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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ERWIN WELLER CO., Petitioner-Appellant,	)	Filed October 27, 1981
vs.	)	
IOWA DEPARTMENT OF JOB SERVICE, Respondent-Appellee,	)	1-217 / 2-65894
and concerning T. A. WALSH, Respondent-Appellee.	)	

Appeal from Woodbury District Court, James P. Kelley, Judge.

This is an appeal by an employer from the district court order dismissing the employer's petition for judicial review of an agency decision awarding unemployment benefits on the ground that the court lacked jurisdiction. We reverse and remand.

William L. Edmonds of Carter, Sar & Edmonds, Sioux City, for petitioner-appellant.

Walter F. Maley, Blair H. Dewey, and Joseph L. Bervid, Des Moines, for respondent-appellee agency.

LeRoy J. Sturgeon of Smith & Smith, Sioux City, for respondent-appellee Walsh.

Heard by Oxberger, C.J., and Donielson, Carter, Snell, and Johnson, JJ.

PER CURIAM

This is an appeal by an employer from the district court order dismissing the employer's petition for judicial review of an agency decision awarding unemployment benefits on the ground that the court lacked jurisdiction. We reverse and remand.

On August 16, 1979, a deputy for the Iowa Department of Job Service filed a decision denying unemployment benefits to the claimant on the ground she was not an employee. The claimant appealed, and the deputy's decision was reversed in a decision filed October 25, 1979. This decision held the claimant was an employee, not an independent contractor. The employer appealed on November 5, 1979. Both parties requested an opportunity to file written briefs, and they were filed January 25, 1980. The Appeal Board affirmed the hearing officer in a decision dated January 31, 1980. The employer and its attorney state that they received no notice of the decision until April 10, 1980, in a telephone conversation between the attorney and James Swessinger of the Department of Job Service. The attorney sent a letter and affidavits to the Department stating that he and the employer had received no notice of the decision. The Department responded in a letter dated April 16, 1980, which granted the employer 20 days to apply for rehearing. The employer filed an application for rehearing on April 18, 1980. On April 24, 1980, the Department denied the application for the reason that there was a "lack of evidence other than that which has already been presented." On the form denying the application was a space stating that the application was denied because it was not filed within 20 days after issuance of the final decision. This space was not checked. The employer filed a petition for judicial review to the district court on May 7, 1980. The district court dismissed the petition on the ground that it had no jurisdiction because the employer had not timely filed its petition for judicial review. Section 17A.19(3), The Code, requires a party to file a petition for judicial review within 30 days of the issuance of an agency's final decision. The employer appealed.

The employer argues that the Job Service Appeal Board conceded the employer had not received notice of the decision filed January 31, when the agency denied rehearing on the ground that no new evidence was presented, and did not check the space for denial on the ground rehearing had not been requested within 20 days after

issuance of the final decision. See § 17A.16(2), The Code. We agree. The trial court erred when it found the agency had not conceded the employer had not received notice.

Since the agency conceded the employer had not received notice of the decision, its grant of a 20-day period to apply for rehearing was appropriate. See § 17A.16(2), The Code. The employer applied for rehearing within the 20-day period. The application was denied. The employer then filed a petition for judicial review within 30 days, as required by § 17A.19(3), The Code. Therefore, the district court had jurisdiction to hear the petition. We therefore remand this case to the district court to decide the issue on the merits.

REVERSED AND REMANDED.