

IN THE COURT OF APPEALS OF IOWA

No. 6-1035 / 06-0657
Filed January 31, 2007

RON L. VAN BAALE,
Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD,
Respondent-Appellee.

Appeal from the Iowa District Court for Jasper County, Martha L. Mertz,
Judge.

Petitioner appeals the district court decision which dismissed his petition
for judicial review due to untimely service. **AFFIRMED.**

Steven J. Holwerda of Selby, Updegraff, Smith & Holwerda, Newton, for
appellant.

Richard Autry, Des Moines, for appellee.

Michael A. Giudicessi of Faegre & Benson, L.L.P., Des Moines, for
employer.

Considered by Mahan, P.J., and Miller, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.**I. Background Facts & Proceedings**

On December 15, 2005, Ron Van Baale filed a petition for judicial review of a decision of the Employment Appeal Board. Van Baale's attorney, Steven Holwerda, mailed a copy of the petition to the Board on December 28, 2005.

The Board filed a motion to dismiss, claiming Van Baale had failed to timely serve the petition, as required by Iowa Code section 17A.19(2) (2005). Under section 17A.19(2) a petitioner must serve copies of the petition on all named parties within ten days after filing the petition. In the present case, the tenth day after filing the petition was December 25, a Sunday. The next day, December 26, was a legal holiday. Van Baale had until December 27 to serve his petition for judicial review, but failed to mail the petition to the parties until the next day, December 28.

In a resistance to the motion to dismiss, Van Baale argued he had substantially complied with the service requirements because he had mailed the petition only one day late. He also stated there was good cause for the delay. Holwerda's son had gone to the Newton Hospital on December 17, was sent to Blank Children's Hospital on December 18, and remained in the hospital until December 22. In addition, there was a death in the Holwerda family on December 26, apparently unrelated to his son's illness. Van Baale asserted the Board was not prejudiced by the one-day delay in serving the petition.

The district court granted the Board's motion to dismiss. The court noted that compliance with the service requirements of section 17A.19(2) was

jurisdictional. The court concluded Van Baale had not substantially complied with section 17A.19(2) because no attempt had been made to serve the respondent within the statutory time period. The court also concluded the statute did not provide for a “good cause” delay in meeting the statutory time requirements. The court determined it lacked jurisdiction to address Van Baale’s petition for judicial review and dismissed it. Van Baale appeals.

II. Standard of Review

We review a district court ruling on a motion to dismiss for the correction of errors at law. *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006).

III. Merits

A. The applicable portion of section 17A.19(2) provides:

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.

A party’s failure to comply with the requirements of the statute deprives the district court of jurisdiction. *Dawson v. Iowa Merit Employment Comm’n*, 303 N.W.2d 158, 160 (Iowa 1981).

The supreme court, however, has “consistently held that substantial – not literal – compliance with section 17A.19(2) is all that is necessary to invoke the jurisdiction of the district court.” *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988). The court has stated substantial compliance

with a statute “means actual compliance in respect to the substance essential to every reasonable objective of the statute.” *Id.* (citation omitted).

In *Monson v. Iowa Civil Rights Commission*, 467 N.W.2d 230, 232 (Iowa 1991), a petitioner directed the sheriff to serve a petition in a timely manner, but the sheriff was unable to complete service within the ten-day period. The supreme court concluded the petitioner had substantially complied with the statute. *Monson*, 467 N.W.2d at 232. Also, in *Brown*, 423 N.W.2d at 193, a petitioner had served the petition two days before filing it with the court. In these circumstances the supreme court found substantial compliance with the statute. *Brown*, 423 N.W.2d at 194.

The district court determined Van Baale did not substantially comply with the requirements of section 17A.19(2) because no attempt was made to serve the petition within the ten-day period. We find no error in the district court’s conclusion. In both of the cases discussed above, the petitioner did not wait until after the ten-day period expired before attempting service of the petition. We affirm the district court’s conclusion Van Baale did not substantially comply with the requirements of section 17A.19(2). A failure of substantial compliance with the statutory requirements precludes the district court from acquiring jurisdiction of a case. *Buchholz v. Iowa Dep’t of Public Instruction*, 315 N.W.2d 789, 791 (Iowa 1982).

B. In an alternative argument, Van Baale claimed there was “good cause” for the failure to serve the petition within the time period required by section 17A.19(2). The case relied upon by Van Baale, *Wilson v. Ribbens*, 678

N.W.2d 417, 421 (Iowa 2004), does not apply to section 17A.19(2). We have found no cases which excuse untimely service under section 17A.19(2) based on good cause or extenuating circumstances. We affirm the district court's conclusion that noncompliance with the statute cannot be excused based on good cause.

We conclude the district court did not have jurisdiction to consider Van Baale's petition for judicial review because the petition was not served on the respondent within ten days, as required by section 17A.19(2). We affirm the district court's dismissal of the petition.

AFFIRMED.