****

**APPEAL TRIBUNAL DECISION**

**Docket Number:** 18 0945 **Hearing Date:** June 21, 2018

**CLAIMANT: EMPLOYER:**

KAREN KELLAR PRESBYTERIAN HOSPITALITY HOUSE

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Karen Kellar None

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a January 24, 2018 determination that denied unemployment benefits under AS 23.20.379 on the ground that the claimant voluntarily left her employment. The Division mailed the determination to the claimant’s address of record on January 25, 2018. The claimant filed her appeal on June 11, 2018, bringing forth the issue of timeliness of the appeal.

The claimant received the determination in late January or early February. She believed that the determination was a mistake. She did not contact the Division concerning the determination. She though the matter would get straightened out. She received a notice of overpayment connected the determination and became concerned but she was working and did not call the Division. She thought she could straighten out the matter when she was laid off for the summer.

The claimant filed a new claim effective June 10, 2018. She filed her appeal at that time.

#### PROVISIONS OF LAW

**AS 23.20.340. Determination of claims.**

(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;**

1. 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

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

In Biessel, Comm. Decision 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.*

The claimant laid aside the determination and the notice of overpayment because she believed it was a mistake. She believed that she could take care of it following her filing for benefits after she was laid off again in the summer.

As in Biessel, this is not a circumstance beyond the claimant’s control.

#### DECISION

The claimant’s appeal from the notice of determination issued on January 24, 2018 is **DISMISSED**.

#### APPEAL RIGHTS

This decision is final unless an appeal is filed 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 appeal rights and procedures is enclosed.

Dated and mailed on June 21, 2018.

Tom Mize

Appeals Officer