

IN THE SUPREME COURT OF IOWA

NO.: 19-0608

CHRISTY B. LOGAN

PRO SE Petitioner-Appellant,

vs.

THE BON TON STORES, INC.

and

LIBERTY MUTUAL INSURANCE, CORP.

Respondents-Appellees

FINAL APPELLANT BRIEF

APPEAL FROM THE IOWA DISTRICT COURT

IN AND FOR JOHNSON COUNTY, IOWA

THE HON. LARS ANDERSON, JUDGE

JOHNSON COUNTY NO.: CVCV080486

PETITIONER – APPELLANT’S BRIEF AND REQUEST FOR ORAL ARGUMENTS

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CERTIFICATE OF FILING AND NOTICE OF SERVICE

Appellant filed this Appellant Brief on the 18th day of October 2019, to the Clerk of the Iowa Supreme Court and to the Appellees' Attorney(s) of Record through the Electronic Filing System.

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PRO SE PETITIONER - APPELLANT

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TABLE OF AUTHORITIES

IOWA APPELLATE CASES:

Ortiz vs. Lyod Roling Construction and Grinnell Mutual Reinsurance. 928 N.W. 2d 651 (Iowa 2019).

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

R.K. Richards vs. Iowa Department of Revenue, 362 N.W.2d 486 (Iowa 1985)

Donald W. Cowell vs. All-American, Inc, 308 N.S.2d 92 (1981)

Resthaven Cemetery Association vs. Board of Review of Polk County, Iowa, 249 N.W.2d 618 (1977)

IOWA STATUTES :

Iowa Code 17A.19 (2)

OTHER JURISDICTIONS:

Louis K. Jones vs. The Industrial Commission et al. 712 N.E.2d 563 (1999), Supreme Court of Illinois.

Paul F. Kelly and Brian Kelly by Paul F. Kelly, His Parent and Natural Guardian vs. City of Rochester, 231 N.S.2d 275 (1975), Supreme Court of Minnesota.

Elmira M. Seifert and Edward P. Seifert, Individually and as Husband of Elmira M. Seifert vs. City of Minneapolis, 213 N.W.2d 605 (1973).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I.** According to the Iowa Supreme Court, substantial compliance with a statute is sufficient when it reasonably carries out the objective of the statute, and is a matter regarding the individual facts in a case. Therefore, based upon the facts in the Disposition of the Case in District Court, did the Claimant substantially comply and honor the intentions of Iowa Code 17A.19, by submitting a timely Petition on January 3, 2019, to the District Court and the Respondents, simultaneously through the Electronic Filing System and by facsimile? (**Appendix pp. 78-80 Motion To Appeal Commission Ruling, January 3, 2019**).
- II.** Did the District Court exercise any discretion when the Claimant requested an extension of time on January 28, 2019, to certify the petition to the Respondents by mail, considering the court had a timely electronic Petition on file, and all parties had been notified? (**Appendix pp. 84-85, Motion To Extend Time For Notice of Service For Judicial Review**).
- III.** Was the subsequent mailing of a certified copy of the Petition to the Respondents on February 19, 2019, an attempt by the Claimant to carry out the objective and intentions of the statute thereby allowing the court to gain jurisdiction? (**Appendix pp. 90-91, Certified Receipts to Respondents, their insurer, and the District Court.**)
- IV.** In the March 13, 2019, ruling from the District Court, did the court fail to exercise any discretion and consider the individual facts in the case or follow a strict and literal interpretation of the statute, 17A.19? (**Appendix pp. 92-95, District Court Ruling**).

ROUTING STATEMENT

The Appellant asks the Iowa Supreme Court to retain this case on the basis that the issues set forth and presented are unique to the individual facts in this case, and further asks that it be analyzed according to the scope of this matter.

As such, the Appellant references *Ortiz vs. Loyd Construction and Grinnell Mutual Reinsurance* 928 N.W.2d 651 (Iowa 2019), as a standard and lens with which the actions in this case might be viewed.

Since this case involves an issue that utilizes at least one method of “Notice of Service,” not [literally] addressed in the statute, the Appellant asks the Supreme Court to determine whether the objective and intent of the statute was sufficiently carried out in this matter.

STATEMENT OF THE CASE

I. Nature of the Case

This case involves an analysis and review of a Petition for Judicial Review submitted in the District Court of Johnson County on January 3, 2019. Claimant, Christy B. Logan, filed a timely Petition seeking relief from a Final Agency Ruling by the Iowa Worker's Compensation Commission on December 5, 2018, for work-related injuries sustained while employed with The Bon Ton Stores, Inc. Thus, this brief seeks to determine whether the Claimant substantially complied with Iowa Code, 17A.19, thus granting the court jurisdiction, in order to appeal the Agency Ruling and address her cause of action.

II. Case History

Claimant, Christy B. Logan, was employed as a retail salesman in the Men's Department at Younkers in Coralville, Iowa, and maintained a relationship with the company from December 18, 2008 through August 20, 2018. In 2014, the claimant sustained injuries to her left knee on March 1, April 5, April 23, and October 18, on a frayed utility rug within her department. The Claimant reported each of these injuries in a timely manner to her immediate supervisor. (**Appendix pp. 13-18, Case Brief**). Despite these reports an accident report was not filed by the employer until May 24, 2014, for the first injury. (**Appendix p. 100, Bon Ton Accident Report**). No medical treatment or compensation was provided.

In June 2014, the claim was denied by Liberty Mutual Insurance Corp., citing a lack of proper notice and prior history of knee pain. On February 18, 2016, Claimant filed a Petition for medical benefits and compensation before the Iowa Worker's Compensation Commissioner. **(Appendix p. 4, Petition.)**

On June 21, 2018, a hearing was held before the Iowa Worker's Compensation Commission in Des Moines, Iowa.

On August 24, 2018, the Deputy Commissioner granted an adverse decision on the first three dates of injury.

On September 11, 2018, the Claimant appealed this decision to the Worker's Compensation Commissioner. **(Appendix pp. 58-68, Motion To Appeal Arbitration Ruling).**

On December 5, 2018, the Worker's Compensation Commissioner affirmed the August 24, 2018, ruling. **(Appendix pp. 75-77, Appeal Decision).**

III. STATEMENT OF FACTS AND DISPOSITION OF THE CASE IN DISTRICT COURT

On January 3, 2019, the Claimant filed a timely Petition for Judicial Review in the District Court of Johnson County, Iowa, through the Electronic filing system and added the names of the Respondent's Attorney(s) of Record in order to notify them of this filing and provide a copy of the Petition. **(Appendix pp. 78-80, Motion To Appeal Commission Ruling).**

Also, on January 3, 2019, the Claimant sent a copy of the Petition by facsimile to the Respondent's Attorney(s) of Record, and received a confirmation of this transaction. **(Appendix, pp. 101-103).** The Respondents have not asserted they did not receive either form of notification – electronically and by facsimile.

The Respondents have also claimed no prejudice by these actions. Prior to the District Court Proceeding, the Claimant and Respondents have been in on-going proceeding for years prior to this action, and as late as less than 30 days before submission for the Petition for Judicial Review.

On January 23, 2019, the Respondents filed a Motion to Dismiss. **(Appendix pp. 81-83).**

On January 28, 2019, in response to the Motion to Dismiss, Claimant filed a Motion to Extend Time for Notice of Service, to submit a copy of the Petition by certified mail. **(Appendix pp. 84-85).**

On February 11, 2019, the District Court issued an order asking the Respondents to respond to the Claimant's Motion to Extend Time for Notice of Service. The response was due by February 19, 2019.

On February 15, 2019, the Respondents submitted a reply to the Motion to Extend Time for Notice of Service. (**Appendix pp. 86-87**).

On February 19, 2019, between the filings of the Respondents' Motion to Dismiss and the Respondents' reply to the Motion to Extend Time for Notice of Service, the Claimant awaited and had anticipated a ruling from the court in response to the Motion Extend Time for Notice of Service, which is why the Claimant did not mail the petition at this interval. (**Appendix pp. 88-89**).

In their reply, the Respondents' noted they had not yet received the mailed petition. "Petitioner has yet to serve her petition on the counsel of record," the Respondent's stated. The Claimant then mailed a certified copy of the Petition on February 19, 2019, to the Respondents' and asked the court to accept this action as proof of attempting to comply with the statute. (**Appendix pp. 90-91**).

On March 13, 2019, the District Court granted the Respondents' Motion to Dismiss for Judicial Review. (**Appendix pp. 92-94**).

On April 12, 2019, Claimant filed a Motion to Appeal the District Court Ruling. (**Appendix pp. 96-99**).

ARGUMENT

Historically, the State Supreme has addressed the matter of compliance with Iowa Code 17A.19, by carefully examining each case on its individual merits, rather than with broad sweeping generalizations. As such, previous opinions have addressed the issue of “intent and objective” in their analysis of substantial compliance. We find this argument most notably in *Ortiz vs. Loyd Roling Construction and Grinnell Mutual Reinsurance* 928 N.W.2d 651 (Iowa 2019).

Upon assessing the facts in *Ortiz*, the actions of the Appellant in *Logan vs. Bon Ton* are noteworthy and parallel to those in *Ortiz*.

In their attempt to carry out the intent and objective of the statute, both Appellant’s attorney’s timely notified the Appellee of the Petition for Judicial Review, initially through the Electronic Filing System (EDMS), and then by a form of communication not expressly stated in the statute. In *Ortiz*, email. In *Logan vs. Bon Ton*, facsimile. Each Appellant further submitted a copy of the Petition by mail more than ten days after the filing of the Petition. In *Logan vs. Bon Ton*, this mailing was certified.

While this brief points to similarities in the cases, compliance with the statute examines the individual facts in each case. As such, the Appellant in *Logan vs. Bon Ton* finds that the District Court followed a strict and literal interpretation in the application of the statute. The fact that other forms of communication are not “strictly” prohibited, connotes that perhaps the legislature wanted to leave future methods open on a case by case basis. Therefore, the Appellant argues in *Logan* that the attempts made to properly notify parties in the matter should not be considered a fatal judicial error, void of intent.

CONCLUSION

Bearing the argument in mind, the Claimant asks that the opinion in this case reversed and returned to District for Judicial Review, on the basis that the Claimant sought to fulfill the intentions of 17A.19 as to carry out its objective and intent.

REQUESTS FOR ORAL ARGUMENTS

Appellant requests this case be submitted for oral arguments.

Dated this 18th day of October, 2019.

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ATTORNEY'S COST OF CERTIFICATE

I certify that the costs for services of the Appellant's Brief and Supporting Documents was a total of \$_____.

CERTIFICATE OF COMPLIANCE

This Appellant brief complies with the rules by utilizing appropriate font size, pagination, and proper headings.

Dated this 18th day of October, 2019.

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