

**ALASKA DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT  
OFFICE OF THE COMMISSIONER  
PO BOX 111149  
JUNEAU, ALASKA 99811-1149**

**DECISION OF THE COMMISSIONER OF LABOR  
Docket No. 23 0060**

**IN THE MATTER OF:**

**CLAIMANT:**

SHELBY VILLANUEVA  
[REDACTED]  
[REDACTED]

**DIVISION:**

BENEFIT PAYMENT CONTROL  
[REDACTED]  
[REDACTED]  
[REDACTED]

The claimant appealed to the Department from a Tribunal decision issued on August 14, 2023. The Tribunal affirmed the division's determinations that denied benefit payments for multiple weeks under AS 23.20.360 and imposed penalties under AS 23.20.387 and AS 23.20.390. The Tribunal reversed the determination denying benefits for the week ending March 26, 2022, when the division explained the week was not eligible for payment regardless of any reported earnings.

An appeal for Department review is a matter of right if the Tribunal reverses or modifies a division determination. In this case, the Tribunal modified the division's determination for the week ending March 26, 2022. Therefore, the claimant's request for Department review is accepted as a matter of right. On this basis, we have reviewed the entire case file, including the audio recordings of the hearing.

The claimant filed two appeals to the Tribunal on two separate matters. The appeals were assigned separate docket numbers<sup>1</sup> and following standard business practice, were scheduled for the same date and time. The hearing was first scheduled for March 7, 2023, but was rescheduled to April 7, 2023, at the claimant's request for time to find an attorney.

On March 28, 2023, the claimant requested to postpone her hearing until the end of April 2023 because, "[M]y aunt has passed away and I am having to go down to California and deal with her house and funeral and all that. As well when I get back I'm thinking end of April I am looking for representation and that can take awhile."

The claimant's request was denied. Appeal hearings are telephonic, and parties often participate from locations other than their home or office. Further, the claimant's hearing was already postponed for a month so she could find representation.

---

<sup>1</sup> Docket 23-0059 and 23-0060

On April 7, 2023, the Tribunal opened the hearing for dockets 23 0059 and 23 0060. Testimony for 23 0059 was completed, the Tribunal accepted the claimant's appeal for 23 0060 as timely. However, the claimant needed to leave and pick her daughter up from school before the matter under docket 23 0060 was addressed.

The hearing was scheduled for May 19, 2023, to accommodate the claimant's work and theater<sup>2</sup> schedules. The postponement was extended until June 2, when the theater production ran longer than expected. The June 2, 2023, hearing was postponed until June 26, 2023, because the claimant's young daughter was hospitalized with a broken arm.

Both the claimant and a division representative appeared for the hearing on June 26, 2023. The issues for the hearing were whether the claimant received unentitled benefits for weeks she claimed benefits while working, whether she intentionally provided false information to obtain unentitled benefits, and whether she was required to repay any unentitled benefits including penalties.

The division provided a variety of audit reports and payroll records<sup>3</sup> from three employers for which the claimant worked during the weeks under review. Northern Dame Construction reported wages in the fall of 2020 and spring of 2021. WorkZone reported wages, on and off, between late 2018 and the fall of 2020. Finally, the State of Alaska reported wages from October 21, 2021, through March 2022.

The claimant testified that she had proof that showed she did not work as much as the employers were reporting. Specifically stating, she had never worked 37.5 hours for the State of Alaska. Therefore, she claimed all the reported wages were suspect. The Tribunal attempted to obtain details from the claimant on the hours of work and wages she believed she was paid. The claimant only made general statements about the wages being incorrect but offered nothing specific to support her argument. The Tribunal offered to continue the hearing to give the claimant an opportunity to provide the proof she offered. The Tribunal gave the claimant until July 17, 2023, to produce payroll information to support her argument. The hearing was scheduled for July 21, 2023.

On July 6, 2023, the claimant provided a copy of one pay advisory issued by the State of Alaska for the pay period ending October 31, 2021. The pay advisory showed the claimant was paid for 28 hours at \$21.91 per hour for a total of \$613.48 in gross wages, precisely what the employer reported on its audit form.<sup>4</sup> The division provided copies of timesheets from the State of Alaska, which showed the claimant's daily work hours for the weeks being reviewed. Copies of the timesheets were sent to the claimant by email on July 7, 2023.

---

<sup>2</sup> The claimant had prearranged performances for a theater production.

<sup>3</sup> Exhibit 1, pages 18 to 21, 23, and 24.

<sup>4</sup> Exhibit 1, page 21.

On July 21, 2023, the Tribunal contacted the parties to continue the hearing. The claimant did not answer the call and had not submitted a request to postpone the hearing. The Tribunal waited 15 minutes before going back on the record to accept the documents as evidence. The claimant's submission was marked Exhibit 6, and the division's submission was marked Exhibit 7.

In the afternoon on Monday, July 24, 2023, the claimant emailed the appeals office stating she missed the hearing on Friday because her mother had a stroke and was in the hospital all weekend. At that point, all additional documents were already accepted as evidence and the hearing was closed.

The Tribunal issued its decision on August 14, 2023. On August 16, 2023, the claimant requested Department review of her case. In her request, the claimant stated in part, "I did not receive the amount of money they claimed I made. I was not working for that much or those hours they claimed and I have proof and need an appeal hearing." The claimant was given until September 1, 2023, to provide her offer of proof. On August 28, 2023, the claimant sent the same October 31, 2021, pay advisory from the State of Alaska. In her email, the claimant wrote, "Here is attached showing how much I actually make and how many hours I actually work."

While the Tribunal did not make any credibility findings in its decision, we found the claimant's testimony unconvincing on several points. While we accept that employers make mistakes in reporting wages, we find it highly unlikely that all three of the claimant's employers would report significantly incorrect wages for the same person.

The claimant's arguments have focused on the accuracy of the employer reports. However, regardless of that point, there were multiple weeks where the claimant did not report any work or wages. She claimed this was due to being told by an unemployment technician that she could continue filing if she was working part-time. The technician's statement was correct, claimants can file for benefits for any week regardless of their employment status. However, that does not preclude the requirement to provide accurate answers on the benefit claim forms.

The claimant stated she may have filed for benefits during a week she was sick and unable to work. However, reviewing the copies of her claim certifications<sup>5</sup> we do not find the claimant ever answered the question, "Were you available and physically able to work full-time each day of the week?" in the negative.

The lack of documentary evidence provided by the claimant was also notable. Although the claimant has maintained that all three employers reported incorrect wages, in more than five months, she has provided only a single pay advisory that showed the hours worked and wages paid for the claimant's first week of work with the State. It also appears she was representing that pay statement as proof of her usual and customary work hours and wages.

---

<sup>5</sup> Exhibit 1, pages 114 to 142.

During the Tribunal hearing, the claimant mentioned she could obtain her payroll information for the State of Alaska in IRIS, which would prove she did not work the hours the employer reported. However, the claimant has never produced payroll records that support her argument.

We find the Tribunal based its decision on the preponderance of the evidence. We agree with the Tribunal's conclusion. The claimant knowingly provided false information while filing for unemployment benefits for the purpose of obtaining benefits to which she was not entitled.

The Division Appeal Tribunal decision issued on August 14, 2023, is **AFFIRMED** in its entirety. The weeks ending March 21, 2020; May 2, 2020; May 16, 2020; June 20, 2020; July 11, 2020; July 25, 2020; August 15 through August 29, 2020; September 26, 2020; and October 26, 2021, through January 15, 2022, remain denied under AS 23.20.360, and the claimant remains liable to repay unentitled benefits and any associated penalties provided under AS 23.20.387 and AS 23.20.390.

**FURTHER APPEAL** may be had from this decision by filing a Notice of Appeal in Superior Court for the State of Alaska within 30 days from the date of mailing of this decision as provided in AS 23.20.445, AS 44.62.560-570 and the Rules of Appellate Procedure of the State of Alaska. This decision is final unless an appeal is filed within the said 30-day period.

**Dated and Mailed on October 10, 2023.**



**CATHERINE MUÑOZ,  
ACTING COMMISSIONER**