

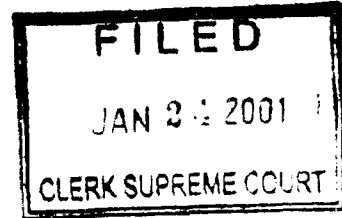
IN THE COURT OF APPEALS OF IOWA

No. 0-648 / 00-0252
Filed January 24, 2001

CORBY RUARK,
Petitioner-Appellant,

vs.

**IOWA DIVISION OF JOB
SERVICE and the EMPLOYMENT
APPEAL BOARD,**
Respondents-Appellees.



Appeal from the Iowa District Court for Des Moines County, William L.
Dowell, Judge.

Corby Ruark appeals from the district court's ruling dismissing his judicial
review action challenging the denial of his claim for unemployment benefits.

AFFIRMED.

Andrew S. Hoth of Hoth Law Offices, Burlington, for appellant.

Anita M. Garrison, Des Moines, for appellee board.

Considered by Streit, P.J., and Miller, J., and R. Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206
(2001).

R. PETERSON, S.J.

The appellant Corby Ruark appeals from the district court's ruling dismissing his judicial review action. He contends the district court erred in granting the Employment Appeal Board's (Board's) motion to dismiss and failing to grant his motion to amend and that a general appearance by Lamont Ltd. rendered the Board's motion to dismiss moot. We affirm.

Background and Proceedings. On December 17, 1999, Corby Ruark filed a petition for judicial review. He joined as respondent, the Iowa Division of Job Service (Division) and the Employment Appeal Board. He had been initially granted benefits, however, his employer, Lamont Ltd., appealed from that decision, and the decision granting him benefits was reversed. He contends the ruling denying him benefits was unreasonable, arbitrary, and capricious and was based upon erroneous and untruthful testimony from the employer's representative. He also contends undisputed testimony of the petitioner, both at the initial fact hearing and at the subsequent hearing, was not taken into account.

On December 27, 1999, the Board filed a motion to dismiss Ruark's petition. It contends Ruark failed to comply with the jurisdictional requirements of the Iowa Code with respect to administrative appeals. On December 28, 1999, Ruark filed a motion to amend his petition for judicial review. The amended petition joined his employer, Lamont Ltd., and incorporated by reference the other allegations set forth in the petition that had been previously filed.

The initial petition filed by Ruark was served on the Division and the Board on December 17, 1999. The amended petition and a copy of the original petition

was served on Lamont Ltd. on December 28, 1999. Lamont Ltd. entered a general appearance in the matter on January 7, 2000.

On January 19, 2000, the district court entered an order granting the Board's motion to dismiss. The court also found, as a result of this ruling, Ruark's motion to amend and add Lamont Ltd. as a party was moot and required no further action by the court.

Standard of Review. When an appellate court reviews a district court's decision on the validity of an agency action, we ask only whether the district court has correctly applied the law. The district court itself is acting in an appellate capacity to correct errors at law on the part of the agency. In our review of such action by the district court, we merely apply the standards of section 17A.19(8) to the agency action to determine whether our conclusions are the same as those of the district court. When the conclusions are the same, we affirm. *UNI-United Faculty v. Iowa Pub.Employment Relations Bd.*, 545 N.W.2d 274, 277 (Iowa 1996).

Discussion. Iowa Code section 17A.19(2) (1999) provides in relevant part:

Within ten days after the filing of a petition for judicial review the petition shall serve by the means provided in the Iowa rules of civil procedure for personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. . . .

Iowa Code § 17A.19(2).

It is Ruark's argument under the rules of civil procedure he had a right to amend his petition and, accordingly, he had ten days from the date of the amendment of his petition to complete service upon Lamont Ltd. We disagree. Iowa Code section 17A.19(2) specifically provides in order for the trial court to gain jurisdiction of an appeal from an administrative agency, the petition must be served upon all parties named in the petition within ten days of the filing of that petition. The petition must include all parties of record in the case before the agency. It was incumbent upon Ruark to serve the petition filed by him on December 17, 1999 on those parties, which included Lamont Ltd., within ten days of the filing of that petition. Failure to strictly comply with this Code section deprives the district court of appellate jurisdiction over the case. See *Dawson v. Iowa Merit Employment Comm'n*, 303 N.W.2d 158, 160 (Iowa 1981); *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651, 654 (Iowa 1980).

In argument, Ruark contends the amended petition states the grounds upon which he seeks judicial review and not the original petition. The amendment adds Lamont Ltd. as a party and adds paragraph twelve to the petition, indicating they were the employer of the petitioner that appeared in the proceedings before the Division and the Board. It adds paragraph thirteen which incorporates, by reference, all of the allegations and prayers as set forth in the petition for judicial review. The original petition sets forth, in paragraph ten, the relief the petitioner is seeking.

Ruark next contends the procedural defect alleged by the Board was remedied or waived when Lamont Ltd. entered their general appearance.

A general appearance is a waiver of notice and the party so appearing submits to the jurisdiction of the court. *In re Guardianship and Conservatorship of Cerven*, 334 N.W.2d 337, 339 (Iowa App. 1983). It is also clear the district court has jurisdiction of appeals from administrative agencies. Iowa Code § 17A.19. However, even though the district court may have jurisdiction of the subject matter and the parties, it may not have the authority to hear the case. This has also been referred to by the supreme court as whether they have "jurisdiction of the case." See *Linn County Sheriff v. Iowa Dist. Ct.*, 545 N.W.2d 296, 299-300 (Iowa 1996).

In *Dawson*, the Iowa Supreme Court stated:

Even though the district court has jurisdiction of the subject matter of such case, it did not require appellate jurisdiction in this case. Failure to comply with the statute deprives the court of this jurisdiction of the case, not merely of the parties.

Dawson, 303 N.W.2d at 160. The general appearance by Lamont Ltd. did not give the trial court authority to hear this case or "jurisdiction of the case."

AFFIRMED.