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2012 IL App (3d) 110255-U

Order filed January 19, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

ARLENE MATTHEWS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit
Plaintiff-Appellee,	)	Kankakee County, Illinois
	)	
v.	)	
	)	
STATE OF ILLINOIS DEPARTMENT	)	
OF EMPLOYMENT SECURITY and	)	Appeal No. 3-11-0255
BOARD OF REVIEW,	)	Circuit No. 09-MR-328
	)	
Defendants-Appellants,	)	
	)	
(Walgreen Company,	)	Honorable
	)	Adrienne W. Albrecht
Defendant).	)	Judge Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Trial court should have dismissed plaintiff's complaint for administrative review because it was not served on the State of Illinois Department of Employment Security's Board of Review (Board) within 35 days of plaintiff receiving the Board's decision.
- ¶ 2 Plaintiff was discharged from her job at a Walgreens drug store in March 2009. After a

referee found that she was disqualified from receiving unemployment benefits, she appealed to the State of Illinois Department of Employment Security's Board of Review (Board). The Board affirmed the Department's decision, and plaintiff filed a complaint for administrative review in the circuit court. Plaintiff immediately served the complaint on Walgreen Co. but did not serve the Board until nearly eight months later. The Board filed a motion to dismiss. The court denied the Board's motion. Following a hearing, the trial court reversed the Board's decision denying plaintiff unemployment benefits. The Board appeals, arguing that (1) the trial court erred in denying its motion to dismiss, and (2) its decision to deny plaintiff unemployment benefits was not clearly erroneous. We reverse and remand.

¶ 3 Plaintiff, Arlene Matthews, was employed by Walgreen Co. as a cashier at a Walgreens store from August 23, 2006, to March 19, 2009. After Walgreen Co. terminated her employment, plaintiff filed for unemployment compensation benefits with the State of Illinois Department of Employment Security (Department). The local Department office granted plaintiff benefits. Walgreen Co. appealed the decision. Following a hearing, the referee set aside the local office's determination, finding that plaintiff was disqualified for benefits because she was discharged for misconduct connected with work.

¶ 4 Plaintiff appealed to the Department's Board of Review. On September 4, 2009, the Board affirmed the referee's decision. On September 16, 2009, plaintiff filed a complaint for administrative review in the circuit court, appealing the Board's decision. On the same date, plaintiff filed a "Summons in Administrative Review." At the top of the summons, plaintiff listed both the Board and Walgreen Co. as defendants. In the "Certificate of Mailing" section at the bottom of the summons, plaintiff listed Walgreen Co. as the only defendant and provided only its address.

¶ 5 Six months later, in March 2010, plaintiff sent by certified mailed copies of her complaint to Walgreen Co. and the Board. The Board received the complaint on March 19, 2010.

¶ 6 On May 10, 2010, plaintiff filed an amended complaint. She filed a "Summons in Administrative Review" with the amended complaint. The "Certificate of Mailing" section listed both Walgreen Co. and the Board as defendants, with addresses for each.

¶ 7 In June 2010, the Board filed a motion to dismiss, arguing that the court lacked subject matter jurisdiction over plaintiff's action because plaintiff failed to issue summons on the Board within 35 days of its decision. Plaintiff filed a response, admitting that she did not list the Board as a defendant in the "Certificate of Mailing" section of the September 16, 2009 summons. However, she argued that the Board was listed as a defendant at the top of the summons and that the Board received a copy of the original complaint in March 2010, and a copy of the amended complaint in May 2010.

¶ 8 The trial court denied the Department's motion to dismiss, finding "sufficient proof on the part of Plaintiff to obtain issuance of summons" because one summons was issued on the date plaintiff filed her complaint and plaintiff later took steps to procure service on the "remaining necessary parties." Following a hearing, the trial court reversed the Board's decision denying plaintiff unemployment benefits, finding that the decision was "clearly erroneous."

¶ 9 The Board first argues that the trial court should have dismissed plaintiff's action because plaintiff failed to cause summons to issue against the Board within the requisite time period.

¶ 10 We review *de novo* the trial court's ruling on a motion to dismiss. *Blumhorst v. Illinois Department of Employment Security*, 335 Ill. App. 3d 1075, 1077 (2002).

¶ 11 Where expressly adopted, the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West

2008)) is the exclusive method of reviewing the decision of an administrative agency. *Hanke v. Department of Professional Regulation*, 296 Ill. App. 3d 825, 827 (1998). The Unemployment Insurance Act provides: "Any decision of the Board of Review \*\*\* shall be reviewable only under and in accordance with the provisions of the Administrative Review Law." 820 ILCS 405/1100 (West 2008).

¶ 12 Section 3-102 of the Administrative Review Law provides that a party shall be barred from obtaining judicial review of an administrative decision unless review is sought within the time and manner provided. 735 ILCS 5/3-102 (West 2008). Section 3-103 of the Administrative Review Law provides:

"Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of a summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." 735 ILCS 5/3-103 (West 2008).

¶ 13 Section 3-105 provides that summons must be issued on the administrative agency and each of the other defendants. 735 ILCS 5/3-105 (West 2008). When relief is sought from a decision involving a claim for unemployment compensation benefits, the Board is the administrative agency that must be named as defendant and served. *New York Carpet World Inc. v. Department of Employment Security*, 283 Ill. App. 3d 497, 500-01 (1996).

¶ 14 Issuance of a summons within 35 days is mandatory. *Gunther v. State of Illinois Civil Service Comm'n*, 344 Ill. App. 3d 912, 914 (2003). The Administrative Review Law is a departure from common law; parties seeking its application must adhere strictly to its procedures. *Stanley v. Department of Employment Security*, 235 Ill. App. 3d 992, 995 (1992). A plaintiff's failure to follow

the requirements of the Administrative Review Law requires dismissal of the action. See *Gunther*, 344 Ill. App. 3d at 914.

¶ 15 A complaint for administrative review that is not served within 35 days must be dismissed unless the plaintiff provides evidence that she attempted, in good faith, to obtain issuance of the summons within the 35-day period. See *Gunther*, 344 Ill. App. 3d at 914; *Blumhorst*, 335 Ill. App. 3d at 1078. Good faith exists when circumstances beyond the control of the plaintiff cause a summons not to be filed within the 35-day period. *Stanley*, 235 Ill. App. 3d at 996. Where there is no evidence that the plaintiff requested a summons to be issued within the 35-day period, the plaintiff fails to establish good faith. See *Blumhorst*, 335 Ill. App. 3d at 1079. The lack of evidence of a good-faith effort on the plaintiff's behalf is fatal to the plaintiff's complaint and compels dismissal. *Veazey v. Baker*, 322 Ill. App. 3d 599, 606 (2001).

¶ 16 Here, plaintiff did not strictly adhere to the procedures set forth in the Administrative Review Law. She correctly named all of the necessary defendants in her complaint and filed the complaint within the requisite 35-day period. However, she did not cause summons to issue against each defendant within 35 days. Plaintiff did not name the Board or provide its address in the list of defendants to receive summons. Her initial request for summons listed only Walgreen Co. Summons did not issue against the Board, a necessary party, until nearly eight months after plaintiff filed her complaint.

¶ 17 Plaintiff has not offered, nor does the record disclose, any evidence demonstrating a good-faith effort on her part to serve the Board within 35 days of its decision. Nor is there any indication that plaintiff's omission was the result of circumstances beyond her control. Rather, the record reflects that plaintiff made no effort to issue summons against the Board until nearly eight months

after she filed her complaint.

¶ 18 Because plaintiff did not cause summons to issue on the Board in the applicable time period and failed to establish a good faith effort to do so, the trial court erred in denying the Board's motion to dismiss. See *Blumhorst*, 335 Ill. App. 3d at 1079; *Hanke*, 296 Ill. App. 3d at 829.

¶ 19 Since we find that plaintiff's complaint should have been dismissed, we need not reach the Board's remaining argument on the merits of the case.

¶ 20 The order of the circuit court of Kankakee County is reversed and the cause is remanded.

¶ 21 Reversed and remanded.