

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK A KELLEY**  
Claimant

**APPEAL NO. 13A-UI-12671-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**C-FAB LLC**  
Employer

**OC: 12/09/12**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 23, 2013, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on December 12, 2013. Claimant Patrick Kelley participated. Todd Cleppe represented the employer and presented additional testimony through Brian Dircks. Exhibits One through Four and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether there is good cause to treat the employer's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer, C-Fab, L.L.C. is a limited liability company. Todd Cleppe is minority co-owner of the limited liability company. Mr. Cleppe's spouse, Maria Cleppe, is majority co-owner. A fact-finding interview was scheduled for October 22, 2013 and the parties were properly notified. Mr. Cleppe sent a letter, dated October 12, 2013, to Workforce Development for use at the fact-finding interview and in lieu of personally participating in the fact-finding interview. Mr. Cleppe indicated in his letter that he was traveling out of the country on October 13, 2013 and would be returning on November 5, 2013. Mr. Cleppe's letter did not contain a request to postpone the fact-finding interview.

Mr. Cleppe left for Israel on October 13, 2013 for a missionary trip. Maria Cleppe did not travel to Israel and instead stayed in Iowa to assist with running the business in Mr. Cleppe's absence. The employer had additional supervisory staff left in Iowa to assist with running the employer's business.

On October 23, 2013, Iowa Workforce Development mailed a copy of the October 23, 2013, reference 01, decision to the employer's last-known address of record in Chelsea, Iowa. The decision allowed benefits to the claimant provided he was otherwise eligible and that held the

employer's account could be charged for benefits. The decision contained a warning that an appeal must be postmarked by November 2, 2013 or received by Workforce Development by that date. The back side of the decision contained clear and concise instructions on how to file an appeal from the decision. The front side of the decision indicated, "**APPEAL INFORMATION INSIDE.**"

Maria Cleppe received the October 23, 2013, reference 01, decision on or about October 25, 2013. Mrs. Cleppe emailed the front side of the decision to Mr. Cleppe. Mrs. Cleppe otherwise took no steps to file an appeal from the decision despite her position as majority owner of the business. Mrs. Cleppe did not email the back side of the decision, the side containing the appeal instructions to Mr. Cleppe. Though the front of the decision made reference to additional information being on the other side of the decision, Mr. Cleppe did not ask Mrs. Cleppe about that additional information.

On October 29, 2013, Mr. Cleppe telephoned the Cedar Rapids Workforce Development Center at the number referenced on the front of the decision and left a message for a Workforce Development representative. Mr. Cleppe did not receive a response from the representative in response to that message or later messages.

Mr. Cleppe returned to Iowa on November 5, 2013. Mr. Cleppe delayed going to his local Workforce Development Center until November 12, 2013, while he attended to other business matters. On November 12, 2013, Mr. Cleppe went to his Workforce Development Center and completed an appeal form. Mr. Cleppe delivered the completed appeal form to a Workforce Development representative. The Appeals Section received the appeal form on November 13, 2013.

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

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any

appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The appeal in question was filed on November 12, 2013, when the employer delivered the completed appeal form to the Workforce Development representative.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme 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 thus 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Majority owner of the company, Maria Cleppe, received the decision within two or three days of the mailing of the decision and at that point had about ten days to file a timely appeal the a deadline that was extended by operation of law to Monday, November 4, 2013. The instructions the employer needed for filing an appeal were clearly and concisely stated on the back side of the decision that Mrs. Cleppe received. The employer elected not to have Mrs. Cleppe or other supervisory staff left in Iowa take steps to file an appeal. The employer elected instead to have Mr. Cleppe attempt to file an appeal from Israel. Workforce Development had provided the employer with the information the employer needed to file a timely appeal, but Mrs. Cleppe failed to forward this information to Mr. Cleppe. The information Mr. Cleppe was seeking from the agency about filing an appeal was the information contained in the portion of the decision that Mrs. Cleppe failed to provide to Mr. Cleppe. It was unreasonable of Mr. Cleppe to expect that Workforce Development was going to return an overseas call. The administrative law judge cannot find fault with the Workforce Development representative or the agency for not returning a call from Israel. In any event, the decision-making and the breakdown in communication that caused the appeal to be late occurred within the employer's company. Any contact that

Mr. Cleppe made with the agency upon his return to Iowa occurred after the extended appeal deadline has passed.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2). Due to the untimeliness of the appeal, the administrative law judge cannot disturb the lower decision, which has become a final agency decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The Agency representative's October 23, 2013, reference 01, decision is affirmed. The appeal in this case was untimely, and the decision of the representative that allowed benefits to the claimant provided he is otherwise eligible and that held the employer's account could be charged for benefits remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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