

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 27 1983

CLERK SUPREME COURT

WYNNFIELD F. CATRON,

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Petitioner-Appellee,

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Filed September 27, 1983

vs.

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**IOWA DEPARTMENT OF JOB SERVICE)
and JOHN DEERE AND COMPANY,)
WATERLOO TRACTOR WORKS,)**3-203
2-69540

Respondents-Appellants.)

Appeal from Tama District Court - William R. Eads, Judge.

Respondents agency and employer appeal from the district court order reversing the agency's finding that it did not have jurisdiction over claimant's appeal regarding his being denied unemployment benefits. REVERSED AND REMANDED.

John W. Rathert of Beecher, Beecher, Holmes & Rathert, Waterloo, and Walter F. Maley, Blair H. Dewey, and Edmund Schlak, Jr., Des Moines, for respondents-appellants.

Dennis Groenenboom, Cedar Rapids, and Donald Ibeling of Ibeling, Wenzel & Gravelle, Cedar Rapids, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

DONIELSON, J.

Respondents agency and employer appeal from the district court order reversing the agency's finding that it did not have jurisdiction over claimant's appeal regarding his being denied unemployment benefits. Respondents claim there is substantial evidence in the record to support the agency's finding that petitioner claimant did not file a timely appeal from the decision of the claims deputy disqualifying him from benefits. We reverse and remand.

In a decision dated July 27, 1979, an agency claims deputy disqualified petitioner from receipt of unemployment benefits. Petitioner was required by Iowa Code § 96.6(2) to appeal that decision within ten days but agency files contain no record of any notice of appeal filed prior to October 8, 1979. Extensive proceedings relating to the agency's jurisdiction to entertain petitioner's appeal were held both before the agency and in district court. Petitioner and his father testified that a notice of appeal was timely mailed to the agency on July 31, 1979, and was resubmitted on August 10, 1979, following a telephone call a day earlier in which an agency employee had alerted them to the fact that their records did not show that a notice of appeal had been filed. The father's recollection of the substance of the telephone call was in some respects disputed by witnesses from the agency but apparently the agency had in its possession at that time medical records, subsequently lost, which the father alleged that he had attached to the original notice of appeal. The final agency decision found that the untimely October 8 notice of appeal contained in its files was the only notice of appeal, relying on various factors detracting from the credibility of petitioner and his father when they testified that earlier notices of appeal had been sent.

The district court reversed on judicial review, reasoning that the agency's acknowledged possession of the subsequently lost medical records allegedly attached to the earlier notices of appeal adequately corroborated the testimony of

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petitioner and his father that earlier notices of appeal had in fact been sent. The court thus concluded that the agency's finding that petitioner's appeal was not timely filed was not supported by substantial record evidence and remanded to the agency for a rehearing on the merits. Respondents brought this appeal.

The ten-day limitation for appealing a disqualification from benefits is found in Iowa Code § 96.6(2). After setting forth the duties of the claims deputy in making an initial eligibility determination, the statute provides as follows:

Unless the claimant or other interested party, after notification or within ten calendar days after such notification was mailed to the claimant's last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith.

Id. This time limit is jurisdictional. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (1979).

The agency found as matters of fact that the October 8 notice of appeal was the first one received by the agency, that such notice was untimely, and that the testimony of petitioner and his father to the contrary was lacking in credibility. We are bound by these findings if they are supported by substantial evidence in the record made before the agency when that record is viewed as a whole. See Iowa Code § 17A.19(8)(f); Cook v. Iowa Department of Job Service, 299 N.W.2d 698, 700-01 (Iowa 1980). "The possibility that two inconsistent inferences may reasonably be drawn from the evidence does not itself deprive findings of substantial evidentiary support." Id. at 701.

We agree with respondents that the agency's findings and conclusions that petitioner did not file a timely notice of appeal were supported by substantial evidence. The critical fact question is whether petitioner and/or his father filed an appeal within ten days after being notified at the end of July of the decision of the agency's claims deputy. It is undisputed that the agency was in receipt of

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certain medical and dental records within the time limit; however, we reject petitioner's assertion that these records were sufficient in themselves to constitute notice of an intent to appeal the claims deputy's decision. Both petitioner and his father testified that a notice of appeal was sent along with the medical records; however, their testimony was confusing and inconsistent on many points. For example, as found by the agency,

... [the father] testifies that he filed two appeals in his own handwriting and personally mailed the same. The claimant testifies that he delivered the appeal to Job Service prepared by his father and yet the one delivered by the claimant is in the claimant's handwriting and not that of the father.

In addition, petitioner gave different responses at various points as to when he first informed the agency's Waterloo branch office of his appeal. We understand that petitioner's history of mental and emotional problems makes it difficult for him to be certain of dates and the chronology of events; however, we cannot say that the agency erred in concluding his testimony, as well as that of his father, was less than completely credible.

Under these circumstances, we believe there is substantial record evidence to support the agency's conclusion that the untimely October 8 notice of appeal was the first one filed by petitioner. Various agency personnel testified without contradiction that the agency received no timely appeal notice along with petitioner's medical records. While this may lead to an inference that petitioner or his father did send an appeal notice with the records and that the former somehow became detached and was lost, we believe that it is equally permissible to infer that a notice of appeal was not in fact sent along with the medical records. This latter inference is especially relevant considering the credibility problems already discussed.

We also reject petitioner's claim that the agency's timely receipt of his

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medical records and telephone calls from his father imposed on the agency a duty to formally request a resubmitted appeal. We find no authority for imposing such an administrative burden; surely the agency cannot be expected to oversee carefully every step of the claim and appeal procedure and inform all claimants of every action that must be taken. It is the claimant's duty to actively pursue his or her rights and responsibilities, including the obligation to ensure that a timely and effective notice of appeal is filed with the agency.

The agency's conclusion that it lacked jurisdiction to consider the merits of petitioner's appeal is supported by substantial evidence in the record. The order of the district court rejecting that conclusion is reversed and the cause is remanded with directions to reinstate the agency's decision.

REVERSED AND REMANDED.