

**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. 21 2099**

IN THE MATTER OF:

CLAIMANT:

CHRISTINE LEE

DIVISION:

BENEFIT PAYMENT CONTROL

REPRESENTED BY:

JAVIER DIAZ, ATTORNEY AT LAW

REPRESENTED BY:

WADE GODFREY, FRAUD INVESTIGATOR

The claimant, through legal counsel, has appealed to the Department from a Tribunal decision issued on May 10, 2022, which affirmed a Division determination issued on October 13, 2021. The Tribunal found the claimant failed to report her employment and wages correctly, knowingly made false statements of material facts with the intent to obtain unentitled benefits, and was required to repay overpaid benefits, including monetary penalties and a period of disqualification.

The claimant is asking to file a late appeal for further review of this case. The claimant states that she was unable to file a timely request due to the pain, depression, and anxiety caused by her polycystic ovarian syndrome (PCOS). The claimant included medical records supporting her diagnosis of PCOS, which were also included in the case file before the Tribunal. The claimant also provides that she was experiencing depression and anxiety related to her PCOS, and it was recommended she participate in weekly therapy sessions. However, she was unable to follow through with therapy sessions for financial reasons.

The claimant did not dispute that her request was untimely or that she was unaware of the thirty-day timeline for filing an appeal for Commissioner review. In her statement included with the request for Commissioner review, the claimant provides that in the summer of 2022, her financial circumstances were dire, she was facing eviction and making arrangements for extending the payment dates for her monthly bills, which were already past due. She made a general statement indicating she was unable to contact an attorney until December 2023. However, she offered no explanation of what changed in December 2023 that made contacting an attorney possible at that time. The claimant indicated she has been employed for the last year, but she was still trying to get into therapy.

To be considered timely, the claimant's appeal request was due no later than June 10, 2022. The first contact with the Appeals office on the matter of timeliness was made on February 26, 2024, in an email from claimant's attorney. This email was followed up on March 11, 2024, and a written request to accept an untimely appeal was received on April 1, 2024. The claimant's counsel asked for the period between December 2023 and the submission of the appeal request to be left out of the timeliness consideration, as it took time to investigate the claimant's situation.

We see no reason for granting this request. The thirty-day appeal period applies to both a self-represented party and those represented by counsel. Any late appeal request must bear the burden of providing evidence establishing the delay in filing was reasonable and outside the appellant's control. However, even giving the claimant the full benefit of the doubt and considering only the days between July 1, 2022, and November 30, 2023, this appeal was filed a minimum of 518 days after the 30-day appeal period. There were 623 days between the Tribunal decision being issued and February 26, 2024, and just over 30 additional days before the written request was submitted on April 1, 2024. As any of the timeframes are so far beyond any semblance of timeliness, it is unlikely the consideration of one over the other would cause any significant difference in the decision.

Estes v. Department of Labor, 625 P.2d 293 (Alaska 1981) [found] that a late claimant must show some quantum of cause; implicit is the requirement that the claimant's delay be caused by some incapacity, be it youth, illness, limited education, delay by the post office, or excusable misunderstanding, at the very least, and that the state suffer no prejudice. If the delay is short, the claimant need show only some cause; for longer delays, more cause must be shown. Borton v. Emp. Sec. Div., Super. Ct., 1KE-84-620 CI, (Alaska, October 10, 1985).

In this case, unlike in Wilson¹, the claimant argues her inability to provide additional evidence of her anxiety and depression claims were due to financial reasons and not just a personal choice not to seek treatment. In Wilson, the Tribunal denied the claimant's request to file an appeal 166 days after the Division issued its determination, finding his claims of depression were vague and unsupported by any medical evidence.

We see no reason to question the claimant's financial situation, her ability to afford therapy or her health claims. However, to grant review after such a significant delay would require evidence of circumstances of such a serious nature as to make it reasonably impossible to have filed the appeal any earlier. Anything less would seriously undermine the timeliness provisions provided under AS 23.20.430.

While we do not question the claimant's medical diagnosis or her struggles with pain, depression, or anxiety, we do not find her circumstances made her incapable of filing her appeal in a timelier manner. The claimant was able to continue working, successfully maintained her job for the last year, and was able to arrange payment

¹ Wilson, Trib dec. P21 358, July 13, 2021.

extensions on her bills. She was not so incapacitated that she was not able to tend to other important matters during the same period she claims an inability to file a simple request for Commissioner review.

The claimant fully participated in the Tribunal hearing. She was given an opportunity to explain her circumstances, present evidence, and question the Division's witnesses. The Tribunal hearing was fair, reasonable, and free of any obvious error.

Therefore, the claimant's request to file an untimely appeal for Commissioner review is denied. This appeal is dismissed for being untimely filed.

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. The appeals office cannot file an appeal with the Superior Court on your behalf. You must file your appeal request directly with the Court.

Dated and Mailed on April 30, 2024.

**CATHERINE MUÑOZ,
COMMISSIONER DESIGNEE**