



**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT**
EMPLOYMENT SECURITY DIVISION
P.O. BOX 115509
JUNEAU, ALASKA 99811-5509

APPEAL TRIBUNAL DECISION

Docket number: 25 0436

CLAIMANT:

ANDRES GUINTU
[REDACTED]
[REDACTED]

EMPLOYER:

BENEFIT PAYMENT CONTROL UNIT
3301 EAGLE ST, STE 205
ANCHORAGE, AK 99503

REOPENING ORDER

On June 9, 2025, the claimant filed an appeal of a determination issued by the Division on July 19, 2022. The Division's determination was based on their finding that the claimant's benefits should be reduced based on the receipt of wages and that penalties were appropriate because the claimant intentionally failed to report his wages. A hearing was held on September 10, 2025 for the sole purpose of determining if the claimant's appeal could be accepted as timely filed. A decision was issued September 11, 2025 holding the claimant's appeal was timely.

A continued hearing was scheduled for 9:00 am Alaska Time on October 1, 2025 to review the underlying matter of wages and reporting. Notice of the telephonic hearing was mailed to the claimant's address of record on September 17, 2025.

On October 1, 2025, at the time of the continued hearing, the appeals officer called the claimant's phone number and did not get an answer. The appeals officer left a message with the assistance of an interpreter, advising the claimant to call the appeals office within 15 minutes of the scheduled start time. The claimant did not call in that time and the hearing was dismissed.

The claimant called the appeals office 35 minutes after the scheduled start time. He was advised he could request re-opening of the hearing in writing. The claimant's written request to re-open the hearing stated that the claimant was sleeping at the time of the hearing officer's call and he had just woken up when he called at 9:35 am.

STATUTORY PROVISIONS

AS 23.20.420. HEARING PROCEDURE AND RECORD.

- (a) Each party shall be promptly given a reasonable opportunity for fair hearing. An appeal tribunal shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory and common law

rules. The appeal tribunal shall include in the record and consider as evidence all records of the department that are material to the issues.

8 AAC 85.153. HEARING PROCEDURES.

- (f) A hearing may be postponed, continued or reopened on the appeal referee's own motion or at the request of an interested party. All requests must explain in detail the reasons for the request. If a party fails to appear in person or by authorized agent at a hearing, the appeal referee may reopen the hearing only if the party failed to appear because of circumstances beyond the party's control. All other requests may be granted only if there is good cause. The following rules apply to requests:
- (1) A request for postponement may be either written or oral but must be received by the appeal referee before the hearing starts.
 - (2) A request for continuance must be made orally to the appeal referee during the hearing.
 - (3) A request for reopening must be made in writing to the appeal referee and must be delivered or mailed within 10 days after the scheduled date of the hearing. The 10-day period may be extended for a reasonable period on a showing that the request was delayed as a result of circumstances beyond the party's control.
 - (4) If a request for reopening is not allowed, the appeal referee will mail a written ruling and a statement of the right of appeal from that ruling to each party.
 - (5) The appeal referee will rule upon requests for continuance or postponement either orally or in writing. The rulings may be contested before the appeal referee at the hearing. If a postponement or continuance is denied, the appeal referee will make a decision on the issue under appeal, and the denial of postponement or continuance may be appealed in an appeal from the referee's decision.

CONCLUSION

Under 8 AAC 85.153(f), a hearing may be reopened at a party's request only if the party failed to appear because of circumstances beyond the parties' control.

In Biessel, Com. Dec. No. 9224963, May 27, 1992, the Commissioner of Labor stated:

The phrase "circumstances beyond a claimant's control" was not intended to mean simply mislaying, forgetting about, or losing a claim certification. "A late appeal may be accepted only if the appellant can show some incapacity, 'be it youth, illness, limited education, delay by the post office, or excusable misunderstanding...' Borton v. Employment Sec. Div., No. IKE-84-620 Civ. (Alaska Superior Ct., 1st J.D., October 10, 1985)"; as cited in Aleshire, Comm'r Dec. 9028559, January 30, 1991....

The claimant was given advance notice of the time and date of the hearing. Instructions in the hearing notice advised the claimant that failing to intend the hearing would result

in his appeal being dismissed. While it is unfortunate that the claimant was sleeping at the scheduled time of the hearing, this is a circumstance within the claimant's control. The claimant has not shown a circumstance beyond his control that caused him to miss his hearing. Therefore, his request to reopen cannot be granted.

DECISION

The employer's request to reopen the hearing is **DENIED**.

APPEAL RIGHTS

This decision is final unless an appeal is filed to the Commissioner of Labor and Workforce Development within **30 days** of the date of the decision. The appeal period may be extended only if the appeal is delayed by circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on November 10, 2025.

A black rectangular box redacting the signature of Rhonda Bunes.

Rhonda Bunes, Appeals Officer