IN THE COURT OF APPEALS OF IOWA

FILED
DEC 13 1999
CLERK SUPREME COURT

No. 1999-314 (9-567) / 98-1044
Filed December 13, 1999

LAVERN LANGEL,
Petitioner-Appellee,

vs.

CARROLL COUNTY,
Respondent-Appellant.

Appeal from the Iowa District Court for Carroll County, Ronald H. Schechman, Judge.

Carroll County appeals the district court's reversal of a decision by the industrial commissioner which denied Lavern Langel workers' compensation benefits.

REMANDED.

Robert C. Landess and Anne L. Clark of Hopkins & Huebner, P.C., Des Moines, for appellant.

Colin J. McCullough of McCullough Law Firm, Sac City, for appellee.

Considered by Streit, P.J., Vogel and Vaitheswaran, JJ.

VOGEL, J.

Carroll County appeals the district court's reversal of a decision by the industrial commissioner which denied Lavern Langel workers' compensation benefits. In its reply brief, the County raised a jurisdictional question for the first time, alleging that Langel failed to timely file his petition for judicial review in district court.

The industrial commissioner filed her decision on August 29, 1997. Langel's petition for judicial review was file-stamped on October 1, 1997, outside of the thirty-day requirement. *See* Iowa Code § 17A.19(3) (1997) ("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.").

In his response to the County's reply brief, Langel states that he served his petition for judicial review within the time period by mailing to all prescribed parties on September 25, 1999. Langel also attached an affidavit asserting that the petition to the clerk of the district court was mailed on the same day that copies were mailed to opposing counsel. However, this affidavit is outside of the record on appeal. *See Jones v. Madison County*, 492 N.W.2d 690, 693-94 (Iowa 1992) (issues based on information not contained in the record will not be addressed on appeal).

Iowa case law has held that if a petitioner fails to timely file a petition for judicial review, the district court lacks authority to review the agency action. *See, e.g., Sharp v. Iowa Dept. of Job Service*, 492 N.W.2d 668, 669 (Iowa 1992);

Boedeker v. Employment Appeal Bd., 462 N.W.2d 728, 730 (Iowa App. 1990); *Sioux City Brick & Tile v. Employment Appeal Board*, 449 N.W.2d 634, 638-39 (Iowa 1989); *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989). However, our case law is not clear as to whether this particular jurisdictional issue can be raised at any time, or whether it can be waived by consent, waiver, or estoppel. *See State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993) ("[W]here subject matter jurisdiction exists, an impediment to a court's *authority* can be obviated by consent, waiver or estoppel.") (emphasis in the original); *see also Schrier v. State*, 573 N.W.2d 242, 245 (Iowa 1997) (holding although district court had lacked authority to hear a postconviction relief case due to the expiration of the statute of limitations, the State had waived the issue on appeal by consenting to the court's authority). However, this is an agency action which requires compliance with statutory prerequisites in order to invoke the district court's jurisdiction for judicial review. *See Anderson v. W. Hodgeman & Sons, Inc.* 524 N.W.2d 418, 422 (Iowa 1994). We therefore conclude that the issue was properly raised in the reply brief.

We conclude that this case should be remanded to the district court to receive evidence with regard to Langel's compliance with Iowa Code section 17A.19(3) to determine whether it had authority to hear the petition for judicial review.

REMANDED.