

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

SABINA KLJAJIC  
3301 COBBLESTONE CIR APT 3  
WATERLOO IA 50701-4703

TYSON FRESH MEATS INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07010-JTT  
OC: 05/21/06 R: 03  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Sabina Kljajic filed an appeal from the June 13, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 15, 2006. Ms. Kljajic participated. Assistant Human Resources Manager Jim Hook represented the employer. Bosnian-English interpreter Zijo Sucaska assisted with the hearing. The administrative law judge took official notice of the Agency's administrative file and Department Exhibits D-1 and D-2 were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 8, 2006, claimant Sabina Kljajic participated in the fact-finding interview with the

assistance of a Bosnian-English interpreter. The fact-finder advised Ms. Kljajic that she could expect to receive a written decision regarding her eligibility for benefits. The June 13, 2006, reference 01, decision was mailed to Sabina Kljajic's last-known address of record on June 13, 2006. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 23, 2006. On June 19, Ms. Kljajic contacted Workforce Development in Des Moines and learned at that time that a decision had been entered and that the decision denied benefits. A Workforce Development representative in Des Moines provided instructions regarding appeal and directed Ms. Kljajic to her local Workforce Development Center in Waterloo for further assistance in filing an appeal. The representative provided Ms. Kljajic with the telephone number for the Waterloo Center, but Ms. Kljajic did not record that information. Ms. Kljajic did not immediately contact the Waterloo Workforce Development Center. Although the deadline for appeal was June 23, Ms. Kljajic did not actually receive her copy of the decision denying benefits until Saturday, June 24. On Monday, June 26, Ms. Kljajic telephoned the Waterloo Workforce Development Center for assistance in filing an appeal. Ms. Kljajic discussed with the representative the fact that the deadline for appeal had already passed. The representative provided Ms. Kljajic with instructions. At that point, Ms. Kljajic already had a copy of the decision denying benefits, which included the address to which her appeal should be directed. Nonetheless, the Waterloo Workforce Development representative provided Ms. Kljajic the Appeals Section address to which she should direct her appeal. Ms. Kljajic did not record this information and did not refer to the information set forth in the decision denying benefits. On June 26, Ms. Kljajic drafted an appeal. On the same day, Ms. Kljajic mailed the appeal to what she thought was the address for the Waterloo Workforce Development Center. Agency records do not indicate that any appeal was actually received at the Waterloo Workforce Development Center. Ms. Kljajic soon learned that she should have directed her appeal to the Appeals Section in Des Moines. On July 6, Ms. Kljajic drafted a second appeal addressed to 1000 East Grand Avenue in Des Moines. That letter was postmarked the same day and received at the Appeals Section on July 10.

#### 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). No submission shall be considered timely if the delay in filing was unreasonable, based on the circumstances in the case. 871 IAC 24.35(2)(c).

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). Despite the fact that Ms. Kljajic did not actually receive her copy of the decision denying benefits until June 24, the evidence in the record indicates that Ms. Kljajic was on notice of the decision denying benefits as of June 19 and provided with instructions at that time designed to assist her with filing a timely appeal. Ms. Kljajic delayed acting upon those timely instructions until June 26. The greater weight of evidence in the record indicated that Ms. Kljajic was, in fact, provided a reasonable opportunity to file a timely appeal, but failed to do so.

Even if the administrative law judge were to conclude that Ms. Kljajic was denied a reasonable opportunity to file an appeal by the June 23 deadline, the evidence indicates that Ms. Kljajic unreasonably delayed filing her appeal. As of June 19, Ms. Kljajic was aware of the adverse decision and the need to file an appeal. As of June 24, Ms. Kljajic had in hand a copy of the decision denying benefits. As of June 26, the Workforce Development staff had twice provided Ms. Kljajic with instructions in filing an appeal. Ms. Kljajic delayed action after the first instructions were given on June 19. Ms. Kljajic then failed to follow the instructions given on June 26. The appeal was not filed until July 6, 2006. The delay that occurred between June 24

and July 6 is clearly attributable to Ms. Kljajic's action or inaction, not Iowa Workforce Development or the United States Postal Service.

The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. 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 June 13, 2006, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

jt/cs