****

**APPEAL TRIBUNAL DECISION**

**Docket Number:** 19 0051 **Hearing Date:** February 1, 2019

**CLAIMANT:**

KRISTINA ANDERSON

**CLAIMANT APPEARANCES:**

Kristina Anderson

####  CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a February 28, 2017 determination that denied unemployment benefits under AS 23.20.378 on the ground that the claimant was not able to work and available for work due to travel. The Division of Employment and Training Services mailed the determination to the claimant’s address of record on March 1, 2017. The claimant filed an appeal on January 15, 2019, bringing forth the issue of timeliness of the appeal.

The claimant relocated temporarily to her parent’s residence in Mill Creek, Washington on or about January 30, 2017. She provided a forwarding address at the Post Office in Fairbanks, Alaska. She provided her address in Washington to the Division.

The claimant’s mother was having difficulty with the claimant’s sister-in-law. The claimant’s mother had gone to the Post Office in Mill Creek, Washington and placed a stop delivery notice on mail addressed to Kristine Anderson at the mother’s address. The claimant did not receive any mail at her mother’s house. She believed the Post Office confused her and sister-in-law as their names were similar.

The claimant returned to Fairbanks, Alaska in April 2018. She stopped her forwarding order. She had difficulty receiving mail at her Post Office Box. She had to get a new Post Office Box in Fairbanks. She began to receive mail in October 2018. She still had difficulty with mail for a period of time.

The claimant received a notice of liability for an overpayment in December. She contacted the Division on January 15, 2019 to determine what could be done about the overpayment. She appealed the determination on that date.

#### 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.

There is a rebuttable presumption that a notice placed in the mail will be timely delivered. Rosser, Comm. Dec. 83H-UI-145, June 15, 1983. Only if it can be shown that some circumstances occurred which prevented or reasonably can be shown to have prevented the delivery of the mail can the presumption of timely delivery be overcome. Whitlock, Comm. Dec. No. 9229240, March 17, 1993.

The claimant has overcome the presumption of timely delivery of the mail. She has shown a circumstance beyond her control prevented her from filing an appeal within the prescribed time limits. Good cause for late filing of her appeal has been shown.

 **DECISION**

The claimant’s appeal from the notice of determination issued on February 28, 2017 is **GRANTED**.

**FINDINGS OF FACT**

**(Travel)**

The claimant established a claim for unemployment insurance benefits effective October 23, 2016.

The claimant left Fairbanks, Alaska on January 30, 2017. She drove through Canada to Mill Creek, Washington for a job interview on February 3, 2017. While driving through Canada, the claimant arranged a second interview in Washington with a job placement company that had several openings in the claimant’s field of endeavor.

The claimant interviewed with Foster Pepper LLC on February 3, 2017. She also interviewed with Robert Half Employment Agency on February 3, 2017. The claimant had a second interview with Foster Pepper LLC on February 10, 2018 for a different position. The claimant interviewed February 7, 2017 with Robert Half for a position with an employer. The claimant was not made privy to the name of the employer.

The claimant continued to seek work in the Washington area while residing at her parents’ home. She was familiar with her job searches but not which ones were done in person during the weeks ending February 18, 2017 and February 25, 2017. Most of her searches were conducted online or by telephone. She provided the Division with her parents’ address on February 27, 2017 as her address of record.

 **PROVISIONS OF LAW**

**AS 23.20.378 provides:**

 (a) An insured worker is entitled to receive waiting-week credit or benefits for a week of unemployment if for that week the insured worker is able to work and available for suitable work….

**8 AAC 85.350:**

 (a) A claimant is considered able to work if the claimant is physically and mentally capable of performing work under the usual conditions of employment in the claimant's principal occupation or other occupations for which the claimant is reasonably fitted by training and experience.

 (b) A claimant is considered available for suitable work for a week if the claimant

 (1) registers for work as required under 8 AAC 85.351;

 (2) makes independent efforts to find work as directed under 8 AAC 85.352 and 8 AAC 85.355;

 (3) meets the requirements of 8 AAC 85.353 during periods of travel;

 (4) meets the requirements of 8 AAC 85.356 while in training;

 (5) is willing to accept and perform suitable work which the claimant does not have good cause to refuse;

 (6) is available, for at least five working days in the week, to respond promptly to an offer of suitable work; and

 (7) is available for a substantial amount of full‑time employment.

**8 AAC 85.353 provides:**

 (a) The requirements of this section apply to any period during which a claimant travels outside the area in which the claimant resides, unless the claimant travels while exempted from availability requirements under AS 23.20.378(a) or in connection with training approved under AS 23.20.382.

 (b) A claimant is available for work each week while traveling only if the claimant is traveling to

 (1) search for work and is legally eligible to accept work in the area of travel;

 (2) accept an offer of work that begins no later than 14 days after the claimant's departure; or

 (3) establish or return to a residence immediately following the claimant's discharge from the armed forces.

 (c) A claimant who travels in search of work must be legally eligible to accept work and make reasonable efforts to find work each week in the area of the claimant's travel, by

 (1) contacting in person an employment office;

 (2) making at least two in-person employer contacts;

 (3) registering in person with the local chapter of the claimant's union that has jurisdiction over the area of the claimant's travel; a claimant who has previously registered with the local union that has jurisdiction over the area of the travel is available for work if the claimant makes contacts as required by the union to be eligible for dispatch in the area of the travel; or

 (4) attending in person a pre-arranged job interview.

 (d) A claimant is not available for work after the claimant travels for more than four consecutive calendar weeks to search for work. A claimant is not available for work after the claimant travels for more than seven days if traveling to

 (1) accept an offer or work that begins 14 days after the claimant’s departure; or

 (2) establish or return to a residence immediately following the claimant’s discharge from the armed forces.

# CONCLUSION

8 AAC 85.353(a) provides that the requirements of this section apply to any period during which a claimant travels outside the area in which the claimant resides.

The Division’s Benefit Policy Manual Section AA 150 provides in subsection C that a claimant who travels for a pre-arranged job interview in the week of travel will be considered available for work during that week. The claimant need only have one scheduled interview during the week to meet regulatory provisions.

8 AAC 85.353(b) provides that a claimant who travels away from their area of residence during their customary workweek is considered available for work only if they travel for one of the three allowable reasons stated.

The claimant traveled to search for work. The claimant had job interviews scheduled for weeks ending February 4, 2017 and February 11, 2017. Thus establishing her travel was for seeking work.

The claimant did not recall specific in person job searches during the weeks ending February 18, 2017 and February 25, 2017. Therefore, the claimant did not meet the requirements under Regulation 8 AAC 85.353(c)(2) to establish that she was searching for work during those two weeks.

*Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law.* Scott, Com. Dec. 87H-EB-162, June 18, 1987.

The claimant has demonstrated her availability under the regulation for weeks ending February 4, 2017 and February 11, 2017 but has not demonstrated her availability for weeks ending February 18, 2017 and February 25, 2017.

 **DECISION**

The determination issued on February 28, 2017 is **MODIFIED**. Benefits are allowed for the weeks ending February 4, 2017 and February 11, 2017. Benefits remain denied for the weeks ending February 18, 2017 through February 25, 2017.

#### 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 February 5, 2019.

 Tom Mize

 Appeals Officer