

**IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY**

<b>Christy B. Logan,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>No. CVCV080486</b>
<b>vs.</b>	)	
	)	<b>RULING</b>
<b>The Bon Ton Stores, Inc.,</b>	)	
	)	
<b>Employer,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>Liberty Mutual Ins. Corp.,</b>	)	
	)	
<b>Insurance Carrier,</b>	)	
	)	
<b>Respondents.</b>	)	

On this date, the above-captioned matter came before the undersigned for review pursuant to the terms of the Court's February 11, 2019 Order. The Court finds a hearing on the parties' pending filings is unnecessary. Having considered the file, relevant case law, and written arguments of the parties, the Court hereby enters the following ruling:

**FACTUAL AND PROCEDURAL BACKGROUND**

On January 3, 2019, Petitioner filed a "Judicial Review: Motion to Appeal Commission Ruling." The Court construes this filing as a Petition for Judicial Review of a final agency action, filed pursuant to Iowa Code § 17A.19 (2019). Petitioner seeks review of a decision of the Iowa Workers' Compensation Commissioner, in which Petitioner was denied workers' compensation benefits. In support of her filing, Petitioner has submitted a copy of her deposition testimony; her notice of appeal of the arbitration ruling in the underlying matter; a copy of the Iowa Workers' Compensation Commissioner's Arbitration Decision, filed August 24, 2018; briefing Petitioner filed in the underlying matter; a summary of medical bills and expenses that Petitioner filed in the underlying matter; and a transcript of the proceedings that took place before the Iowa Workers' Compensation Commissioner.

On January 23, 2019, Respondents filed a Motion to Dismiss Petition for Judicial Review. Respondents argue that Petitioner has not complied with the service requirements of Iowa Code § 17A.19(2), in that Petitioner faxed a copy of her Petition to Respondents, rather than serving Respondents in the manner set forth in § 17A.19(2). Respondents contend the Court must dismiss the Petition because the Court lacks jurisdiction on judicial review.

On January 28, 2019, Petitioner filed a Motion to Extend Time for Notice of Service for Judicial Review. Petitioner asserts she has substantially complied with § 17A.19(2); Respondents' counsel is aware of "all past and current actions in this matter"; and Petitioner

seeks an extension of time to properly serve Respondents in order to give this Court jurisdiction over the controversy.

On February 15, 2019, Respondents replied, stating they rest on their Motion to Dismiss, and noting that Petitioner had, as of that date, not served her Petition on Respondents' counsel.

Petitioner responds that she has requested an extension of time to serve Respondents with the Petition. Petitioner also has filed a "Notice of Service Judicial Review: Motion to Appeal Commission Ruling," in which she appears to indicate that she has served Respondents with a copy of her Petition. Finally, Petitioner has filed copies of U.S. Postal Service Certified Mail Receipts, purporting to show service of the Petition on Respondents on February 19, 2019.

### CONCLUSIONS OF LAW

Iowa Code § 17A.19 governs the filing of petitions for judicial review, and provides, in relevant part:

2. Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. 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. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or their attorney of record at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.

Iowa Code § 17A.19(2) (2019). A failure to comply with the procedures set forth in Iowa Code § 17A.19 "deprives the district court of appellate jurisdiction over the case." Brown v. John Deere Waterloo Tractor Works, 423 N.W.2d 193, 194 (Iowa 1988). In Brown, the Iowa Supreme Court held that substantial compliance with § 17A.19 provides the district court with jurisdiction over the case. Id. at 194-96. The Iowa Supreme Court has adopted the following definition of "substantial compliance":

""[s]ubstantial compliance' with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served.

What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case."

Id. at 194 (citing Smith v. State, 364 So.2d 1, 9 (Ala.Crim.App. 1978)).

There is no question that the provisions of Iowa Code § 17A.19 apply to Petitioner's Petition for Judicial Review. The question is whether Petitioner substantially complied with § 17A.19, such that this Court has jurisdiction over her Petition. The Court concludes that Petitioner's sending of a facsimile of her Petition to Respondents is not substantial compliance with the requirements of § 17A.19. The service requirements of § 17A.19(2) are clear, and do not authorize service by facsimile. Petitioner's service of her Petition by facsimile does not constitute Petitioner following the statute sufficiently so as to carry out the intent for which it was adopted. Id. The Iowa Legislature has not authorized service by facsimile in these circumstances, and service of documents by personal service or certified mail is the manner prescribed by the Iowa Legislature in this and most, if not all, other types of disputes; thus, the Court cannot envision a situation where service by facsimile would be considered substantial compliance with the clear directive of the Iowa Legislature for service of judicial review petitions. Regardless of the fact that Petitioner sought an extension of time for service, the Court lacked jurisdiction over the merits of this dispute once the ten days allowed for service had passed. Further, the service on Respondents by certified mail was made well after the ten day service deadline in § 17A.19(2) had passed. Therefore, the jurisdictional requirements of § 17A.19(2) have not been met, and the Motion to Dismiss Petition for Judicial Review should be granted. Petitioner's Motion to Extend Time for Notice of Service for Judicial Review should be denied.

### **RULING**

**IT IS THEREFORE ORDERED** that Respondents' Motion to Dismiss Petition for Judicial Review is **GRANTED**. Petitioner's Motion to Extend Time for Notice of Service for Judicial Review is **DENIED**. Petitioner's Petition for Judicial Review is dismissed. If there are cost to be assessed, they are assessed to Petitioner.

Clerk to notify.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV080486  
**Case Title** CHRISTY LOGAN VS THE BON TON STORES INC, ET AL

So Ordered

A handwritten signature in blue ink that reads "Lars G. Anderson". The signature is written in a cursive style.

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Lars Anderson, District Court Judge,  
Sixth Judicial District of Iowa