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**APPEAL TRIBUNAL DECISION**

**Docket Number:** 20 0302 **Hearing Date:** April 22, 2020

**CLAIMANT: EMPLOYER:**

AMY ROE BENEFIT PAYMENT CONTROL

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Amy Roe None

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a July 15, 2019 determination that reduced unemployment benefits under AS 23.20.360, denied benefits under AS 23.20.387 and required repayment of benefits and a penalty under AS 23.20.390 on the ground that the claimant had misrepresented her eligibility. The Division of Employment and Training Services mailed the determination to the claimant’s address of record on

July 16, 2019. The claimant filed an appeal on March 24, 2020, bringing forth the issue of timeliness of the appeal.

The claimant moved in May 2019 to a different address. She went to the Post Office and left a forwarding address. She ceased to get mail. She went to the Post Office sometime in late July or August. She was told all of her mail was returned to the sender. She did not receive any mail from the Division.

The claimant filed a new claim for unemployment insurance benefits on Tuesday, March 24, 2020. She learned at that time she was denied and overpaid. 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. She made efforts to continue to receive her mail by giving the Post Office a forwarding address. As the claimant has established that a circumstance beyond her control prevented her filing an appeal within the 30 day time period, the appeal is considered to be timely filed.

#### DECISION

The claimant’s appeal from the notice of determination issued on July 15, 2019 is **GRANTED**. A new hearing will be scheduled at which both parties will be allowed to present testimony.

#### 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 April 23, 2020.

Tom Mize

Appeals Officer