

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

WOODS CONSTRUCTION AND)
DEVELOPMENT, INC.)
252 MASON DR.)
RIVERDALE, IA 52722)
Appellant,)
v.)
IOWA WORKFORCE DEVELOPMENT,)
Respondent.)

DIA Case No. 24IWDMO011

**ADMINISTRATIVE LAW JUDGE
DECISION**

STATEMENT OF THE CASE

Iowa Workforce Development (“IWD”) completed an investigation and determined that an employer-employee relationship existed between Woods Construction and Developments, Inc. (Woods Construction) and certain individuals performing services for the company. Woods Construction appealed IWD’s determination. IWD transferred the case to the Department of Inspections, Appeals and Licensing (DIAL) to schedule a contested case hearing. A telephone hearing was held on February 7, 2024. Kaitlyn Woods and Seth Woods appeared and testified on behalf of the company. Jeffrey Koncsol represented IWD. IWD field auditor Deborah Pendleton appeared and testified. The evidentiary record remained open to allow the parties to submit additional evidence. IWD exhibits 1 through 35, and Appellant exhibits A through KK were admitted as evidence. The evidentiary record was closed on March 4, 2024.

ISSUES

(1) Whether there was good cause for Woods Construction’s failure to file a timely appeal; and (2) whether an employer-employee relationship existed between Woods Construction and certain workers performing services for Woods Construction.

FINDINGS OF FACT

In February 2023, IWD sent a notification letter to Woods Construction that it was auditing its business to ensure compliance with the unemployment insurance laws. Field auditor Deborah Pendleton was assigned to conduct the audit.

On June 29, 2023, IWD issued a letter to Woods Construction stating that it had completed its audit and determined there was an additional tax due of \$96,384.36. The letter outlined the appeal rights, stating “This decision will be final if you do not file an

appeal in thirty days from the date on this notice. Your appeal must be in writing and mailed directly to the Unemployment Insurance Services Tax Bureau.” The letter further outlined what information was required when filing the appeal.

Woods Construction filed its appeal with IWD On October 20, 2023. In the written appeal letter, Woods Construction stated, in part:

Woods Construction reached out for an extension on the findings as they were in final litigation with the Department of Labor where [attorney] Ms. Smid was representing them. As of 10/17/2023 the DOL case has been finalized and a paid (sic) the agreed upon sum. Woods Construction and Development was instructed to finalize the DOL case then proceed to the IWFD Audit per counsel and conversations with the IWFD.

Ms. Pendleton testified that she did not at any point advise the company to delay filing its appeal, and that she does not have the authority to extend the appeal deadline. The only evidence of a requested extension is about a request for information Ms. Pendleton sent to Woods Construction in April 2023. The deadline to provide the requested information was May 2, 2023. On May 2, Ms. Woods emailed Ms. Pendleton, including the company’s attorney, and stated that her attorney will reach out to Ms. Pendleton for clarification and an extension due to ongoing litigation over related matters. The extension pertained to the deadline for providing requested information.

After the audit determination was issued on June 29, 2023, Woods Construction communicated with Terryne Densmore, an employer liability specialist with IWD. Ms. Densmore emailed Woods Construction on July 5, 2023, advising the company that its account was in arrears of \$96,384.58 plus interest and penalty. To prevent collection actions, Ms. Densmore informed the company to contact her to arrange a payment plan, or file delinquency reports and pay the amount due by July 17, 2023.

Following this email, Woods Construction made contact with Ms. Densmore. The evidence includes a recording of a July 11, 2023, phone call between Ms. Densmore, Ms. Woods and Mr. Woods. Ms. Densmore identified herself as a collector with IWD’s employer liability section. She stated that Woods Construction should have received a letter from IWD regarding the audit determination that they had about 50 employees. Ms. Woods stated the company did not have employees. She further explained the company has a pending case with the DOL. Ms. Woods stated that is why she wanted to speak to Ms. Densmore “about this deadline and everything.” Ms. Woods stated Ms. Pendleton has been in contact with their attorney for the DOL litigation, and was not sure if Ms. Densmore needed to be made aware of the pending DOL litigation as well. Ms. Densmore stated she would contact her manager to determine if IWD can temporarily stop collections activity. In response, Ms. Woods stated that they were also trying to get ahold of her “to get a game plan here as well.” It is unclear who Ms. Woods was referring to, but the context suggests she may have been referring to Ms. Pendleton. Ms. Woods further stated she was not ignoring Ms. Densmore’s email but was trying to figure out what they were supposed to do. Following the phone conversation, Ms. Densmore emailed Woods

Construction informing the company that she spoke to her manager and the manager directed her “to stop collection activity at this time.”

Ms. Woods acknowledged that she did not receive any notification from IWD specifically stating that IWD was extending the company’s deadline for filings its appeal. However, Ms. Woods testified she interpreted Ms. Densmore’s email to mean that the IWD matter was “on pause” while the DOL case was pending. She further testified their attorney advised them not to do anything on the IWD audit until the DOL case was finalized. After the DOL case was finalized and paid, Ms. Woods testified she contacted IWD to initiate this appeal.

Ms. Pendleton testified to a phone conversation with Ms. Woods. Although Ms. Pendleton did not provide the date of this conversation, Ms. Woods testified she spoke to Ms. Pendleton about the audit appeal after the DOL case was finalized in October 2023. During their phone call, Ms. Woods shared with Ms. Pendleton that the company had pending litigation with the DOL and they were advised by their attorney not to do anything regarding the IWD audit until the DOL matter was concluded. Ms. Pendleton testified she reiterated the appeal rules to Ms. Pendleton during the phone call and advised that if Ms. Woods did appeal, the matter would be reviewed by an administrative law judge.

CONCLUSIONS OF LAW AND ANALYSIS

Under Iowa law, an employer must contribute to the unemployment compensation fund in accordance with rules adopted by IWD.¹ “An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker’s status, and all questions regarding coverage of a worker or group of workers may be appealed.”² “Unless otherwise required, all determinations by the tax bureau will be sent by regular mail or e-mail, depending on how the employer elected to receive correspondence,” and the “determination will be dated, and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination.”³ A related provision of law reiterates the 30-day deadline, stating:

An appeal from a decision of the tax bureau of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers’ status, and all questions regarding coverage of a worker or group of workers shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than 30 calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at the party’s last-known address.⁴

1 Iowa Code §§ 96.7, 96.9, 96.11.

2 871 Iowa Administrative Code (IAC) 23.52(1).

3 IAC 871—23.52(4).

4 IAC 871—26.5(2).

In this case, IWD issued its unemployment insurance tax audit results on June 29, 2023. Because the decision was addressed to the correct person and sent to the correct address, Woods Construction had 30 days to appeal the decision. The company did not appeal, however, until October 20, 2023.

The undersigned has reviewed and considered the communications Woods Construction had with IWD's employer liability specialist, Ms. Densmore, in July 2023. These communications occurred within the 30-day period for filing the appeal. It is clear to the undersigned that Woods Construction was attempting to keep IWD informed of its DOL case and explain that they were advised by their attorney to hold off on the IWD matter while the DOL case was pending. However, the undersigned cannot find that these communications from Woods Construction in July 2023 constituted the filing of an appeal. The appeal rights outlined in the audit decision letter advised Woods Construction that its appeal had to be submitted in writing and mailed to IWD.

The undersigned has also considered Ms. Densmore's communication to Woods Construction that she was directed by her manager "to stop collection activity at this time." With the company's unfamiliarity with this process, one can easily understand Ms. Woods' conclusion that this correspondence meant IWD was "pausing" the audit findings while Woods Construction concluded its DOL case. The company's attorney had also advised the company not to do anything with the IWD appeal while the DOL case was pending. In reviewing the phone conversation and email with Ms. Densmore, the undersigned notes Ms. Densmore identified herself as a collector for IWD and that she was directed to stop "collections activity" on the account. Ms. Densmore did not discuss the audit findings or the appeal process. Ms. Pendleton was also mentioned as having knowledge of the DOL case and having contact with the company's attorney. However, the evidence in the record does not show that Ms. Pendleton, Ms. Densmore, or any other IWD representative extended the deadline for filing the appeal.

As the appeal is untimely, the undersigned administrative law judge has no jurisdiction to consider the merits of Woods Construction's appeal. While there is sympathy for Woods Construction in this matter, given its unfamiliarity with the process and reliance on legal counsel's advice, there is no good cause exception to the late filing of an appeal. Accordingly, IWD's action must be affirmed.

DECISION

IWD's decision is **AFFIRMED**. IWD shall take any action necessary to implement this decision.

Dated this 5th day of April, 2024.



Jasmina Sarajlija
Administrative Law Judge

cc: Woods Construction and Development, Inc., c/o Seth Woods, 252 Mason Dr.,
Riverdale, IA 52722, woodsconstructiondevelopment@gmail.com (by Email and
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Deborah Pendleton, IWD Deborah.pendleton@iwd.iowa.gov (by AEDMS)
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APPEAL RIGHTS

This decision constitutes final agency action. Any party may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing. Any party may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.⁵

⁵ IAC 871—26.17(5)

Case Title: WOODS CONSTRUCTION AND DEVELOPMENT, INC. V. IOWA
WORKFORCE DEVELOPMENT
Case Number: 24IWDM0011
Type: Final Decision

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "J. Sarajlija". The signature is written in black ink on a white background.

Jasmina Sarajlija, Administrative Law Judge