

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DAVID H LYNCH**  
Claimant

**APPEAL NO. 21A-UI-05865-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENE MOELLER OIL COMPANY**  
Employer

**OC: 07/12/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a late appeal from the October 13, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 13, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on April 29, 2021. The claimant did not provide a telephone number for the appeal hearing and did not participate. Chris Birnbaum represented the employer. The administrative law judge took official notice of the following Agency administrative records: the reference 01 decision, the available fact-finding interview materials, and the record of benefits paid to the claimant (DBRO and KPYX).

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 13, 2020, Iowa Workforce Development mailed the October 13, 2020, reference 01, decision to the employer's last-known address of record. The decision allowed benefits to the claimant, provided he met all other eligibility requirements, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 13, 2020 for no disqualifying reason in a timely manner, prior to the deadline for appeal. The decision stated that the decision would become final unless an appeal was postmarked by October 23, 2020 or was received by the Appeals Section by that date. The decision provided clear and concise instructions for filing an appeal online, by fax, by email, or by mail. The employer received the decision in a timely manner, prior to the deadline for appeal. Gene Moeller, President, collected the correspondence from the employer's post office box and gave it to Chris Birnbaum, Supervisor. Mr. Birnbaum contacted the IWD customer service telephone number and spoke to a representative. Mr. Birnbaum asked whether the claimant was receiving unemployment insurance benefits. The IWD representative advised that the claimant was not at that time receiving unemployment insurance benefits. Mr. Birnbaum

makes the additional non-credible assertion that the IWD representative told him the employer need not do anything else in response to the decision. The IWD representative would not have uttered such words or conveyed such notion. The employer did not file an appeal by the October 23, 2020 deadline or at point prior to February 11, 2021. On February 11, 2021, the employer faxed an appeal to the Appeals Bureau. The appeal was prompted by the employer's receipt of a quarterly statement of charges that included a charge for benefits paid to the claimant. The Appeals Bureau received the appeal on February 11, 2021.

## **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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

The appeal in this matter was filed on February 11, 2021, when the Appeals Bureau received the appeal the employer had faxed that same day.

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). One 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The employer's appeal was untimely. The employer received the decision in a timely manner and had a reasonable opportunity to file an appeal by the October 23, 2020 appeal deadline. The employer's assertion that an IWD representative said the employer need not file an appeal from the decision is not credible. The administrative law judge cannot conceive of any circumstance under which an IWD representative would utter such comment to an employer. The attributed comment would be inconsistent with the law, inconsistent with the information contained in the written decision, inconsistent with IWD standard operating procedures, and inconsistent with IWD training. The employer did not file an appeal by the October 23, 2020 deadline and further unreasonably delayed filing an appeal until February 11, 2021. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). Because the late filing of the appeal was attributable to the employer's inaction and delayed action, and not attributable to IWD or the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the employer appeals. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The employer's appeal was untimely. The October 13, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 13, 2020 for no disqualifying reason, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

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James E. Timberland  
Administrative Law Judge

May 06, 2021  
Decision Dated and Mailed

jet/ol