IN THE UTAH COURT OF APPEALS

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Larry Ross, Petitioner, v. Department of Workforce Services, Workforce Appeals Board, Respondent.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100204-CA F I L E D (April 22, 2010) 2010 UT App 102

Original Proceeding in this Court

Attorneys: Larry Ross, Lehi, Petitioner Pro Se
Suzan Pixton, Salt Lake City, for Respondent

Before Judges Davis, McHugh, and Voros.

PER CURIAM:

Petitioner Larry Ross seeks judicial review of a decision of the Workforce Appeals Board (the Board) assessing a fraud overpayment and statutory penalty in the combined amount of $1876 pursuant to Utah Code sections 35A-4-405(5) and 35-4-406(4). See Utah Code Ann. § 35A-4-405(5) (Supp. 2009); id. § 35A-4-406(4) (2005). This case is before us on a sua sponte motion for summary disposition.

Ross testified at the hearing before an Administrative Law Judge (the ALJ) that he started a new job on August 24, 2009, which was the date when he physically went into the office. During the previous week, he attended a work-related training seminar in San Francisco. On August 24, 2009, his wife filed an employment benefits claim on his behalf for the benefit week ending August 22, 2009, which represented that he did not work, did not attend training, and was able and available for full-time work during that week. Ross himself filed a claim for the benefit week ending August 29, 2009, but he testified that he believed this was a claim for the benefit week ending August 22, 2009. He also represented that he had not worked, had not attended training, and was able and available for work during the benefit week. Ross was paid by his employer for both the week

ending August 22, 2009, when he attended training, and the week ending August 29, 2009, when he worked in his employer's office. The Department of Workforce Services (the Department) assessed an overpayment and statutory fraud penalty for both weeks.

We 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). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990).

Ross did not dispute the assessment of an overpayment in the hearing before the ALJ, but he challenged the application of the statutory fraud penalty. The Utah Supreme Court concluded in Diprizio v. Industrial Commission, 572 P.2d 679 (1977), that neither the Department nor the courts could alter the application of penalties under the provisions currently contained in Utah Code section 35A-4-405. See id. at 680. Thus, the supreme court held that where a claimant admitted that he failed to report work and earnings he should have reported, the Department was required to apply the statutory penalty. See id. at 680-81. Similarly, in Mineer v. Board of Review, 572 P.2d 1364 (1977), the Utah Supreme Court stated,

> The intention to defraud is shown by the claims themselves which contain false statements and fail to set forth material facts required by statute. 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 1366. Because neither this court nor the Board may alter the statutory penalty, we cannot grant the relief Ross requests.

At the hearing before the ALJ, Ross did not dispute that he had accepted new employment prior to the week spent at the seminar in San Francisco. For the first time in his request for reconsideration of the Board's decision, Ross argued that he was entitled to benefits for the week ending August 22, 2009, because he actually had not been hired by his new employer when he attended the seminar and was both available for work and conducting a work search during that week. Claims asserted for the first time before the Board or before this court have no basis in the testimony and evidence presented by either party at the hearing before an ALJ and will not be considered. See Brown & Root Indus. v. Industrial Comm'n, 947 P.2d 671, 677 (Utah 1997)

("We have consistently held that issues not raised in proceedings before administrative agencies are not subject to judicial review except in exceptional circumstances.").

Ross did not dispute that he failed to report his work and earnings for the weeks in question. The automated claim system clearly identified the week for which a claim was being made. Furthermore, the system asked not only whether Ross worked during the week in question, but whether he attended training. Even if Ross did not know that his wife had filed a claim on his behalf, the Claimant Guide clearly advised him that he was responsible for any representations made in claims filed in his name by persons with access to his personal identification number. The claims filed for the benefit weeks ending August 22, 2009, and August 29, 2009, did not truthfully respond to questions asking whether he worked or attended training during those weeks. Ross received benefits to which he was not entitled as a result of his misstatements and omissions. The Board's factual findings are supported by substantial evidence, and its application of law to the facts does not exceed the bounds of reasonableness and rationality. Accordingly, we affirm the Board's decision.

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James Z. Davis,
Presiding Judge

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Carolyn B. McHugh,
Associate Presiding Judge

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J. Frederic Voros Jr., Judge