IN THE COURT OF APPEALS OF IOWA

No. 0-081 / 98-2248
Filed August 16, 2000

FILED
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CLERK SUPREME COURT

CHARLES W. KERNER,
Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD and IES UTILITIES, INC.,
Respondents-Appellees.

Appeal from the Iowa District Court for Lee County, David B. Hendrickson Judge.

The petitioner appeals the district court's ruling dismissing his judicial review petition challenging the denial of his claim for unemployment benefits. **AFFIRMED.**

Charles W. Kerner, Kahoka, Missouri, pro se, for appellant.

Richard R. Ramsey, Des Moines, for appellee board.

Deborah M. Neyens, Cedar Rapids, for appellee employer.

Considered by Vogel, P.J., and Mahan and Hecht, JJ.

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VOGEL, P.J.

Charles Kerner appeals the decision of the district court which dismissed his petition for judicial review. Kerner claims the court did not apply the correct standard of review to the motion to dismiss. He also claims the decision of the Employment Appeal Board, which found he was not entitled to unemployment benefits, is not supported by substantial evidence. We affirm.

Kerner is employed by IES Utilities, Inc. On May 5, 1998, Kerner, along with some other employees, had a beer with his lunch at a restaurant. Kerner drove a company car to and from the restaurant. IES suspended Kerner from July 1 to July 13, 1998, because he had violated a rule prohibiting employees from performing their job duties under the influence of alcohol.

Kerner sought unemployment compensation benefits. The Employment Appeal Board determined Kerner had been suspended for misconduct because he had violated the employer's policies involving the use of alcohol.

Kerner filed a petition for judicial review on October 15, 1998. IES was served on October 27, 1998, and the board was served on November 3, 1998. The pertinent portion of Iowa Code section 17A.19(2) provides:

> Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties in the petition . . . Such personal service or mailing shall be jurisdictional.

The district court dismissed Kerner's petition because he did not serve all parties within ten days after the petition was filed, as required by section 17A.19(2). Kerner appeals.

When ruling on a motion to dismiss filed by a respondent we are obliged, like the district court, to view the allegations in the light most favorable to the petitioner. *Hollinrake v. Iowa Law Enforcement Academy,* 452 N.W.2d 598, 600 (Iowa 1990).

Kerner contends the district court did not apply a proper standard of review to the motion to dismiss. He claims that because he was a pro se petitioner, the court should have read expansively the allegations in his petition.

We do not utilize a deferential standard when litigants choose to represent themselves. *Metropolitan Jacobson Dev. Venture v. Board of Review,* 476 N.W.2d 726, 729 (Iowa App. 1991). The law does not judge by two standards, one for lawyers and another for lay persons. *Kubik v. Burk,* 540 N.W.2d 60, 63 (Iowa App. 1995). Rather, all are expected to act with equal competence. *Id.* We find the district court applied the proper standard of review.

What prevents us from addressing the merits of Kerner's contentions is a waiver of the jurisdictional issue on appeal. Kerner does not address the motion to dismiss on its merits. He does not claim he substantially complied with section 17A.19(2), or that he timely served respondents with service of notice. A party's failure in a brief to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 14(a)(3); *Hollingsworth v. Schminkey,* 553 N.W.2d 591, 596 (Iowa 1996). Kerner's failure to contest the basis for the motion to dismiss prevents us from reversing the dismissal.

We affirm the decision of the district court which dismissed Kerner's petition for judicial review.

AFFIRMED.