

IN THE COURT OF APPEALS OF IOWA

No. 0-067 / 09-1062
Filed February 24, 2010

CARLOS VARGAS PATINO,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF
TRANSPORTATION, MOTOR
VEHICLE DIVISION,**
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,
Judge.

Carlos Vargas Patino appeals the district court's dismissal of his petition
for judicial review for lack of subject matter jurisdiction. **AFFIRMED.**

Bassel El-Kasaby of Kasaby & Nicholls, Omaha, Nebraska, for appellant.

Teresa K. Baumann, Iowa Department of Transportation, Ames, for
appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

The Iowa Department of Transportation (DOT) entered a ruling denying Carlos Vargas Patino's request for rehearing on October 6, 2008. On November 6, 2008, Patino filed a petition for judicial review in the Polk County District Court.¹ The State filed a motion to dismiss the petition as untimely. The district court determined the petition had not been filed within thirty days after the agency's final decision, as required by Iowa Code section 17A.19(3) (2007), and thus was untimely. We affirm.

The record reveals that on October 6, 2008, the DOT ruled upon Patino's application for rehearing. On the same day, the DOT mailed by ordinary mail a copy of the ruling to Patino in accordance with their administrative rule. See Iowa Admin. Code r. 761-13.12(2). The DOT was authorized to implement this rule pursuant to Iowa Code section 17A.12(1). If a party files an application for rehearing, "the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied." Iowa Code § 17A.19(3). Unless the agency grants the application within twenty days of its filing, the application is deemed denied. *Id.* § 17A.16(2). Here, Patino's application was both denied and deemed denied on October 6, 2008. Under either circumstance, the petition for judicial review was required to be filed on or before November 5, 2008 (as that day was not a Saturday, Sunday, or legal holiday). See Iowa Code §§ 4.1(34), 17A.19(3); *Ford Motor Co. v. Iowa Dep't of Transp. Regulations Bd.*, 282 N.W.2d 701, 702 (Iowa 1979).

¹ Patino filed an amended and substituted petition on November 7, 2008.

Because the petition was untimely, the district court was without jurisdiction to review the case. See Iowa Code § 17A.19(3) (“If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after the application has been denied or deemed denied.”); *City of Des Moines v. City Dev. Bd. of State*, 633 N.W.2d 305, 309 (Iowa 2001) (“A timely petition for judicial review from an administrative decision is a jurisdictional prerequisite.”); *Sharp v. Iowa Dep’t of Job Servs.*, 492 N.W.2d 668, 670 (Iowa 1992) (noting a petition for judicial review must be filed in the district court within thirty days of final agency action in order to invoke the jurisdiction of the court).

AFFIRMED.