

DEBORAH QUADE (O) (2023)

REFERENCE NO.: 2023200002

*Note: The appeal period has expired, pursuant to Iowa Admin. Code rule 701-7.19(8)(d) the Administrative Law Judge's proposed decision is adopted as the final decision by the Department.*

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

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IN THE MATTER OF:

Deborah Quade  
401 Rose Street  
Bellevue, IA 52031

DIA No. 23IDRIIT0004  
IDR Docket No. 2022-200-2-0174

**PROPOSED DECISION**Individual Income Tax.

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**STATEMENT OF THE CASE**

Taxpayer Deborah Quade filed an appeal of a decision of the Department of Revenue (the Department or IDR) denying her request for reinstatement of an appeal. This matter came on for hearing by telephone on March 7, 2023. Assistant Attorney General Katherine Penland represented the Department. Also present on behalf of the Department was tax appeals specialist Lisa Krom. Douglas Pearce represented the taxpayer. Official notice was taken of the administrative file. The Department submitted exhibits marked A-H that were admitted into the record.

The day before hearing, the Department made a motion to dismiss for failure to prosecute the case. At the start of hearing, the tribunal heard argument on the motion. During the argument, it became clear to the tribunal that the taxpayer intended to put on no witnesses and had submitted no new evidence. Because the taxpayer bears the burden of proof, *see* Iowa Admin. Code r. 701-7.19(10)(d) the tribunal allowed both sides to make legal arguments and then adjourned the hearing, rather than requiring the Department to present evidence.

**FINDINGS OF FACT**

In April 2020, the IDR issued a Notice of Assessment to Quade. (Ex. A). The Notice of Assessment assessed \$5,457 in tax, \$238.50 in penalty, and \$742.15 in interest, for a total assessment of \$6,437.65. As the tribunal understands it, this assessment concerns unreported alimony income. In June 2020, Quade filed a tax protest. The protest noted that Quade was then contesting a federal audit for the same tax year (2017) in United States Tax Court. The protest requested that the matter be kept in abeyance until resolution of the Tax Court case. (Ex. B).

At the same time, there was then pending a Motion to Dismiss for Lack of Jurisdiction in the Tax Court case, based on the following allegations. (Ex. D). On October 10, 2019, the IRS mailed

Quade a notice of deficiency. The IRS then followed up with a “Letter 555” dated December 10, 2019. Based on the subsequent Tax Court order, the tribunal infers that a Letter 555 is, at least, a procedural letter informing taxpayers of certain deadlines. The Tax Court’s order provides that the Letter 555 informed Quade her deadline to petition the Tax Court was January 7, 2020. This information was, apparently, also on the original IRS notice of deficiency. Notwithstanding those two documents informing her of the deadline of January 7, 2020, Quade’s petition was not postmarked until January 16, 2020, or received by the Tax Court until January 21, 2020. Based on that deficiency, the Commissioner filed the Motion to Dismiss in March 2020, which the Tax Court subsequently granted on July 28, 2020. (Ex. D). There does not appear to have been any appeal thereof.

On September 3, 2020, IDR revenue examiner Emily Steward emailed Pearce’s office to introduce herself as the examiner assigned to the tax protest. Ms. Steward wrote, “In the protest, it states the taxpayer is contesting the audit with the IRS. Once the IRS makes a final determination, Iowa would follow suit in this particular case. Please keep me updated every 30 days, and send any documentation received by the taxpayer from the IRS for review.” (Ex. C). Note that on September 3, 2020, the Tax Court case had been resolved for over a month. An email address of dcplawoffice@hotmail.com responded to Ms. Steward’s email. The responsive email, sent on September 4, made three statements: that IDR was authorized to email confidential information to Pearce’s office, that dcplawoffice@hotmail.com was the email address to use, and that email transmissions are not always secure. The email was signed by “Atty Douglas C. Pearce.” The name associated with the email address was “Sheri Clancy.” (Ex. C). Ms. Clancy is an assistant in Pearce’s office. Ms. Steward responded to the email from Ms. Clancy or Pearce, “Thank you for your response. I have made a note on the protest, so please keep me updated with any information from the IRS.” (Ex. C).

The next communication in the administrative record between the IDR and Pearce’s office is an email from Reid Jewell, a tax appeals specialist, to dcplawoffice@hotmail.com on November 15, 2021. Jewell wrote that the appeal had been reassigned to him. He wrote, “I see from the appeal that Quade challenged a similar IRS matter in the US Tax Court. However, the notes on my end do not provide any recent updates regarding developments on the federal side, if any.” Jewell requested any such updates. (Ex. D).

It does not appear any response came. But Jewell must have found another way to answer his question, because on November 29, 2021, he wrote a letter—that is, it appears to have been sent by physical mail—to Pearce. The letter noted that the Tax Court case was dismissed for lack of jurisdiction on July 28, 2020. The letter went on to say:

The taxpayer’s Iowa appeal was timely filed, and the taxpayer’s Iowa appeal remains pending. Therefore, the Appeals Section requests that you respond in writing by December 29, 2021 and discuss in detail the legal and factual basis for the taxpayer’s contention that the amounts in question are not subject to Iowa income tax. Please include all documents necessary to support the taxpayer’s

position, including but not limited to a copy of the taxpayer's Dissolution of Marriage and any related documents.

Please provided [sic] the requested response by December 29, 2021. If no response is received by December 29, 2021, the Appeals Section will consider this inaction as failure to pursue the appeal and will request dismissal of the appeal pursuant to Iowa Administrative Code rule 701 7.12.

If you have any questions regarding this matter, please do not hesitate to contact me.

(Ex. D). It does not appear the IDR received any response to that letter, either. So on January 7, 2022, the IDR filed a motion to dismiss Quade's appeal before IDR Director Kraig Paulsen. (Ex. D). That motion alleged Quade was failing to pursue the appeal. (Ex. D). No resistance was filed. On February 10, 2022, Director Paulsen granted the motion. (Ex. E).

On or about February 24, 2022, Quade filed an application for reinstatement with the IDR. Pearce attached a cover letter to the application. The cover letter stated, inter alia, "I totally missed connecting with any email. I don't do well in that regard." As the basis for reinstatement, the application set forth the following: "The undersigned requests reinstatement of the above appeal because this attorney in his advanced maturity does not handle e-mail very well or with any understanding and he did not see any email relating to this matter until he received via US Mail on Monday February 14, 2022 the departments [sic] Order to Dismiss. Therefore the request for reinstatement is made to allow the applicant to respond appropriately to the departments [sic] request." The application again listed the appropriate email address for Pearce as dcplawoffice@hotmail.com. (Ex. F).

On May 2, the IDR denied the application for reinstatement. (Ex. G). Its ruling noted, "Despite your claim that you do 'not handle e-mail very well or with any understanding,' you authorized the Department to communicate with you via email regarding this matter on September 4, 2020. Because the Department received that authorization, the Appeals Section does not find reason of good cause and the application for reinstatement is denied." (Ex. G).

On May 31, Quade filed a request for formal hearing on the application for reinstatement. (Ex. H). The request stated, in full (as in original):

Taxpayer's counsel received on Wednesday, May 4, 2022 a notice by letter that taxpayers application for reinstatement was denied. Taxpayer hereby files this Request For Formal Hearing on Application for Reinstatement.

Taxpayer makes this request for the following reasons:

1. Taxpayer is entitled to have a determination from the IA Dept of Revenue that some individual has physically reviewed the order regarding the taxpayers

Dissolution of Marriage which was granted March 2, 2016 and that the payments the taxpayer received constituted alimony. A copy of said document is attached for record and review if so chosen, and taxpayer notes that nowhere in said document does the word alimony appear,<sup>[1]</sup> (document consists of 30 pages.)

2. Taxpayer and taxpayer's counsel, in spite of several requests received no replies or acknowledgment from IRS personnel except for what taxpayer and counsel received from the US Tax Court. Taxpayer's counsel thinks Covid impacted this matter with the IRS.
3. Per affidavit enclosed the office of taxpayer's counsel did not receive any prior email notifications.

For the above reasons taxpayer respectfully requests that a Formal Hearing on the taxpayer's Application for Reinstatement be granted.

Attached was an affidavit signed by Sheri A. Clancy, an assistant to Pearce. (Ex. H). Clancy attested (as in original):

1. That I am the taxpayer's counsel assistant in this matter before the Iowa Department of Revenue.
2. That there is filed in such matter a Motion by the Iowa Department of Revenue as Respondent in said matter to dismiss my Application for Reinstatement and said letter is designated as a Notice of Dismissal and that said letter was delivered to taxpayers counsel at the address of 880 Locust St, Ste 108 on or about May 4, 2022.
3. The first time that I became aware of said letter referred to in No. 2 hereof is when attorney Douglas C. Pearce showed me a copy of said letter that was attached to the Motion to Dismiss filed by the Respondent in this matter.
4. My attorney in this matter had asked if I have ever received such a letter or such a notice and I have always told him that I have never received such a letter or notice and I can state with certainty now that I still have not received such a letter. This correspondence was supposedly sent by email to taxpayer's

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<sup>1</sup> The dissolution decree is in the administrative record. While it does not contain the word "alimony," it does provide for "maintenance," which the tribunal understands to be essentially a synonym for alimony. See Iowa Code § 598.1 (defining "support" to include "alimony, child support, maintenance, and any other term used to describe these obligations"); *In re Marriage of Sokol*, No. 21-1918, 2023 WL 451075, at \*3 (Iowa Jan. 27, 2023) (discussing history of alimony). Quade's ex-husband was to provide maintenance to her in the amount of \$2,733 per month and 30% of his gross bonus "as it is received" as permanent maintenance effective June 1, 2016, or when he moved out of the marital residence, whichever occurred first. (Appeal file).

counsel at dcplawoffice@hotmail.com but I print all correspondence for my maturing boss and I can state that I never received or saw any emails from the Iowa Department of Revenue prior to getting the Dismissal by mail at our office address of 880 Locust St, Ste 108, Dubuque, IA 52001.

Further this affiant sayeth naught.

(Ex. H). That request for formal hearing brings us here.

### CONCLUSIONS OF LAW AND ANALYSIS

Appeals of Department decisions may be filed in one of four ways: submitting through GovConnectIowa, emailing idrhearings@iowa.gov, mailing the Legal Services and Appeals Division at P.O. Box 14457 in Des Moines, or hand delivering the appeal at the Hoover State Office Building. Iowa Admin. Code r. 701-7.3(1).

Iowa Administrative Code rule 701-7.12 sets out the following grounds for dismissal of an appeal: filing untimely, failing to follow the required format, failing to pursue the appeal at the informal stage, failing to respond to a denial of an application for reinstatement, failing to file a timely application for reinstatement, failing to diligently pursue the appeal during contested case proceedings, and refusing to comply with discovery requests. Iowa Admin. Code r. 701-7.12(1)-(6).

The record makes clear the appeal here was dismissed because of failure to pursue the appeal. Rule 701-7.12 sets forth two times at which a party may fail to pursue the appeal: at the informal stage and during contested case proceedings. Iowa Admin. Code r. 701-7.12(3), (6). A contested case proceeding requires certain filings that were not made here before the application for reinstatement. See Iowa Admin. Code r. 701-7.16. Therefore, this appeal was dismissed at the informal stage. The rule on appeals dismissed at the informal stage provides:

**7.12(3) Failure to pursue the appeal at the informal stage.** If the protest was filed timely and informal procedures were initiated, the failure of the taxpayer to present evidence or information requested by the review unit, including the failure to respond to a position letter or information request, shall constitute grounds for the director or the director's designee to dismiss the appeal. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. Such dismissals require a motion to be filed by the review unit.

*a. Procedures for motions to dismiss.* If the department seeks to dismiss the appeal, the review unit shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an

order dismissing the appeal. If a resistance is filed, the review unit has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701-7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal shall be dismissed. Thereafter, rule 701-7.19(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

- b. *Grounds for reinstatement of dismissed appeals.* If a motion to dismiss is filed and is unresisted, the appeal that was dismissed may be reinstated by the director or the director's designee for good cause if an application for reinstatement is filed with the clerk within 30 days of the date the appeal was dismissed and following the conclusion of the procedure in subrule 7.12(4). For purposes of this rule, "good cause" shall mean the same as "good cause" in Iowa Rule of Civil Procedure 1.977.
- c. *Content and review of the application for reinstatement.* The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal and the grounds that are relevant. Supporting documentation must be supplied. The director shall refer the application to the review unit for review and notify the taxpayer whether the application is granted or denied. Thereafter, the procedure in subrule 7.12(4) should be followed.

Iowa Admin. Code r. 701-7.12(3). Here a motion to dismiss was filed and was unresisted. The appeal was then dismissed. Under subrule (3)(b), then, this appeal may be reinstated only for "good cause." We are instructed that "good cause" has the meaning given to it in Iowa Rule of Civil Procedure 1.977. That rule provides:

On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for *mistake, inadvertence, surprise, excusable neglect or unavoidable casualty*. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than 60 days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation.

Iowa R. Civ. P. 1.977 (emphasis added). "Good cause" is a "sound, effective, and truthful reason." *Sheeder v. Boyette*, 764 N.W.2d 778, 780 (Iowa Ct. App. 2009). It is "something more than an excuse, plea, apology, extenuation, or some justification, for the resulting effect." *No Boundry, LLC v. Hoosman*, 953 N.W.2d 696, 700 (Iowa 2021) (citation omitted). While courts prefer

adjudicating controversies on their merits, this objective is qualified “because it cannot be extended to the point where a default judgment will be vacated when the movant has ignored the rules of procedure with ample opportunity to abide by them.” *Sheeder*, 764 N.W.2d at 780. Courts will not set aside default judgments “where the movant fails to show any effort to appear in response to a due and timely notice.” *Haynes v. Ruhoff*, 157 N.W.2d 914, 916 (Iowa 1968).

When Quade initially applied for reinstatement, the basis offered was: “The undersigned requests reinstatement of the above appeal because this attorney in his advanced maturity does not handle e-mail very well or with any understanding and he did not see any email relating to this matter until he received via US Mail on Monday February 14, 2022 the departments Order to Dismiss. Therefore the request for reinstatement is made to allow the applicant to respond appropriately to the departments request.”

Then when requesting a formal hearing on this matter, Quade offered that she was “entitled to have a determination” that someone from IDR “physically reviewed” her divorce decree, that she had not received any reply from the IRS, and that Pearce had not gotten “any prior email notifications.”

None of these can establish good cause. The tribunal will take them one at a time.

The first basis is, essentially, that Pearce “does not handle e-mail” well. That is not a sound reason to reinstate this appeal. Email is a ubiquitous technology in the year 2023. Indeed, for lawyers, electronic filing is the default in state and federal courts and is approaching that status in this tribunal. This tribunal cannot find a failure to handle email constitutes good cause.

Beyond that, the tribunal does not think it is a “truthful” reason that Pearce received nothing on this case before February 14, 2022. Jewell mailed him, physically, a letter in November 2021 asking him to provide information. There was no response to that, either. (To be fair, Pearce says he did not “see any email,” but in context the sentence seems to argue he received nothing at all before the mail on February 14, 2022.)

Quade asserts she is entitled to a determination that someone from the Department reviewed her divorce decree. She has that. It’s the Notice of Assessment that began this whole case. One can reasonably infer, because IDR assessments don’t materialize unbidden from the ether, that someone from IDR reviewed her divorce decree and determined she was not accurately reporting her alimony income. Reinstating the appeal will not get Quade different information about whether *IDR* believes “alimony” and “maintenance” are the same thing. Requesting that *IDR* review her divorce decree, when she possesses the record of a *de facto* review of her divorce decree, is not sufficient to establish good cause.

Quade offers that she did not get adequate communication from the IRS. That may be, and if so, that is unfortunate, but reinstating an appeal before *IDR* will not change that. This does not suffice to establish good cause.

Pearce states he did not get “any prior email notifications.” Again, the tribunal rejects any email-based arguments here. Pearce has a working email address that he provided multiple times to the IDR. He cannot now hide behind his technological incompetence to excuse his failure to prosecute this claim.

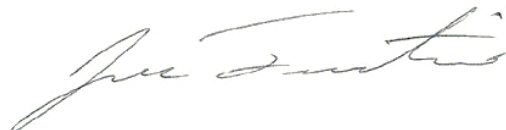
The Department’s decision to deny the application for reinstatement is affirmed.

Iowa Code section 421.60(2)(h) allows taxpayers who “failed to appeal a notice of assessment to the department with the time provided by law” to contest the assessment by paying the tax, interest, and penalty, and filing a refund claim. The tribunal takes no position on whether that procedure remains available to Quade.

### ORDER

The Department’s decision is hereby AFFIRMED. The Department shall take any action necessary to implement this decision.

Dated this March 9, 2023.



Joseph Ferrentino  
Administrative Law Judge

cc: Deborah Quade (By Mail)  
Douglas C. Pearce, 880 Locust Street, Suite 108, Dubuque, IA 52001;  
dcplawoffice@hotmail.com (By Email and Mail)  
Lisa Krom, IDR lisa.krom@iowa.gov (By Email)  
Katherine Penland, Assistant Attorney General kate.penland@ag.iowa.gov (By AEDMS)  
Connie Larson (By AEDMS)

### NOTICE

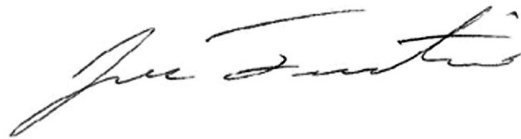
Pursuant to 701 Iowa Administrative Code 7.17(8)(d), this order becomes the final order of the Department for purposes of judicial review or rehearing unless a party files an appeal to or review on motion of the director with 30 days of the date of this order, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. The appeal shall be directed to:

Office of the Director  
Iowa Department of Revenue  
Hoover State Office Building  
Des Moines, Iowa 50319



**Case Title:** DEBORAH QUADE VS IOWA DEPARTMENT OF REVENUE  
**Case Number:** 23IDRIIT0004  
**Type:** Proposed Decision

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read "Joe Ferrentino".

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Joseph Ferrentino, Administrative Law Judge