



APPEAL TRIBUNAL DECISION

Docket number: 26 0088 **Hearing date:** February 24, 2026

CLAIMANT:

MACKENZIE COOPER
[REDACTED]

EMPLOYER:

MAPLE SPRINGS MANAGEMENT LLC
[REDACTED]

CLAIMANT APPEARANCES:

Mackenzie Cooper

EMPLOYER APPEARANCES:

Emily Palenski

CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against a December 22, 2020, determination that denied benefits under AS 23.20.379 on the grounds that the claimant was discharged for work related misconduct. The Division mailed the determination to the claimant's address of record on December 23, 2020. The claimant's appeal was filed on February 11, 2026, giving rise to the issue of the timeliness of the claimant's appeal.

The claimant was not filing for benefits at the time the Division issued the determination in this case. She was away from her residence until February 2021, and when she returned, the Division's determination was not in the mail that accumulated in her absence. The claimant filed a new claim for unemployment benefits in January 2026, and she updated her mailing address at that time. The claimant received an overpayment notice at her new address on February 11, 2026, and she contacted the Division and learned of the determination that had created the overpayment. The claimant filed her late appeal at that time.

PROVISIONS OF LAW - TIMELINESS

AS 23.20.340 provides in part;

- (e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that

the application was delayed as a result of circumstances beyond the claimant's control.

- (f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 - 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

8 AAC 85.151 provides in part;

- (b) An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

CONCLUSION - TIMELINESS

An appellant has the burden to establish some circumstance beyond the appellant's control prevented the timely filing of the appeal.

Once a notice has been properly mailed to an individual's last known address, the Department has discharged its "notice" obligation. The appellant's asserted failure to receive the notice does not establish cause for an extension of the appeal period. Andrews, Com. Dec. 76H-167, Oct. 8, 1976; aff'd Andrews v. State Dept. of Labor, No. 76-942 Civ. (Alaska Super. Ct. 1st J.D., April 13, 1977). There is a rebuttable presumption that a notice placed in the mail will be timely delivered. Rosser, Com. Dec. 83H-UI-145, June 15, 1983.

The claimant has overcome the presumption that the notice was delivered because the notice was not in the mail that was collected while the claimant was away from her residence. The claimant filed her appeal as soon as she became aware of the determination. The Tribunal finds the claimant's appeal was delayed by circumstances beyond her control.

DECISION - TIMELINESS

The claimant's appeal from the notice of determination issued on December 22, 2020, is **ACCEPTED** as timely filed.

CASE HISTORY - SEPARATION

The determination issued December 22, 2020, denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant was discharged for misconduct connected with the work.

FINDINGS OF FACT - SEPARATION

The claimant began work for the employer on February 3, 2020. She last worked on May 13, 2020. At that time, she worked full-time as a receptionist.

The employer was dissatisfied with the claimant's attendance because she had been absent ten days in the three months she was employed. The claimant was absent due to illness, getting stuck in the snow and an accident involving a moose. The employer spoke to the claimant the day before her last day of work and let her know that her job was in jeopardy due to her absences.

The claimant called the employer in advance of her shift on May 14, 2020, and reported that she would not be coming in to work because she was experiencing cold symptoms. The employer had been very clear that workers should not come to work with symptoms similar to COVID-19 symptoms, because of the concerns about the virus at that time.

The employer decided the claimant's absences were causing too much stress on other employees who had to cover the claimant's receptionist duties when she was absent. The claimant was advised on May 14, 2020, that she was discharged.

PROVISIONS OF LAW - SEPARATION

AS 23.20.379 provides in part:

- (a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker...
 - (1) left the insured worker's last suitable work voluntarily without good cause....
 - (2) was discharged for misconduct connected with the insured worker's last work.

8 AAC 85.095 provides in part:

- (c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:

- (1) leaving work due to a disability or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;
 - (2) leaving work to care for an immediate family member who has a disability or illness;
 - (3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;
 - (4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's
 - (A) discharge from military service; or
 - (B) employment;
 - (5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;
 - (6) leaving work in order to protect the claimant or the claimant's immediate family members from harassment or violence;
 - (7) leaving work to accept a bonafide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reasons for the work not materializing must not be due to the fault of the worker;
 - (8) other factors listed in AS 23.20.385(b).
- (d) "Misconduct connected with the insured worker's work" as used in AS 23.20.379(a)(2) means
- (1) a claimant's conduct on the job, if the conduct shows a willful and wanton disregard of the employer's interest, as a claimant might show, for example, through gross or repeated negligence, willful violation of reasonable work rules, or deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee; willful and wanton disregard of the employer's interest does not arise solely from inefficiency, unsatisfactory performance as the result of inability or incapacity, inadvertence, ordinary negligence in isolated instances, or good faith errors in judgment or discretion....

AS 23.20.385(b) provides, in part:

- (b) In determining whether work is suitable for a claimant and in determining the existence of good cause for leaving or refusing work, the department shall, in addition to determining the existence of any of the conditions specified in (a) of this section, consider the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training, experience, and earnings, the length of the claimant's unemployment, the prospects for obtaining work at the

claimant's highest skill, the distance of the available work from the claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.

CONCLUSION - SEPARATION

The claimant was discharged because she called in sick after being warned for her frequent absences.

In Tolle, Com. Dec. 9225438, June 18, 1992, the Commission of Labor states, in part:

Unexcused absence or tardiness is considered misconduct in connection with the work unless there is a compelling reason for the absence or tardiness and the worker makes a reasonable attempt to notify the employer.

The claimant in this case had a compelling reason to leave work because she was experiencing cold symptoms during a time of heightened concern about the COVID-19 virus. The claimant called the employer before her shift was to start to notify them of her absence. Considering Tolle, the Tribunal concludes the absence which resulted in the claimant's discharge does not rise to the level of misconduct connected to her work.

The Tribunal does not dispute an employer's right to discharge an employee who does not meet their standards, but not all such discharges are for misconduct. The claimant in this case was discharged for reasons other than misconduct. The penalties of AS 23.20.379 are not appropriate.

DECISION - SEPARATION

The determination issued on December 20, 2020, is **REVERSED**. Benefits are **ALLOWED** for the weeks ending May 23, 2020, through June 27, 2020, if otherwise eligible. The three weeks are restored to the claimant's maximum benefits. The determination will not interfere with the claimant's eligibility for extended benefits under AS 23.20.406-409.

APPEAL RIGHTS

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

Dated and mailed on February 27, 2026.



Rhonda Bunes, Appeals Officer