IN THE COURT OF APPEALS OF IOWA

No. 1999-598 (9-859) / 99-0785
Filed May 31, 2000

BRIAN DAVID KRAUTH,
Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,
Defendant-Appellee.

FILED
MAY 3 1 2000
CLERK SUPREME COUR

Appeal from the Iowa District Court for Cass County, J.C. Irvin, Judge.

The petitioner appeals from the district courts ruling dismissing his judicial review action on the revocation of his driver's license. **AFFIRMED.**

Carl J. Petersen of Rutherford, Trewet & Petersen, Atlantic, for appellant.

Thomas J. Miller, Attorney General, David A Ferree, Special Assistant Attorney General, and Carolyn J. Olson, Assistant Attorney General for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

PER CURIAM.

Petitioner-appellant, Brian Krauth, appeals the district court's order sustaining the Department of Transportation's motion to dismiss Krauth's petition for judicial review of the Department's revocation of his driver's license. We affirm.

In September 1998, Krauth was arrested for operating while intoxicated. Implied consent procedures were invoked. Krauth failed the chemical test resulting in the administrative revocation of his driver's license.

Krauth commenced contested case proceedings. On November 23, 1998, an administrative law judge entered a ruling upholding the revocation. Krauth received the decision by certified mail on November 28, 1998. The decision informed Krauth he had a ten-day period from his receipt of the ruling to appeal to the director of the Iowa Department of Transportation. On December 14, 1998, beyond the requisite ten-day period, Krauth appealed the decision to the director. On December 17, 1998, the director denied the appeal because it was not timely.

Krauth filed a petition for judicial review challenging the revocation. The agency filed a motion to dismiss for failure to exhaust administrative remedies. The district court sustained the motion to dismiss. The court determined Krauth waived his right to appeal by allowing the time for an intra-agency appeal to elapse. The court concluded Krauth had failed to exhaust administrative remedies and, therefore, the court lacked jurisdiction to review the agency action.

A party may apply for judicial review of agency action in a contested case proceeding after exhausting all adequate administrative remedies. Iowa Code § 17A.19(1). The district court is deprived of jurisdiction if administrative remedies are not exhausted. *Keokuk County v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999). Contested case proceedings in operating-while-intoxicated cases are governed by Iowa Administrative Code chapter 761. This chapter provides for appeal of an administrative law judge's decision to the agency director. Iowa Admin. Code r. 761-13.7 (1997); Iowa Admin. Code r. 761-620.4(2). Failure to make a timely appeal is deemed a failure to exhaust administrative remedies. Iowa Admin. Code r. 761-13.7(5); Iowa Admin. Code r. 761-620.4(2)(f).

Krauth did not file an appeal of the administrative law judge's decision within the ten-day period for appeal. The decision then became final. Iowa Code § 17A.15(3); Iowa Admin. Code r. 761-13.7. Once an agency decision has become final, there is no statutory authorization for subsequent agency review. *Kash v. Iowa Dep't. of Employment Servs., Div. of Job Serv.*, 476 N.W.2d 82, 83 (Iowa 1991) (quoting *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979)). Once the ten-day period for appeal passed, the director had no authority to review the administrative law judge's decision. Krauth's failure to appeal within the ten-day period is a failure to exhaust administrative remedies. The district court correctly determined it was without jurisdiction to review the agency's action and sustained the agency's motion to dismiss.

AFFIRMED.