Fire & Casualty v. Reuter, 299 Or. 155, 158-59, 700 P.2d 236, 238
9 (1985), See also West Coast Theater Corp. v. City of Portland, 897 F.2d
10 1519 (9th Cir. 1990).

11 In order for this court to find for the Department it must
12 address three issues and find in the affirmative on each. First, may
13 the doctrine of collateral estoppel apply to an administrative
14 decision? Second, may it apply where a default against the defendant
15 has been entered? Third, were the issues of fact found against the
16 defendant in the first proceeding identical to those which must be
17 shown under § 523(a)(2)(A) and did the defendant have an opportunity
18 to litigate those issues?

19 In Oregon the doctrine of collateral estoppel, or issue
20 preclusion, is applicable to default judgements. Gwynn v. Wilhelm, 226
21 Or. 606, 609 (1961). It is also applicable to administrative
22 decisions, provided that "the tribunal's decision-making processes
23 include certain requisite characteristics." Drews v. EBI Co., 310 Or.
24 134, 139 (1990). There being no showing that the administrative
25 tribunal's decision in this matter did not include the requisite
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1 characteristics, this court may apply the doctrine to the
2 administrative decision.

3 The court now turns to the question of whether the issues of fact
4 found in the administrative proceeding were identical to those which
5 must be found for nondischargeability under § 523(a)(2)(A). The
6 administrative decision was based on a finding that the defendant
7 willfully made a misrepresentation to the Department by failing to
8 report a material fact, that is, that she was employed. This finding
9 is identical to that which must be shown by the Department under §
10 523(a)(2)(A). In addition, the affidavit's attachments demonstrate that
11 the Department made a showing in the administrative hearing that it
12 relied on the defendant's misrepresentations in making its payments to
13 her and was damaged in the specific amount prayed for. The defendant
14 had an opportunity to, but did not, appeal the administrative decision;
15 it became a final order. Under the administrative procedure the
16 defendant had a full and fair opportunity to litigate the issue in the
17 prior administrative action and declined that opportunity.

18 The court holds that under these facts the doctrine of collateral
19 estoppel applies. It further holds that the debt owed to the Department
20 by the defendant was incurred by fraud or misrepresentation and is non-
21 dischargeable under § 523(a)(2)(A). An order and judgment consistent
22 with this memorandum opinion will be entered upon submission of
23 appropriate documents by Mr. Rosenhouse.

POLLY S. HIGDON
Chief Bankruptcy Judge

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