UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40243
Summary Calendar

HERBERT J. ROBINSON, M.D.,

Petitioner,

VERSUS

DRUG ENFORCEMENT ADMINISTRATION,

Respondent.

Appeal from the Order of the Drug Enforcement Administration
(DEA 89-ERA-36)

(October 28, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:[1]

Herbert J. Robinson, M.D., a San Antonio physician, petitions this court to vacate a Drug Enforcement Administration ("DEA") order revoking his DEA Certificate of Registration.[2] The DEA based the order on its finding that Robinson "materially falsified" his

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

[2] Without this registration, Robinson cannot legally prescribe drugs regulated by the Comprehensive Drug Abuse Prevention and Control Act. 21 U.S.C. § 812.

registration application. 21 U.S.C. § 824(a)(1). Robinson lodged his notice of appeal in this court pursuant to 21 U.S.C. § 877, which vests this court with jurisdiction to review final orders issued by the DEA. We affirm.

Robinson's sole contention on appeal is that his response to one of the questions on his February 13, 1991 registration application, while incorrect, did not amount to a material falsification of the application. The DEA's order centers on Robinson's negative answer to question 4(b) of his application:

> Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substances registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation.

Robinson answered this question "No" despite the fact that the Texas State Board of Medical Examiners (the "State Board") suspended his license to practice medicine from September, 1988 to January, 1991. Robinson explains that he attached copies of the State Board orders suspending and reinstating his license to his DEA registration application. According to Robinson, these attachments qualify his negative answer to question 4(b). As a result, Robinson contends that his answer to question 4(b) was not materially false.

We need not decide whether Robinson's answer to question 4(b) was materially false because he failed to raise this issue before the DEA. Absent extraordinary circumstances, parties seeking judicial review of agency orders may not raise new issues on appeal

if those issues were never raised in the original agency proceedings. **Local Union 60 v. NLRB**, 941 F.2d 1326, 1336 (5th Cir. 1991). This rule promotes informed agency decisions and avoids "the application of judicial resources to matters that might be resolvable at the agency level." **Sears, Roebuck & Co. v. FTC**, 676 F.2d 385, 398 (9th Cir. 1982).

In his administrative appeal, Robinson never suggested that he attached papers to his February 13, 1991 application to the DEA. In response to a DEA letter ordering him to show cause why his DEA registration should not be revoked, Robinson waived his right to an administrative hearing and submitted a written response acknowledging that his negative answer to question 4(b) was incorrect. The response explained that Robinson's error was unintentional, and not an attempt to deceive the DEA. Robinson's response never points out that his certification application included attachments that qualified his answer to question 4(b).

In fact, the DEA contends that its records conclusively show that Robinson's February 13, 1991 application was not accompanied by the attachments he claims were submitted. This application, which is included in the administrative record on appeal, does not refer to any such attachment, nor are any such documents attached to the application in the record. The agency could have easily addressed this issue by examining Robinson's application if Robinson had presented the issue to them. We find no exceptional circumstances here that would permit Robinson to present this question to us for the first time on appeal.

AFFIRMED.