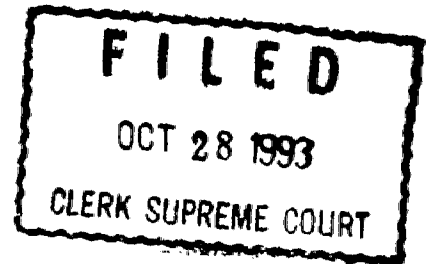


IN THE COURT OF APPEALS OF IOWA

No. 3-051 / 92-1323



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KRIS SPRATT,

Appellee,

vs.

EMPLOYMENT APPEAL BOARD,

Appellant.

Appeal from the Iowa District Court for Linn County,
Thomas L. Koehler and August F. Honsell, Jr., Judges.

The Employment Appeal Board appeals the district court's ruling on a petition for judicial review reversing its decision denying unemployment benefits. **REVERSED.**

William C. Whitten, Des Moines, for appellant.

Kris Spratt, Cedar Rapids, pro se.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ. Donielson, J., takes no part.

SCHLEGEL, J.

The Employment Appeal Board appeals the district court's ruling on a petition for judicial review reversing its decision denying unemployment benefits to Kris E. Spratt. The Board's appeal is grounded upon two issues. First, the Board claims its motion to dismiss should have been sustained. Second, the Board contends the court erred in holding that substantial evidence did not exist to support the Board's ruling denying unemployment benefits. We hold the motion to dismiss should have been sustained, and we reverse the district court.

Kris E. Spratt was employed by APAC Telemarketing Corporation, a company engaged in marketing of products by telephone. Spratt was employed to make calls offering products for sale by telephone. She was discharged after receiving three warnings of errors in her presentations to prospective customers. She applied for unemployment compensation.

Spratt appeared throughout these proceedings without the assistance of counsel. Because of her lack of understanding of the rules under which her claim would be determined, she failed to furnish her telephone number so that she could participate in the initial hearing on her claim. Forty minutes after the conclusion of that hearing she called the administrative law judge to inquire about the hearing. She was unable to offer any evidence and was told the record was closed. She was advised that a

decision would be forthcoming. The administrative law judge found that Spratt was discharged for misconduct. Spratt gave notice of appeal/rehearing. The Board denied a rehearing and affirmed the decision denying benefits.

Spratt sent a letter addressed to the Linn County District Court, "Attn: Clerk of Court," requesting a judicial review of the decision of the Board. Neither the letter, nor any other communication, directed the clerk of court to notify the parties. A copy of the letter was forwarded to the Employment Appeal Board.

No indication of service of notice or mailing of a copy of the letter was indicated on the letter, and no copy was served upon or mailed to APAC Telemarketing Corporation, the employer which had appeared in the proceedings before the administrative law judge in the case.

The respondent Employment Appeal Board moved the district court to dismiss the petition for lack of jurisdiction. The district court denied the Board's motion to dismiss, stating:

The intention of Iowa Code Chapter 17A is to strike a fair balance between one of its purposes (simplifying the process and ease and availability) and the need for economical and effective governmental administration. The failure to mail a copy of the Petition to the employer is not a jurisdictional defect and the Petitioner has substantially complied with Iowa Code Section 17A.19(2). See Brown v. John Deere Waterloo Tr. Works, 423 N.W.2d 193, 194-195 (Iowa 1988).

Considering the appeal on its merits, the district court ruled that the claimant was not guilty of misconduct and

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reversed the agency decision. From this ruling, the agency has appealed.

In our determination of this issue, we rely upon Iowa Code section 17A.19(2) (1991). This section, in relevant part, states:

Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa 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.

We hold the district court was in error when it found that the case was properly before it on appeal. We find the claimant failed to comply with the notice provisions of section 17A.19(2) and that such lack of compliance was jurisdictional. The agency's motion to dismiss should have been sustained.

A similar problem to that raised in this case was discussed and decided in Record v. Iowa Merit Employment Department, 285 N.W.2d 169, 171-73 (Iowa 1979). In that case, Record had been discharged by his employer, Job Service (a state agency). He filed a complaint with the Iowa Merit Employment Department (Commission). He then filed a petition for judicial review in the district court. In that petition, he named, as respondents, the Iowa Merit Employment Department, its director, and members of the Commission. He mailed copies of the petition to them pursuant to section 17A.19(2). He did not notify Job

Service--in any way--of the filing of the petition for judicial review.

Job Service filed an appearance and petition of intervention in the district court, "alleging the judicial review action should be dismissed for lack of subject matter jurisdiction due to petitioner's noncompliance with section 17A.19(2) in failing to serve Job Service with a copy of the petition for judicial review." Id. at 171-72.

The supreme court held that the failure to notify Job Service in any way of the filing of the petition for judicial review deprived the district court of jurisdiction to consider Record's petition. The district court's dismissal of the petition was affirmed.

In the strikingly similar factual situation in the instant case, the petitioner failed to notify the employer in any way. Although in this case the employer did not intervene and move for the dismissal of the petition for further review, the issue of the lack of notice was properly placed before the district court by the respondent, Employment Appeal Board.

Under section 17A.19(2), declaring the giving of notice jurisdictional, and following the authority of Record v. Iowa Merit Employment Department, we hold the district court was in error in overruling the respondent's motion to dismiss.

Throughout the appeal process, Spratt has proceeded pro se. She indicates that she does not have the understanding

of the procedures involved to be strictly held to their requirements. A lay person who fails to utilize professional assistance should be ready to take the consequences. State v. Walker, 236 N.W.2d 292, 295 (Iowa 1975).

[W]e cannot permit substantial departures from statutory appellate procedures on the basis a layperson is handling his own appeal. The legislature made no such exception [in Iowa Rule of Appellate Procedure 3]. The ultimate result of that policy would be a chaotic breakdown in our judicial system.

State v. Dunham, 232 N.W.2d 475, 477 (Iowa 1975).

"We do not utilize a deferential standard when persons choose to represent themselves. The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence". Metro. Jacobson Dev. v. Bd. of Review, 476 N.W.2d 726, 729 (Iowa App. 1991). If lay persons choose to proceed pro se, they do so at their own risk, Id.; Simmons v. Brenton Nat. Bank of Perry, 390 N.W.2d 143, 145 (Iowa App. 1986).

While it is regrettable that Spratt did not accomplish the appeal she sought, we cannot tailor rules to apply to her, thereby creating rules that are different than those that apply to everyone else. The district court believed she substantially complied with the law. With respect to the notice provisions of the statute, she did not comply as required.

We reverse the decision of the district court and hold that petitioner's appeal of the agency action is dismissed. Costs are assessed against petitioner.

REVERSED.