

**IN THE COURT OF APPEALS OF IOWA**

No. 2-993 / 11-1901  
Filed January 9, 2013

**NEW DIRECTION IN SALES, INC.,**  
Petitioner-Appellant,

**vs.**

**EMPLOYMENT APPEAL BOARD,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

New Direction in Sales, Inc. appeals the district court's dismissal of its  
petition for judicial review. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Richard Autry, Employment Appeal Board, Des Moines, for appellee.

Heard by Doyle, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

New Direction in Sales, Inc. (NDS) appeals the district court's dismissal of its petition for judicial review. NDS contends the district court erred in granting the claimant's motion to dismiss. We affirm.

The issue before us is strictly procedural. Former NDS employee Carey Ryan's initial claim for unemployment benefits against NDS was denied; however, Ryan appealed from that decision, and the decision denying her benefits was reversed. On June 23, 2011, NDS filed a petition for judicial review naming the Employment Appeal Board as respondent. NDS argued the ruling ordering payment of benefits to Ryan would unjustly enrich Ryan and prejudice the substantial rights of NDS and was unreasonable, arbitrary, capricious, and based upon erroneous application of law.

On July 29, 2011, Ryan filed a motion to dismiss NDS's petition. Ryan argued NDS failed to comply with the jurisdictional requirements of the Iowa Code with respect to administrative appeals. Ryan stated that neither she nor her attorney was served with NDS's petition.<sup>1</sup>

On October 21, 2011, following a hearing, the district court entered an order granting Ryan's motion to dismiss. NDS now appeals, arguing the court erred in dismissing its petition. We review the district court's ruling on a motion to dismiss for errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012).

Iowa Code section 17A.19(2) (2011) provides in relevant part:

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<sup>1</sup> NDS's petition did not name Ryan as a party.

Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. . . .

As this provision specifically sets forth, in order for the district court to gain jurisdiction of an appeal of an agency action in a contested case, the petition must be served upon all parties of record in the case before the agency within ten days of the filing of the petition. Iowa Code § 17A.19(2). Here, it was incumbent upon NDS to serve its petition on those parties, which included Ryan, within ten days of the filing of that petition. Failure to strictly comply with this statutory provision deprived the district court of appellate jurisdiction over the case. See *Sioux City Brick & Tile Co. v. Emp't Appeal Bd.*, 449 N.W.2d 634, 637-38 (Iowa 1989); *Dawson v. Iowa Merit Emp't Comm'n*, 303 N.W.2d 158, 160 (Iowa 1981).

NDS contends any defect in its petition was cured when the Employment Appeal Board filed its answer on July 13, 2011, "and the answer contained no allegation of lack of jurisdiction or defective service." NDS also argues any procedural defect was remedied when Ryan filed her motion to dismiss, because that motion essentially "amounted to a motion to intervene." Upon our review, we find neither of these contentions to be persuasive. Ryan was a party of record, separate from the Board, who was not served notice of the petition. *Klinge v. Bentien*, 725 N.W.2d 13, 16 (Iowa 2006) (observing lack of subject matter jurisdiction can be raised at any time, cannot be waived or vested by consent by

a party, and “[t]he parties themselves cannot confer subject matter jurisdiction on a court by an act or procedure”). We are not persuaded by NDS’s argument that Ryan’s filing of a motion to dismiss for lack of jurisdiction avails Ryan to the court’s jurisdiction. See *id.* Finally, we decline to entertain NDS’s request to reverse any prior precedent interpreting Iowa Code section 17A.19(2) for purposes of this appeal.

We affirm the district court’s dismissal of NDS’s petition for judicial review for failure to comply with the jurisdictional requirements of the Iowa Code with respect to administrative appeals.

**AFFIRMED.**