

**APPEAL TRIBUNAL DECISION**

**Docket number:** 19 0482 **Hearing date:** July 26, 2019

**CLAIMANT: DETS:**

ISAAC NORRIS BENEFIT PAYMENT CONTROL UNIT

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Isaac Norris Cyndy Imboden

####  CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against an April 4, 2019 determination that denied benefits under AS 23.20.362 and AS 23.20.387 on the grounds that the claimant intentionally failed to report deductible income, and held him responsible to repay unentitled benefits and a penalty in AS 23.20.390. The Division mailed the determination to the claimant’s address of record on April 5, 2019. The claimant’s appeal was filed on May 16, 2019, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant arranged to have his mail delivered to the house of a friend while he was at work and temporarily without a residence. The claimant did not have his friend review his mail, she just set the mail aside for him. The claimant returned from a period of work out of town and set up a new claim for benefits effective April 21, 2019. The claimant was not advised of the determination mailed April 5, 2019, even though the penalty denial period of the determination would prevent the claimant from receiving benefits through March 28, 2020.

At that time, the claimant had not yet retrieved his mail from his friend’s house. He was busy looking for a place to live and he had problems connecting with his friend to get his mail. When the claimant collected the bundle of mail, he waited a few days to open it, because he was not expecting any time-sensitive mail.

The claimant did not receive benefits from his new claim as expected, so he called the Division’s claim center on May 16, 2019 and he was advised of the determination. The claimant filed his appeal at that time. He later found the determination in his mail.

#### PROVISIONS OF LAW

**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;**

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.

*It is clear from Estes v. Department of Labor, 625 P.2d 293 (Alaska 1981) 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).*

*When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant’s request.* Murphy, Com. Dec. No 87H-UI-283, September 29, 1987.

The Division mailed the notice to the claimant’s address of record and it was within the claimant’s control to have retrieved and reviewed his mail within the appeal period. However, the claimant spoke with a claim center representative during the 30-day day appeal period and he was not advised that there was a matter pending that would affect the future benefits for which he was applying.

The Tribunal finds that the Division’s obligation to notify the claimant of the determination and its effect on his new claim for benefits overrides the claimant’s responsibility to read his mail. In applying Estes and Murphy, the Tribunal finds the claimant’s appeal may be accepted as timely filed.

#### DECISION

The claimant’s appeal from the notice of determination issued on April 4, 2019 is **ACCEPTED** as timely filed. A new hearing notice will be follow and the parties are required to follow instructions on the notice to participate in the continued hearing.

#### 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 August 5, 2019.

 Rhonda Buness, Appeals Officer