

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

JOSEPHINE M. BERELC,

Plaintiff,

vs.

Case No. 91-CV-011-788

STATE OF WISCONSIN LABOR AND
INDUSTRY REVIEW COMMISSION,

Defendant.

MEMORANDUM DECISION

Introductory Statement

This case deals with an appeal of a decision by the Labor and Industry Review Commission ("LIRC") which reduced unemployment benefits received by the plaintiff because she was receiving social security benefits at the same time. The defendant has filed a motion to dismiss plaintiff's complaint for failing to properly serve an authenticated copy of the summons and complaint upon the LIRC.

Issue Presented

The issue is whether this court has jurisdiction to review the decision of the LIRC.

Statement of Facts

The LIRC decision was issued August 5, 1991. Plaintiff's papers were timely filed with this court on August 26, 1991. Plaintiff did not serve the LIRC until January 3, 1992.

Discussion

Section 102.23(1), Wis. Stats., requires a party seeking review of an LIRC decision to file a summons and complaint with the circuit court *and* serve an authenticated copy of the summons and complaint upon the commission within 30 days. This requirement is also set forth in a copy of the "Appeal Rights" given to a petitioner before the LIRC.

Because the plaintiff did not comply with section 102.23(1), Wis. Stats., this court lacks jurisdiction. "Invoking the court's jurisdiction to review an agency decision by petition for review is "entirely statutory" . . . Failure to comply [with the statute] is fatal; it requires dismissal for lack of subject matter jurisdiction.' [Cites omitted]." YMCA of Beloit v. Revenue Department, 141 Wis.2d 907, 914 (1987).

It is undisputed that "to establish subject matter jurisdiction in the circuit court, strict compliance [with the statute] is required." Johnsonville Sausage v. Revenue Department, 113 Wis.2d 7, 9 (Ct. App. 1983). Also see Brandt v. Labor and Industry Review

Commission, 166 Wis.2d 623 (1992).¹ The burden here is on the petitioner to demonstrate that service on the respondent has been done in accordance with the applicable law in order for the court to obtain jurisdiction.

Conclusion

The plaintiff has not satisfactorily established that she has complied with Chapter 102 of the Wisconsin Statutes. Therefore, this court does not have jurisdiction to review the decision of the LIRC. Accordingly, the defendant's motion to dismiss is **granted**.

Counsel for the defendant should draft an order consistent with this opinion and submit it under the five-day rule.

Dated this 1st day of October, 1992, at Milwaukee, Wisconsin.

BY THE COURT:

Hon. Robert J. Miech
Circuit Court Judge

¹"Robert Brandt's failure to join his employer as a party is not a hypertechnical deficiency; rather, it is a lack of compliance with a statutory requirement. . . . We must . . . require strict compliance." 166 Wis.2d at 634-635.