

IN THE UTAH COURT OF APPEALS

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Gordon A. Bray,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20100064-CA	
v.)		
)		
Department of Workforce)	F I L E D	
Services, Workforce Appeals)	(March 23, 2010)	
Board,)		
)	<table border="1"><tr><td>2010 UT App 72</td></tr></table>	2010 UT App 72
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Respondent.)		

Original Proceeding in this Court

Attorneys: Gordon A. Bray, Bountiful, Petitioner Pro Se
 Michael R. Medley, Salt Lake City, for Respondent

Before Judges McHugh, Orme, and Voros.

PER CURIAM:

Petitioner Gordon A. Bray seeks judicial review of a decision of the Workforce Appeals Board (the Board) assessing a fraud overpayment of \$13,998 and a statutory penalty in an equal amount pursuant to Utah Code sections 35A-4-405(5) and -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.

Bray does not dispute any material fact underlying the Board's decision. However, he claims that he should be relieved of the overpayment and penalty because (1) he believed that he was not required to report his earnings as a contract employee, relying on information he obtained from the Department of Workforce Services (the Department) eight to ten years before, and (2) the Department failed to promptly contact him to inform him of his mistake and thereby mitigate the amounts of the overpayment and penalty.

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). 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).

Bray did not dispute the assessment of an overpayment in the hearing before an Administrative Law Judge (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 Bray requests.

In his appeal to the Board, Bray asserted that he should be partially relieved of the overpayment and penalties because the Department failed to promptly discover his reporting error and thereby reduce the amount of unemployment benefits improperly paid to him. The Board rejected this claim, finding that if Bray had "read the Claimant Guide he would have realized his obligation to report his work and earnings and never would have falsely reported his claim." The guide was provided to Bray twice during the period in question, but he testified that he did not read it. Instead, he relied upon outdated information allegedly obtained from a departmental representative eight to ten years before. Furthermore, the Board and ALJ found that when Bray filed his weekly benefit claims for the week ended November 15, 2008 through the week ended August 22, 2009, he answered "no" to the question, "During the week, did you work?" Bray did not dispute that although he was a full-time employee, he failed to report his work and earnings when he filed claims for those weeks. Although it was detrimental to Bray that his new employer failed to timely respond to multiple inquiries from the Department, the Board's conclusion--that Bray bore the ultimate responsibility for providing false information to the

Department--is within the bounds of reasonableness and rationality.

Bray did not dispute that he failed to report his work and earnings for the weeks in question. Furthermore, he did not truthfully respond to the question of whether he worked during those weeks or that he received benefits to which he was not entitled as a result. 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.

Carolyn B. McHugh,
Associate Presiding Judge

Gregory K. Orme, Judge

J. Frederic Voros Jr., Judge