FILED
APR 27 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CLINTON MEMORIAL PARK CEMETERY, INC.,

Plaintiff-Appellee,

vs.

IOWA DEPARTMENT OF JOB SERVICE AND ALICE M. NIELSEN,

Defendants-Appellant.

Filed April 27, 1982 31

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2-66679

Appeal from Clinton District Court, L. D. Carstensen and Margaret S. Briles, Judges.

Defendants appeal from the district court decision on judicial review reversing the agency's award of unemployment benefits, asserting, (1) the district court lacked jurisdiction since the petition for judicial review was personally served, rather than being mailed as required by section 17A.19(2), The Code 1977. REVERSED FOR LACK OF APPELLATE COURT JURISDICTION.

Walter F. Maley, Blair H. Dewey, and Thomas J. McSweeney for defendants-appellants.

Simon W. Rasche, Jr.,Camanche, for plaintiff-appellee.

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

PER CURIAM

Defendants appeal from the district court decision on judicial review reversing the agency's award of unemployment benefits, asserting, (1) the district court lacked jurisdiction since the petition for judicial review was personally served, rather than being mailed as required by section 17A.19(2), The Code 1977, (2) the agency hearing officer was not deprived of jurisdiction by failure of the notice of hearing to state the issues as required by section 17A.12(2)(d), The Code 1977, and in any event the issue had not been preserved for appeal and, (3) the administrative rules under which the employer's telephoned request for a continuance was denied were not unfair or unlawful. The district court's order is reversed for lack of jurisdiction.

The underlying dispute in this case involves a claim for unemployment benefits. Iowa Depart of Job Service is a defendant on the petition for judicial review. Co-defendant, Alice M. Nielsen, sought, but was denied, unemployment benefits. She appealed the claims deputy's denial of benefits to the Appeal Board. After an evidentiary hearing, a hearing officer reversed the claims deputy's decision and awarded defendant Nielsen unemployment benefits. The Appeal Board adopted the hearing officer's decision.

Defendant Nielsen's employer, Clinton Memorial Park Cemetery, Inc., petitioner in this appeal, sought judicial review of the agency action. Copies of the petition for judicial review were not mailed to the parties of record within ten days after the petition was filed. Instead, personal service was made upon the parties. The trial court, in its order overruling Job Service's special appearance, which contested the district court's jurisdiction, indicated the parties were personally served rather than served by mail as required by section 17A.19(2), The Code 1977.

Section 17A.19(2) states in part

> Within ten days after the filing of a petition for judicial review file stamped copies of the petition shall be mailed by the petitioner 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 mailing shall be jurisdictional and shall be addressed to the parties at their last known mailing address.

In Neumeister v. City Development Board, 291 N.W.2d 11, 13-14 (Iowa 1980), the supreme court held personal service under section 17A.19(2), The Code 1975, instead of the required mailed notice, was a jurisdictional defect and dismissed the appeal for lack of jurisdiction. In Dawson v. Iowa Merit Employment Commission, 303 N.W.2d 158, 160 (Iowa 1981), the supreme court stated:

> Petitioners assert personal service is a more reliable means of giving notice. This assertion goes only to the wisdom of the legislation. The statute does not recognize personal service as an alternative. Because a copy of the petition was admittedly not mailed to respondent within ten days of its filing, the district court did not acquire jurisdiction of the case.

The court also stated the jurisdictional defect went to appellate jurisdiction and not personal jurisdiction. Id.

We are convinced the case at bar is factually identical to Neumeister and Dawson. We see no reason to treat petitioner's failure to provide mailed notice ifferently in this case. Neumeister and Dawson are dispositive of this appeal and ompel dismissal of petitioner's appeal.

Given our conclusion on the issue of the court's appellate jurisdiction, we eed not address petitioner's remaining claims.

REVERSED.