

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
Wallace State Office Building  
DES MOINES IOWA 50319

**Appeal Number: 10IWD082**

**Respondent (6)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**KRUSE QUALITY CONSTRUCTION  
ATTN: BERNARD KRUSE  
P.O. BOX 00028  
DENMARK, IA 52624-0028**

**IOWA WORKFORCE DEVELOPMENT  
MATT MARDESEN, INVESTIGATOR  
1000 EAST GRAND AVENUE  
DES MOINES, IA 50319**

DAN ANDERSON, IWD  
JOSEPH BERVID, IWD  
JOSEPH WALSH, IWD  
JASON TRYON, IWD

**This Decision Shall Become Final, as of the date of mailing stated below unless:**

1. Either party files a WRITTEN application for a rehearing WITHIN TWENTY (20) DAYS AFTER the date below. The written application must state the specific reasons for the rehearing and the relief sought. If the request for a rehearing is denied or if the rehearing decision is not satisfactory, either party may petition the District Court WITHIN THIRTY (30) DAYS of either action;

OR

2. Either party may petition the District Court WITHIN THIRTY (30) DAYS after the date below.

YOU DO HAVE THE RIGHT TO HIRE A LAWYER at your own expense to represent you in these proceedings.

Laura E. Lockard

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(Administrative Law Judge)

November 10, 2010

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(Decision Dated & Mailed)

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## **STATEMENT OF THE CASE**

Kruse Quality Construction filed an appeal of two decisions issued by Iowa Workforce Development (the Department). The first decision, issued April 9, 2010, found the appellant liable for unemployment insurance contributions effective January 1, 2005 under Chapter 96 of the Iowa Code. The second decision, issued April 12, 2010, found that an employer-employee relationship existed between the appellant and its workers during 2005 through 2009.

A hearing was originally scheduled for November 5, 2010. Prior to that date, the appellant requested a continuance in order to gather additional information. The Department did not object to the request for continuance. At the same time, the Department made a motion to bifurcate the hearing. There are two issues that have been certified for appeal by the Department: 1) whether the appellant timely filed an appeal; and 2) whether the Department correctly determined that an employer-employee relationship existed between the appellant and its workers and found the appellant liable for unemployment insurance contributions. The Department proposed

to separate the two issues and hold a hearing on the timeliness issue first. The appellant did not object to the Department's motion to bifurcate.

A hearing on the issue of the timeliness of the appellant's appeal only was held on November 10, 2010 before Administrative Law Judge Laura Lockard. The Department was represented by attorney Joseph Walsh. Investigator Matt Mardesen testified for the Department. The appellant appeared through owner Bernard Kruse. Mr. Kruse presented testimony.

The Department submitted Exhibit A, pp. 12-13, and Exhibit B, which were admitted into the record as evidence. The appellant submitted Exhibits 1 through 3, which were admitted into the record as evidence.

### **ISSUE**

Whether Kruse Quality Construction filed a timely appeal.

### **FINDINGS OF FACT**

On April 9, 2010, the Department issued and mailed a Notice of Employer Status and Liability to Kruse Quality Construction. The notice advised the appellant that it was liable for unemployment insurance contributions effective January 1, 2005 under Chapter 96 of the Iowa Code. The notice also informed the appellant of its contribution rate for calendar years 2006 through 2010. The notice stated that any appeal must be filed within 30 days of April 9, 2010. The notice further stated that the decision would become final unless an appeal was postmarked by May 9, 2010 or received by the Department's appeal bureau by that date. (Exh. A, p. 13).

On April 12, 2010, the Department issued and mailed a second Notice of Employer Status and Liability to Kruse Quality Construction. The notice advised the appellant that the Department had determined that an employer-employee relationship existed between the appellant and individuals performing services for the business during the years 2005 through 2009. The notice stated that any appeal must be filed within 30 days of April 12, 2010. The notice further stated that the decision would become final unless an appeal was postmarked by May 12, 2010 or received by the Department's appeal bureau by that date. (Exh. B).

On May 26, 2010, the Department received a fax from Bernard Kruse of Kruse Quality Construction. In the fax, Mr. Kruse stated his intent to appeal the decision issued May 9, 2010. Mr. Kruse stated that the reason he did not meet the appeal deadline was that his son, who is in the Marines, was deployed to Afghanistan and the family was seeing him off in California. (Exh. A, p. 12).

At hearing, Mr. Kruse testified that he received the decisions from the Department and believed he had plenty of time to deal with them. During the same time period, however, he was being pressured to sell a spec house quickly and at a loss and his son received word that he would be deploying to Afghanistan. Mr. Kruse and his wife flew to California on May 13, 2010 to see their son off then drove his car back to Iowa. When

they returned to Iowa, Mr. Kruse realized that he had missed the appeal deadline. He then sent in the appeal letter referenced above. (Kruse testimony).

### **REASONING AND CONCLUSIONS OF LAW**

Once the Department makes a determination regarding employer liability, the affected employing unit or employer has a right to appeal from this determination. Iowa law provides that “[a]n appeal shall not be entertained for any reason by the department unless the appeal is filed with the department within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.”<sup>1</sup>

In this case, the Department’s notices were mailed April 9 and April 12, 2010. The appellant’s appeal letter was not faxed to the Department until May 26, 2010, after the deadline to appeal both the decisions had passed. Mr. Kruse acknowledged having received the decisions.

In defense of the late appeal, Mr. Kruse explained that he had a number of obligations during the appeal time period. I found Mr. Kruse’s testimony regarding his son’s deployment and sale of a spec house credible, but unfortunately those facts do not justify the filing of a late appeal.

The appellant’s appeal was not timely made. Having determined that the appeal was not timely, I have no jurisdiction to consider whether the Department correctly determined that the appellant was liable for unemployment insurance contributions or whether the Department correctly determined that an employer-employee relationship existed between the appellant and its workers.

### **DECISION**

The appellant’s appeal is dismissed as untimely. The Department shall take any action necessary to implement this decision.

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<sup>1</sup> Iowa Code § 96.7(4) (2009).