

IN THE IOWA COURT OF APPEALS

FILED

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CLEAN SUPREME COURT
Filed November 24, 1981**MICHAEL J. McDONALD,**)

Petitioner-Appellee,)

vs.)

IOWA DEPARTMENT OF JOB SERVICE)

Respondent-Appellant.

1-221
2-66061

Appeal from Black Hawk District Court, Thomas H. Nelson, Judge.

Respondent-agency appeals from the district court decision on judicial review reversing the agency's determination with regard to petitioner's claim for unemployment benefits. REVERSED.

Sara A. Kersenbrock, Waterloo, for petitioner-appellee.

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

Submitted to Oxberger, C.J., and Donielson, Carter, Snell, and Johnson, JJ.

PER CURIAM

Respondent-agency appeals from the district court decision on judicial review reversing the agency's determination with regard to petitioner's claim for unemployment benefits. We reverse.

Petitioner, Michael J. McDonald, voluntarily quit his job at Venda Foods in 1977. When petitioner filed for unemployment benefits, the agency paid him \$912. Subsequently, a decision was issued by a deputy of the agency finding petitioner was not entitled to the benefits and petitioner must repay the \$912. The decision of the deputy was affirmed by a hearing officer. Petitioner appealed that decision to the appeal board, which affirmed the hearing officer's decision on November 4, 1977.

In an unrelated claim by petitioner for unemployment benefits in December 1977, a deputy of the agency determined petitioner had requalified for unemployment benefits after he had been laid off from subsequent employment. The first week's benefit of \$114 was credited against the previously established \$912 overpayment. No further benefits were paid or credited to petitioner after the first week because he stopped submitting weekly vouchers showing his availability for work.

In the fall of 1978 petitioner was again notified of the overpayment amount still due the agency. In October of 1978, petitioner appealed the notice of overpayment to a hearing officer, who affirmed the original notice of overpayment. Petitioner then appealed the hearing officer's decision to the appeals board, who affirmed the hearing officer's decision on February 8, 1979.

On May 10, 1979, petitioner filed for judicial review in Black Hawk county district court. The trial court rejected the agency's challenge to the court's jurisdiction and remanded the matter to the appeal board. On June 20, 1980, the appeal board held that it did not have jurisdiction over the matter. Petitioner then filed another petition for judicial review on July 21, 1980. The court issued a judgment and decree, the relevant part of which denied the agency's claim for repayment of the \$912 overpayment to petitioner.

The agency appeals, asserting the trial court lacked subject matter jurisdiction since the petition for judicial review was not timely filed pursuant to section 17A.19(3), The Code 1977. We agree with the agency.

Section 17A.16(4) provides, in relevant part:

3. If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application under section 17A.16, subsection 2, for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case.

Section 17A.16(2) provides, in relevant part:

2. Any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, within twenty days after the issuance of any final decision by the agency in a contested case... Such an application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing.

Those sections establish the period in which a timely petition for judicial review may be filed. Failure to file the petition within those limits is a jurisdictional defect, Ford Motor Company v. Iowa Department of Transportation, 282 N.W.2d 701, 703 (Iowa 1979), which will result in dismissal of the action. Id.

Despite the appellees' failure to file a brief and the sketchy record, we are of the opinion appellants have submitted a meritorious claim that the appellees did not timely file for judicial review. All appeals on petitioner's initial claim, that he should not be required to repay the \$912, were finally adjudicated adversely to him on November 4, 1977. Not until petitioner filed for additional benefits in December of 1977, after being laid off a second job, did he renew his original claim. Pursuant to sections 17A.19(3) and 17A.16(2), petitioner must have filed his petition for review within thirty days of the agency's final decision. The agency's final decision on the overpayment controversy was issued by the agency on November 4, 1977. The petition for review was filed on May 10, 1979, over one and one-half years after the decision. Therefore, we reverse the trial court's judgment and decree dated November 20, 1980, as the court lacked subject matter jurisdiction. See Ford Motor Company v. Iowa Department of Transportation, 282 N.W.2d 701, 703 (Iowa 1979); cf. Qualley v. Chrysler Credit Corporation, 261 N.W.2d 466, 471 (Iowa 1978).

REVERSED.