

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**WILLIAM T CLARK**  
Claimant

**APPEAL NO: 13A-UI-08246-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON RETAIL DELI MEATS INC**  
Employer

**OC: 06/02/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

William T. Clark (claimant) appealed a representative's June 20, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Retail Deli Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2013. The claimant participated in the hearing. Matt Chase appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last-known address of record on June 20, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 30, 2013, a Sunday. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, July 1. On Tuesday, July 2 the claimant sent an initial appeal of the decision via fax from the Cherokee Library; he faxed that appeal to 515-242-0498. This fax number is in the Agency's Claims Section. The fax transmission report generated on July 2 indicated that the fax to that number completed correctly. However, the appeal sent to the Claims Section instead of to the Appeals Section was not rerouted by the Agency to get to the Appeals Section. As a result, when the claimant learned on or about July 15 that the Appeals Section had not received his appeal, he refaxed his appeal along with the July 2 transmission report to the Appeals Section at the Appeals Section's fax of 515-242-5144. However, the claimant did not have an explanation as to why the initial appeal was not made until July 2, rather than by July 1.

## REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case then becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge can attribute the additional delay between July 2 and July 15 to Agency error for the Claims Section not forwarding the July 2 appeal to the Appeals Section, necessitating the claimant's refiling of his appeal on July 15. However, even treating the appeal as having been filed when the claimant initially submitted his appeal on July 2, there has not been any showing to excuse the delay in not making that initial appeal by the July 1 deadline. The administrative law judge concludes that failure to file a timely appeal within the prescribed time was not shown to be due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

**DECISION:**

The representative's June 20, 2013 decision (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are denied.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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