

IN THE SUPREME COURT OF IOWA

No. 18-0047

ISAAC ORTIZ,

Petitioner-Appellant,

vs.

**LOYD ROLING CONSTRUCTION, and
GRINNELL MUTUAL REINSURANCE,**

Respondents-Appellees.

**APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE JEANIE VAUDT JUDGE
Polk County No. CVCV054944**

**PETITIONER-APPELLANT'S
FINAL REPLY BRIEF AND
REQUEST FOR ORAL ARGUMENTS**

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PROOF OF SERVICE AND CERTIFICATE OF FILING

The undersigned certifies that this Appellant's Final Reply Brief was served and filed on the 4th day of June 2018, upon the following persons and upon the Clerk of the Supreme Court by electronic filing and electronic delivery to the parties via the EDMS system, pursuant to Iowa R. App. P. 6.902(2) and Iowa Ct. R. 16.1221(2) to the following:

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SECONDARY RESOURCES

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. Whether the District Court erred in dismissing the Petition for Judicial Review because Claimant substantially complied with Iowa Code § 17A.19(2) when Defendants timely received a file-stamped copy of the Petition for Judicial Review and then later received a copy by regular mail.**

IOWA APPELLATE CASES:

Brown v. John Deere Waterloo Tractor Works, 423 N.W.2d 193 (Iowa 1988).....7-8

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IOWA STATUTES:

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ARGUMENT

Defendants were not prejudiced in any way by the technical defects they claim by service of the Petition for Judicial Review. Defendants conveniently leave out this fact in their brief, and instead, take twenty-three (23) pages to explain what can be boiled down to: Defendants did not receive a copy of the Petition for Judicial Review *by regular mail* within ten (10) days of it being filed. Defendants essentially make an argument that is based on a literal interpretation of Iowa Code section 17A.19(2).

The biggest problem with Defendants' argument is it does not address the actual issue before the Court, which is whether Claimant substantially complied with Iowa Code section 17A.19(2) based upon the particular facts of the case while keeping the purposes of the Administrative Procedure Act in mind.

Claimant submits that based upon the particular circumstances – Defendants timely received a file-stamped copy of the Petition for Judicial Review and then later received a copy by regular mail – Claimant substantially complied with Iowa Code section 17A.19(2).

I. The District Court erred in dismissing the Petition for Judicial Review because Claimant substantially complied with Iowa Code § 17A.19(2) when Defendants timely received a file-stamped copy of the Petition for Judicial Review and then later received a copy by regular mail.

Claimant substantially complied with Iowa Code section 17A.19(2)¹ when Defendants timely received a file-stamped copy of the Petition for Judicial Review and then later received a copy by regular mail. This Court has instructed district courts to apply a “substantial compliance” standard. *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193 (Iowa 1988). “What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case[.]” *Id.* at 194. This Court has clearly held that failure to serve a petition for judicial review within ten days from filing of the petition does *not* defeat the district court’s jurisdiction. *Monson v. Iowa Civil Rights Comm’n*, 467 N.W.2d 230, 232 (Iowa 1991) (“Service, though tardy, was completed in substantial compliance with the statute.”).

Here, the District Court erred in dismissing the Petition for Judicial Review because it did not analyze all the facts of this case. It is true that Defendants did not receive a copy of the Petition for Judicial Review by regular mail within ten days of it being filed. If Defendants had, then Claimant would have literally complied with the Statute. However, this one fact does not dictate the outcome of this case

¹Claimant will refer to Iowa Code section 17A.19(2) as “the Statute.”

because that would be applying a “literal compliance” standard in direct contradiction of this Court’s precedent. *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193 (Iowa 1988).

Further, the District Court created a bright line rule that is tantamount to a shift from a standard of substantial compliance to the standard of literal compliance. The District Court created a rule that a party must attempt to mail or personally serve a petition for judicial review within ten days for there to be substantial compliance. App. 5-6. Claimant details how this rule contradicts the Court’s precedent in his initial Brief. For the instant Reply Brief, Claimant will focus on how the District Court erred in not considering all of the facts surrounding the conduct of Attorney Christopher Spencer.

A. The District Court erred when it failed to consider Attorney Christopher Spencer’s conduct in context of the purpose of the Iowa Administrative Procedure Act.

The District Court erred when it failed to consider Attorney Christopher Spencer’s conduct in context of the purpose of the Iowa Administrative Procedure Act. The purpose of the Administrative Procedure Act is “to simplify the process of judicial review of agency action as well as increase its ease and availability...” *Brown*, at 194-195 (citing to *Frost v. S.S. Kresge Co.*, 299 N.W.2d 646 (Iowa 1980)); Iowa Code § 17A.19(2); Arthur Bonfield, *The Iowa Administrative*

Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process, 60 Iowa L. Rev. 731, 758-759 (1975).

Here, it is undisputed that Claimant's attorney sent a file-stamped copy of the Petition for Judicial Review by regular mail. Attorney Christopher Spencer decided to complicate the process by raising a technical defect in the method of service. Attorney Christopher Spencer chose to litigate a technical defect *after* having received a file-stamped copy of the Petition by regular mail, and this conduct is inconsistent with the purpose of the Administrative Procedure Act.

B. The District Court erred when it failed to consider how the conduct of Attorney Christopher Spencer was misleading.

The District Court erred when it failed to take into account the fact that Attorney Christopher Spencer wrote a misleading email to Claimant's Attorney. Attorney Christopher Spencer minimized the gravity of the situation by leaving out his true intentions when he wrote:

I have been given documents that were recently filed with the Polk County District Court on Isaac Millanes Ortiz. I was wondering if you were going to be sending the Petition to us via regular mail? Please let me know as soon as you can.

App. 16. Contrary to the District Court's assertion, Attorney Christopher Spencer *never* raised subject matter jurisdiction in this email. *Id.* If Attorney Christopher Spencer had mentioned "subject matter jurisdiction," Claimant's attorney would have reacted differently because he would have understood the gravity of the

situation. Attorney Christopher Spencer's email seemed to imply that Defendants had no issue with the method of service, but simply wanted a copy via regular mail. Claimant's attorney did provide a copy by regular mail even though it appeared that Attorney Christopher Spencer was merely asking for a professional courtesy. Attorney Christopher Spencer was not up-front with opposing counsel and this type of deception should not be rewarded.

CONCLUSION

For the reasons stated above, the Court should reverse the District Court's ruling because Claimant substantially complied with Iowa Code Section 17A.19(2), and then, remand the case back to the District Court so the Petition for Judicial Review can be heard on the merits.

REQUEST FOR ORAL ARGUMENTS

Claimant requests that the case be submitted with oral arguments.

Respectfully submitted,

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ATTORNEY'S COST CERTIFICATE

We hereby certify that the costs paid for printing Claimant-Appellant's Brief
was the sum of \$_____.

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements

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