IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ANDREA L. BECK, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	No. 30043-9-III UNPUBLISHED OPINION

Korsmo, C.J. — An e-mail delivery problem prevented timely service of a notice of appeal on two parties. Clear precedent from the Washington State Supreme Court required that the matter be dismissed. We affirm the superior court.

FACTS

Appellant Andrea Beck worked for 20 years as a cardiac services technician before being discharged by Providence St. Mary Medical Center of Walla Walla. Providence contended that she falsified her time sheets. The Employment Security Department (ESD) denied Ms. Beck unemployment benefits due to misconduct.

She appealed that ruling to the Office of Administrative Hearings. At that hearing, Providence contended that Ms. Beck had actually been fired for insubordination. The administrative law judge ruled in favor of Ms. Beck, finding that Providence had not established that misconduct occurred. Providence sought review from the Commissioner's Review Office, which ruled that there had been disqualifying misconduct and denied benefits. The written ruling issued August 20, 2010.

Ms. Beck then filed a petition for review with the superior court on September 17, 2010. Providence was served by mail that same day. Ms. Beck's counsel also sent a letter via e-mail to ABC Legal Messengers, asking it to serve ESD and the Attorney General's Office. Unfortunately, due to a mistake in the e-mail address, ABC did not receive the documents until the following week. It served the Attorney General on September 23 and ESD on September 24.

The superior court granted ESD's motion to dismiss, finding that it had no jurisdiction over the proceedings due to the untimely service on ESD. Ms. Beck then timely appealed to this court.

ANALYSIS

The sole issue in this appeal concerns the determination that superior court had no jurisdiction to hear this case. We agree with the superior court that this issue has been

resolved against Ms. Beck's position.

This court reviews a superior court's order of dismissal for failure to comply with the service requirements of the Administrative Procedure Act (APA), ch. 34.05 RCW, de novo. *Ricketts v. Bd. of Accountancy*, 111 Wn. App. 113, 116, 43 P.3d 548 (2002). In order to obtain review of an administrative decision,

> [a] petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

RCW 34.05.542(2). The superior court does not obtain appellate jurisdiction over an appeal from an agency decision unless the appealing party complies with the service requirements of RCW 34.05.542(2). *See, e.g., Union Bay Pres. Coal. v. Cosmos Dev. & Admin. Corp.,* 127 Wn.2d 614, 617-18, 902 P.2d 1247 (1995); *City of Seattle v. Pub. Emp't Relations Comm'n* (*PERC*), 116 Wn.2d 923, 926-27, 809 P.2d 1377 (1991).

Ms. Beck argues that she substantially complied with the statute—the court and opposing party were timely notified of her appeal, and the other parties were notified shortly thereafter, so all concerned had actual notice of her intention. Substantial compliance is "actual compliance in respect to the substance essential to every reasonable objective of [a] statute." *In re Writ of Habeas Corpus of Richard J. Santore,* 28 Wn. App. 319, 327, 623 P.2d 702 (1981). Generally, noncompliance with a statutory mandate

is not substantial compliance. *Id.* Courts have found substantial compliance in cases where there has been actual compliance with a statute, but with minor procedural faults. *Cont'l Sports Corp. v. Dep't of Labor & Indus.*, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996).

The issue of whether the substantial compliance doctrine applies to our APA is undecided. *PERC*, 116 Wn.2d at 928. However, *PERC* did decide that the doctrine does not apply to a statutory time limit:

> It is impossible to substantially comply with a statutory time limit in the same way. It is either complied with or it is not. Service after the time limit cannot be considered to have been actual service within the time limit. We therefore hold that failure to comply with a statutorily set time limitation cannot be considered substantial compliance with that statute.

Id. at 928-29.

Since the decision in *PERC*, other courts have considered the applicability of the substantial compliance doctrine to RCW 34.05.542. In *Union Bay Preservation Coalition.*, the court considered whether timely service of a copy of the petition on the parties' attorney, rather than the parties, substantially complied with RCW 34.05.542(2)'s requirement that all parties of record be served. 127 Wn.2d at 617. The court found that the unequivocal definition of "party" in the APA combined with the legislative history precluded application of the substantial compliance doctrine. The court noted that its

"ruling arises directly from the words of the APA and, for this reason, decisions applying the doctrine of substantial compliance to other statutes are not persuasive." *Id.* at 620. In *Cheek v. Emp't Sec. Dep't*, 107 Wn. App. 79, 25 P.3d 481 (2001), this court rejected the appellant's argument that she achieved timely service on the ESD by serving the Attorney General's Office 34 days after the 30-day time limit even though she never served the ESD. We held that "[s]ubstantial compliance with the service requirements of the APA does not invoke . . . appellate jurisdiction." *Id.* at 85.

Division One of this court considered a nearly identical situation to this case in *Clymer v. Emp't Sec. Dep't*, 82 Wn. App. 25, 917 P.2d 1091 (1996). In *Clymer*, the appellant wanted to appeal an unemployment determination made in his case by the commissioner of ESD. Although the appellant's attorney left the petition for review for a legal messenger several days before the deadline, the messenger did not take the petition from the office because it was not accompanied by a filing fee. *Id.* at 27. The mistake was discovered and rectified one day after the deadline had expired. *Id.* The appellant contended that he substantially complied with RCW 34.05.542(2). *Id.* at 28. Division One rejected the argument, holding that a failure to comply with RCW 34.05.542(2)'s 30-day filing requirement "resulting from a messenger's failure or refusal to accept a Petition for Review for filing, does not constitute substantial compliance." *Id.* at 29. In light of

PERC and *Clymer*, Ms. Beck's contention that she substantially complied with the 30-day time limit is unconvincing.

While we agree with Ms. Beck that all concerned parties were alerted to her desire to seek superior court review, *PERC* and *Clymer* confirm that notice alone is not sufficient. When the legislature has specified a time deadline for filing and service, the doctrine of substantial compliance will not serve to override that deadline.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, C.J.

WE CONCUR:

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Brown, J.

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Sweeney, J.