

**IN THE COURT OF APPEALS OF IOWA**

No. 9-845 / 09-0028  
Filed November 25, 2009

**KATHY THOMPSON,**  
Plaintiff-Appellant,

**vs.**

**STATE OF IOWA,**  
Defendant-Appellee.

---

Appeal from the Iowa District Court for Mills County, Timothy O'Grady,  
Judge.

Thompson appeals the district court's dismissal for lack of jurisdiction.

**AFFIRMED.**

Karen A. Dales, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Jeanie Kunkle Vaudt, Assistant  
Attorney General, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, P.J.**

Kathy Thompson appeals the district court's ruling it lacked jurisdiction to hear the matters raised in her "motion for directive." Resolution of this appeal requires an understanding of the previously-issued court and agency rulings.

In November 2003, the Iowa Department of Inspections & Appeals determined Thompson, an employee of the Glenwood Resource Center, had physically abused a resident and she was placed on the child abuse registry. Thompson appealed, and after an evidentiary hearing before an administrative law judge (ALJ) the Department's decision was reversed. The ALJ ordered Thompson removed from the child abuse registry.

The State appealed to Iowa Department of Inspections & Appeals Director. On August 19, 2004, the director issued a final order reversing the ALJ. The director concluded the allegation Thompson engaged in child abuse is founded and kept Thompson's name on the child abuse registry.

In September 2004, Thompson timely petitioned for judicial review of the director's final order. In November 2007, the district court reversed the director and remanded. The district court's ruling is critical to the resolution of this appeal. The court stated:

The record made at the contested case hearing must be weighed as a whole, including any determinations of veracity by the ALJ who personally observed the demeanor of the witnesses. Nothing in the Final Order shows that the Director weighed the determinations of veracity by the ALJ who personally observed the demeanor of the witnesses . . . . As the Final Order does not reflect that the Director weighed the determinations of veracity made by the ALJ in his proposed decision, the Final Order should be reversed and remanded for consideration of the record in its entirety, including the ALJ's determinations on the veracity of the eyewitness.

...  
IT IS FURTHER ORDERED AND ADJUDGED that this matter is remanded to the Director of the Department of Inspections and Appeals for rehearing.

On remand, after reviewing the complete record, including evidence regarding eyewitness veracity as directed by the district court, the director again reversed the ALJ's proposed decision and ruled the allegation Thompson engaged in child abuse is founded. The director's final order on April 24, 2008, continued Thompson's name on the child abuse registry.

Thompson did not seek agency rehearing as authorized by Iowa Code section 17A.16(2) (2007). Rather, on May 15, 2008, after the deadline for filing a petition for rehearing had expired, Thompson faxed and mailed a document captioned "Appeal" to the Department.

On May 23, 2008, the State faxed and mailed Thompson a letter informing her "[t]he law provides no further appeal mechanism within the agency." Noting the district court did not retain jurisdiction on remand and noting the time for filing a motion for rehearing had passed, the State informed Thompson: "Your remedy at this point . . . lies in petitioning the district court for judicial review of the agency's final order on remand dated April 24, 2008." Thompson did not file a petition for judicial review.

On October 15, 2008, Thompson filed a "motion for directive" with the district court arguing the first judicial review court "found that the final order failed to consider the evidence presented in the hearing and ordered that the [Department] have a rehearing of this matter." In response, the State filed a motion to strike; arguing the remand was for consideration of the record in its

entirety and did not include directions to take additional evidence. In December 2008, the court sustained the State's motion to strike, stating:

Thompson did not pursue other remedies after her May 15, 2008 "Appeal." She did not petition for judicial review within thirty days of the April 24, 2008 Final Order. The court did not retain jurisdiction over this matter. Thompson's "Motion for Directive" is untimely. The court does not have jurisdiction to hear this matter.

Thompson now appeals, arguing the district court erred in granting the State's motion to strike and in treating her motion for directive as an untimely petition for judicial review. We review for correction of errors at law. Iowa R. App. P. 6.907 (2009).

Thompson essentially argues a remand for "consideration of the record in its entirety" entitles her to a second evidentiary hearing. We do not read the court's remand directive so broadly. While the court's remand order briefly mentions rehearing, when considered in context, the plain language of the remand order instructs the agency to weigh the record as a whole while considering "the ALJ's determinations on the veracity of the eyewitness." The Director considered the record anew as directed and issued a new final order. Thompson could have argued a new evidentiary hearing was required by timely seeking an agency rehearing or by timely seeking judicial review. She did neither. We find no error and decline the State's request for an award of costs.

**AFFIRMED.**