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### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0103 **Hearing date:** February 19, 2020

**CLAIMANT:**

RODNEY OHANEN

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Rodney OHanen None

#### CASE HISTORY

The claimant timely appealed a January 21, 2020 determination which denied benefits under AS 23.20.375. The issue before the Appeal Tribunal is whether the claimant met the filing requirements.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective November 24, 2019. The claimant filed a bi-weekly certification to claim benefits for the weeks ending December 14, 2019 and December 21, 2019 on December 26, 2019.

The next bi-weekly certification for the weeks ending December 28, 2019 and January 4, 2020 was to be filed between January 5, 2020 and January 11, 2020. The claimant attempted to file his certification during that period, but he had problems with the internet connection in his home. The claimant had to get assistance from his internet service provider to get a password for internet access.

The claimant did not consider contacting the Division by phone to file his certification, and he did not think of trying to file using the Division’s telephone filing system.

On January 21, 2020, the claimant attempted to file certifications for the weeks ending January 11, 2020 and January 18, 2020. He re-opened his claim for benefits effective January 19, 2020. He then contacted the Division and certifications were taken by phone for weeks ending December 28, 2019 through January 18, 2020. The weeks ending December 28, 2019 and January 4, 2020 were denied because they were filed more than seven days past the end of the two-weeks. The weeks ending January 11, 2020 and January 18, 2020 were denied because the weeks ended before the date of his re-opened claim.

The claimant received an unemployment insurance claimant handbook when he established his claim for benefits. He recalled reading the handbook. The Tribunal takes notice that the Division’s handbook advises claimants that they must file every two weeks in order to keep their claim open and active and that a claim must be re-opened if a claimant stops filing for any reason and wants to start filing again.

#### PROVISIONS OF LAW

**AS 23.20.375. Filing requirements**

(a) An insured worker is entitled to receive waiting-week credit or benefits for a week of unemployment for which the insured worker has not been disqualified under AS 23.20.360, 23.20.362, 23.20.378 - 23.20.387, or 23.20.505 if, in accordance with regulations adopted by the department, the insured worker has

(1) made an initial claim for benefits; and

(2) for that week, certified for waiting-week credit or made a claim for benefits.

**8 AAC 85.100 Intrastate claim filing: initial claims**

(a) Intrastate initial claims, including new claims, transitional claims, additional claims, and reopened claims, as defined in this chapter, must be filed in accordance with the standards set out in this section. A claimant is not eligible for waiting week credit or benefits for any week before the week in which the initial claim is effective under this section.

(b) A claimant shall file an initial claim with an unemployment insurance claim center of the division by

(1) electronic means using an Internet application for benefits, which is the division's preferred and primary method for filing an initial claim;

(2) telephone; or

(3) mail, with the prior approval of the director.

(c) An initial claim is effective Sunday of the week in which the claimant

(1) files the claim; or

(2) requests to file a claim during regular business hours of the division, if the claim cannot be immediately accepted and the claimant files the claim within five business days after the date of that request, or if filed by mail, within 14 calendar days after the date of that request.

(d) An initial claim filed by mail is effective on Sunday of the week of the postmark date of the mailing of the completed claim form.

(e) Repealed 3/25/2007.

(f) A claimant who is in continued claim status at the end of a benefit year must file a new claim to begin a new benefit year. An extended benefit claimant who is in continued claim status at the end of the benefit year, or at the end of any quarter following the benefit year, must file a new claim to determine eligibility for regular benefits in a new benefit year. The director will send a notice of the requirement to file a new claim to the claimant at least two weeks before the end of the benefit year or the end of the applicable calendar quarter.

(g) A transitional claim, or any new claim filed during a series of continued claims after the end of a benefit year, is effective on Sunday of the week immediately following the end of the benefit year or the applicable calendar quarter, if the claim is filed no later than seven calendar days after the end of the benefit year or applicable calendar quarter. The director shall extend the time allowed for filing the claim if the failure to file the claim earlier was caused by an oversight or error of the division.

(h) A claimant shall file an additional claim to begin a new series of continued claims in a benefit year if the claimant had intervening work and

(1) stopped filing continued claims; or

(2) earned wages for a week greater than one and one-third times the weekly benefit amount plus $50.

(i) An claimant filing an additional claim shall provide

(1) the name and address of the claimant's last employer;

(2) the dates of employment; and

(3) the reason for separation from that employer.

(j) A claimant who stopped filing continued claims for a reason other than work shall file a reopened claim to begin a new series of continued claims in the same benefit year. A claimant filing a reopened claim shall provide the reason why the claimant stopped filing continued claims.

**8 AAC 85.102 Intrastate filing: continued claims**

(a) An intrastate claimant located in this state is eligible for waiting week credit or benefits for a week if the claimant

(1) files a continued claim for the week as required in this section; and

(2) meets all requirements of AS 23.20 and this chapter.

(b) A claimant shall file a continued claim with an unemployment insurance claim center of the division by

(1) an electronic means designated by the director;

(2) telephone; or

(3) mail, with the prior approval of the director.

(c) A continued claim for a week is filed when an unemployment insurance claim center of the division receives a certification for a continued claim.

(d) The filing date of a continued claim filed by mail is the postmark date of the mailing of the completed claim form.

(e) The date of filing of a continued claim filed by telephone is the date that the claimant accesses the telephone filing system and provides claim information for the week using the claimant's personal identification number.

(f) For each week claimed, the claimant shall answer specific eligibility questions and shall certify to the truthfulness and completeness of the answers.

(g) A continued claim for a week may not be filed before the end of the week claimed. A continued claim may not be filed later than seven calendar days after the end of the week claimed, except that

(1) if the director authorizes the filing of bi-weekly claims, the claim may not be filed later than seven days after the end of the bi-weekly period authorized by the director;

(2) a claim for benefits for a week of partial unemployment may not be filed later than seven days after the claimant receives wages for that week.

(h) The director shall extend the time allowed in (g) of this section for filing a continued claim if the claimant has good cause for filing a late claim and the claimant files the claim as soon as possible under the circumstances.

(i) For the purposes of (h) of this section, "good cause" means circumstances beyond a claimant's control that the division determines leave the claimant with no reasonable choice but to delay filing the claim; "good cause" includes illness or disability of the claimant, processing delays within the division, or failure of the division to provide sufficient or correct information to the claimant in order to file a continued claim.

#### CONCLUSION

The claimant in this case did not file his certifications in a timely manner because of problems with the internet service in his home.

Regulation 8 AAC 85.102(i) holds a claimant may have good cause for filing a claim if the delay is caused by illness or disability, processing delays within the Division or failure of the Division to provide sufficient information to the claimant in order to file. The claimant’s delays filing was due to problems with his personal internet service and he failed to make reasonable efforts to file in a timely manner, such as contacting the Division to request assistance. The weeks ending December 28, 2019 and January 4, 2020 were filed late without good cause.

In Matchett, Com. Dec. 992621, January 10, 2000, the Commissioner held in part:

*The unemployment insurance system also requires the filing of continuing claims on a bi-weekly basis wherein claimants certify to among other things, their availability for work and any earnings they may have had. If the continued claims are not filed on a timely basis, memories fade and there is a danger they will not be filed accurately. Allowing claims to be backdated for substantial periods, works against that goal. The statute requiring timely filing of claims is not frivolous.*

The claimant re-opened his claim effective December 19, 2019. He was required to re-open his claim because he stopped filing. The weeks ending January 11, 2020 and January 18, 2020 ended before the claim was re-opened.

In Olson, Com. Dec. No. 9122650, January 29, 1992, the Commissioner of Labor stated, in part:

*The regulation is clear that any initial claim must bear the date it is filed. There is no provision for backdating such claims at all, for good cause or otherwise.*

In Scott, Com. Dec. 87H-EB-162, June 18, 1987, the Commissioner held in part:

*Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law.*

The claimant did not have good cause to file late certifications and he re-opened his claim effective January 19, 2020.

#### DECISION

The determination issued on January 21, 2020 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending December 28, 2019 through January 18, 2020

#### APPEAL RIGHTS

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

Dated and mailed on February 24, 2020.

 Rhonda Buness, Appeals Officer