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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1999-415 (9-668) / 99-0294
Filed December 13, 1999

KAREN COOPER,
Petitioner-Appellant,

vs.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD
Respondent-Appellee,
and

STATE OF IOWA, DEPARTMENT OF HUMAN RIGHTS, DIVISION ON STATUS OF AFRICAN-AMERICANS,
Respondent.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Karen Cooper appeals from the district court's ruling dismissing her appeal of an Iowa Public Employment Relations Board's decision to uphold the termination of her employment. **AFFIRMED.**

Rod Powell of Powell Law Firm, P.C., Norwalk, for appellant.

Jan V. Berry, Des Moines, for appellee.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

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MAHAN, J.

Karen Cooper appeals from the district court's ruling dismissing her appeal of an Iowa Public Employment Relations Board's decision to uphold the termination of her employment. Cooper contends the district court erred in finding she failed to comply with the notice provision of Iowa Code section 17A.19(2) (1997). Cooper also contends she should be awarded appellate attorney fees in the event she prevails on appeal. We affirm.

Karen Cooper was employed by the State of Iowa in the Department of Human Rights, Division on Status of African-Americans (Department). Cooper's employment with the Department was terminated on June 27, 1996. Following her termination, Cooper filed an appeal with the Iowa Public Employment Relations Board (PERB). PERB dismissed Cooper's appeal on July 24, 1998.

Cooper filed a petition for judicial review in Polk County on August 21, 1998, naming PERB and the Department as respondents. Cooper, by certified mail, sent a copy of the petition and original notice to Thomas Miller, attorney general of the State of Iowa, on August 28, 1998. Said certified mail was delivered on August 31, 1998. Cooper then filed a Notice of Service of Process on Respondents on September 1, 1998, in which she stated service of process was made in accordance with Iowa Code section 613.9 by sending all pertinent documents to the Iowa Attorney General by certified mail. It is undisputed no copies of the petition or original notice were ever served on or mailed to PERB or the Department.

PERB first learned of the judicial review proceeding on December 2, 1998, when an assistant attorney general made a courtesy call informing them of a scheduling order they had received.[1] PERB promptly filed a motion to dismiss contending Cooper failed to comply with the jurisdictional notice requirements of Iowa Code section 17A.19(2). Following hearing, the district court granted PERB's motion to dismiss concluding Cooper had failed to substantially comply with the notice requirements of the section. Cooper appeals.

I. Standard of Review. Our review of rulings on motions to dismiss is limited. *Haupt v. Miller,* 514 N.W.2d 905, 907 (Iowa 1994). We review a district court's ruling on a motion to dismiss for corrections of errors at law. Iowa R. App. P. 4; *Ritz v. Wapello County Bd. of Supervisors,* 595 N.W.2d 786, 789 (Iowa 1999).

II. Substantial Compliance. Iowa Code section 17A.19(2) provides, in part, as follows:

> **17A.19 Judicial review.**
>
> Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action.
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> . . .
>
> 2. Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa

[1] The assistant attorney general had noticed the scheduling order did not indicate PERB was mailed a copy. Therefore, the specific purpose of the call was to see if PERB was aware of the order.

> rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition *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 personal service or mailing shall be jurisdictional.* The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or their attorney of record at their last known mailing address.

Iowa Code § 17A.19(2) (emphasis added).

PERB is an administrative agency subject to the Administrative Procedure Act. *Maquoketa Valley Community Sch. Dist. v. Maquoketa Valley Educ. Ass'n,* 279 N.W.2d 510, 512 (Iowa 1979). The provisions of Iowa Code section 17A.19(2) are the exclusive means for seeking judicial review of administrative action in the absence of a specific statute. Iowa Code § 17A.19(2); *Green v. Iowa Dep't of Job Serv.,* 299 N.W.2d 651, 654 (Iowa 1980). The procedures set out in that section are jurisdictional, and a failure to comply deprives a district court of appellate jurisdiction over the case. *Dawson v. Iowa Merit Employment Comm'n,* 303 N.W.2d 158, 160 (Iowa 1981).

It is undisputed Cooper did not literally comply with the provisions of 17A.19(2). The issue in this case is Cooper's claim her service upon the attorney general pursuant to Iowa Code section 613.9 was substantial compliance with those provisions, and the district court unjustly penalized her for the failure of the attorney general to follow through and notify its agencies of the pending action.

Iowa Code section 613.9 provides, in part, as follows:

> **613.9 Service on state.**
>
> Service upon the state shall be made by serving a copy of the original notice with a copy of the petition upon the county attorney for the county, or counties, *in which the real estate is located,* and by sending a copy of the original notice and petition by certified mail to the attorney general, at Des Moines.

Iowa Code § 613.9 (emphasis added). It is clear this section is limited to actions against the state pursuant to Iowa Code section 613.8 and deals specifically with the state's consent to be sued in actions involving title to real estate, partitions of real estate, the foreclosure of liens or mortgages against real estate or the determination of the priorities of liens or claims against real estate in which the state may have an interest. It has no reasonable relation or applicability to Iowa Code Chapter 17A involving judicial review actions.

Our supreme court has defined "substantial compliance" as follows:

> "[s]ubstantial compliance" with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case. *Smith v. State,* 364 So. 2d 1, 9 (Ala. Crim. App. 1978) (citation omitted); *accord Dorignac v. Louisiana State Racing Comm'n,* 436 So. 2d 667, 669 (La. App. 1983). We essentially adopted this definition in *Superior/Ideal, Inc. v. Board of Review,* 419 N.W.2d 405, 407 (Iowa 1988).

Brown v. John Deere Waterloo Tractor Works, 423 N.W.2d 193, 194 (Iowa 1988).

The district court concluded, in part:

> Cooper's failure to serve the two respondent agencies with the petition does not rise to the level of substantial compliance. In order to find that there was substantial compliance, the purpose of the statute must have been effectuated by the petitioner's actions. Parties served with copies of a petition for judicial review by the district court have ordinarily been parties throughout the agency proceedings and are familiar with the issues in the contested case. *See Richards v. Iowa Dep't of Revenue,* 362 N.W.2d 486 (Iowa 1985). PERB was only notified of the appeal when the existence of a scheduling order was communicated to them over 100 days after the petition had been filed. If neither agency that participated in the contested case proceeding receives notice that the petitioner has appealed, the intent of the statute has been defeated.

We agree with the district court. Iowa Code section 17A.19(2) is a simple and straightforward way of insuring all parties receive notice of the action. In the instant case, PERB was advised of the action through a chance phone call made more than 100 days after the filing of the petition. The Code section was not "followed sufficiently so as to carry out the intent for which it was adopted." *Brown,* 423 N.W.2d at 194. The purpose of the statute was not served and, therefore, Cooper did not substantially comply.

We also agree with the district court and appellee and reject Cooper's alternative argument concerning a "virtual merger of identity" between PERB and the attorney general's office. *See Buchholtz v. Iowa Dep't of Pub. Instruction,* 315 N.W.2d 789, 792 (Iowa 1982). The agencies do not perform related duties, and there is no statutory authority for the argument the attorney general is PERB's agent for service of process. In addition, PERB and the attorney general have been adverse to

each other in certain judicial review actions. *See e.g. State v. Iowa Pub. Employment Relations Bd.*, 560 N.W.2d 560 (Iowa 1997).

In summary, Cooper did not substantially comply with the requirements of Iowa code section 17A.19(2). Since compliance is jurisdictional, we affirm the decision of the district court dismissing Cooper's action.

III. Attorney Fees and Expenses. We have affirmed the decision of the district court and need not address this issue.

AFFIRMED.