

IN THE COURT OF APPEALS OF IOWA

No. 1-966 / 11-0794
Filed February 1, 2012

TRISTAN CONSTRUCTION, INC.,
Petitioner-Appellant,

vs.

**IOWA WORKFORCE DEVELOPMENT
and THE IOWA DEPARTMENT OF
INSPECTIONS AND APPEALS,**
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

Employer appeals the district court's dismissal of its petition seeking
judicial review of agency action. **AFFIRMED.**

Kimberly K. Baer of Baer Law Firm, Des Moines, for appellant.

Joseph L. Bervid and Nicholas S.J. Olivencia, Des Moines, for appellee
Iowa Department of Workforce Development.

Considered by Vogel, P.J., Eisenhauer, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

EISENHAUER, J.

On December 18, 2009, Iowa Workforce Development—Tax Bureau (IWD) assessed Tristan Construction, Inc. for unpaid unemployment insurance contributions at “the rate assigned to newly covered construction employers under” Iowa Code section 96.7 (2009). On January 18, 2010, Tristan appealed the assessment. IWD sent a copy of the file to Tristan with a cover sheet stating: “Any documents to be added to the appeal file must be faxed to the Inspections and Appeals Administrative Law Judge” Also: “The Division of Administrative Appeals will notify you directly of the date and time of your appeal hearing in a written notice.”

The subsequent “Notice of Telephone Hearing” was headed: “Iowa Department of Inspections and Appeals, Division of Administrative Hearings, Wallace State Office Building, Des Moines, Iowa 50319.” The notice set a September 2010 hearing, listed IWD as the “Other Interested Party,” and provided the name and phone number of the administrative law judge (ALJ). The notice informed Tristan:

If you wish to have documents or other exhibits considered by the administrative law judge in the hearing, you must do the following:

- Mail or fax the documents or other exhibits to the administrative law judge at the following location:
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
502 E. 9th Street, 3rd floor
Des Moines, IA 50319
Fax: (515) 281-XXXX

After hearing, the ALJ ruled against Tristan on September 15, 2010. The ALJ’s decision is headed: “Iowa Department of Inspections and Appeals,

Division of Administrative Hearings, Wallace State Office Building, Des Moines, Iowa 50319.” The decision instructed the parties the “Decision Shall Become Final” unless “(1) Either party files a WRITTEN application for a rehearing WITHIN TWENTY (20) DAYS AFTER [September 15, 2010] . . . OR (2) Either party may petition the District Court WITHIN THIRTY (30) DAYS after [September 15, 2010].”

It is undisputed Tristan’s accountant did not file its October 4, 2010 application for rehearing with the ALJ or the Iowa Department of Inspection and Appeals. Tristan instead filed for rehearing with the opposing party, IWD, and the employment appeal board,¹ an agency not involved in the contested case. Tristan’s rehearing application is headed: “State of Iowa, Employment Appeal Board Iowa Workforce, Lucas State Office Building, 4th Floor, Des Moines, IA 50319.” Because of the misfiling, no ruling was made on the request for rehearing.

On November 3, 2010, Tristan filed a petition for judicial review in the district court. IWD moved for dismissal arguing because Tristan did not file an application for rehearing with the ALJ, “there was nothing to deny or deem denied.” IWD asserted the district court lacked subject matter jurisdiction because Tristan’s petition for judicial review was not timely filed within thirty days of the September 15, 2010 ALJ ruling. The district court granted IWD’s motion, and this appeal followed. We review for correction of errors at law. *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006).

¹ Iowa Code section 96.6 provides a process for an employee to claim unemployment benefits. Iowa Code section 96.6(3) states the ALJ’s unemployment benefits decision may be appealed “to the employment appeal board.”

On appeal, Tristan acknowledges untimely appeals implicate the court's subject matter jurisdiction, but argues its rehearing application substantially complied with the Iowa Administrative Procedures Act, chapter 17A, "because of the intimate relationship between the Employment Appeal Board and the Department of Inspections and Appeals." Second, Tristan claims the lack of clarity in the ALJ's decision led Tristan to conclude its rehearing application should be filed with IWD and the employment appeal board. Third, Tristan argues it should be held to a standard of "what an average layperson would understand about where a request for rehearing would need to be filed."

We find no merit to Tristan's arguments. Iowa Code section 96.7(5) governs appeals regarding employer contributions and requires petitions for judicial review to be filed "within thirty days after the date of the notice to the employer." Further, Section 17A.19(3) states a petition for judicial review must be filed thirty days after the an application for rehearing is denied or deemed denied or thirty days after the agency's final contested case decision.

"A timely petition for judicial review to the district court is a jurisdictional prerequisite for review of final agency action." *Sharp v. Iowa Dep't of Job Serv.*, 492 N.W.2d 668, 669 (Iowa 1992) (declining to expand the district court's judicial-review-of-agency-action jurisdiction beyond statutory time limits). "Judicial review of the administrative proceedings is a right conferred by statute." *Kerr v. Iowa Pub. Serv. Co.*, 274 N.W.2d 283, 287 (Iowa 1979). "[W]here a right of judicial review is statutory, the procedure prescribed by the statute must be followed." *Id.* Additionally, "jurisdiction does not attach, nor is it lost, on equitable principles. It is purely a matter of statute." *Cunningham v. Iowa Dep't of Job*

Serv., 319 N.W.2d 202, 204 (Iowa 1982) (rejecting argument of substantial compliance with application for rehearing process).

Based on these principles and the facts detailed above, the district court correctly dismissed Tristan's untimely petition for judicial review.

AFFIRMED.