

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 0377 **Hearing date:** May 7, 2020

**CLAIMANT: DETS:**

SIONE TUUHOLOAKI BENEFIT PAYMENT CONTROL UNIT

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Sione Tuuholoaki None

####  CASE HISTORY

The claimant filed an appeal against a November 1, 2019 determination that denied benefits under AS 23.20.360 and AS 23.20.387 on the grounds that the claimant intentionally failed to report wages, and held him liable to repay overpaid benefits and a penalty under AS 23.20.390. The Division mailed the determination to the claimant’s address of record on November 4, 2019. The claimant’s appeal was filed on April 20, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

 **FINDINGS OF FACT**

The claimant did not recall receiving the determination under appeal. He did receive a determination of overpayment liability which detailed the overpaid benefit and penalty amounts he was required to pay and contains a statement about the right to appeal the determination. The claimant does not read English and he has his wife or a friend help him understand his mail from the Division. The claimant does not recall that he was advised of the right to appeal the determination within 30 days, and believes the person helping him summarized the notice and did not mention that part.

The claimant called the Division on November 8, 2019 to inquire about the determination. He was advised about payment options and steps the Division would take to collect the overpaid benefits. The claimant does not recall that his right to appeal the Division’s determination was explained to him. The claimant began making payments toward his overpayment.

The claimant applied for unemployment benefits in April 2020. He did not receive benefits and contacted the Division to find out why. He was advised that in addition to the amount he had to repay, he was disqualified from receiving benefits until after August 15, 2020 as a result of the determination made in November 2019. The claimant’s appeal rights were explained to him at that time and he filed his appeal.

#### 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.

The claimant received one of the Division’s notices which notified him of his appeal rights, but he was unable to read it and the person who assisted him summarized the document and did not explain that right to him. A claimant bears the responsibility to act on notices from the Division and the claimant in this case had a responsibility to seek assistance and ensure he was getting a complete explanation of notices sent to him by the Division. However, the claimant also called the Division within the 30-day appeal period and his right to appeal the determination was not explained to him.

*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, Comm. Dec. No 87H-UI-283, September 29, 1987.

*We find no material errors in the Tribunal's findings. However, we have previously ruled in* Murphy, Comm. Decision 87H-UI-283, Sept. 29, 1997*, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances.* Vassar, Comm. Dec. 96 0614, May 15, 1996.

The Division had an opportunity to assist the claimant when he called about the determination on November 8, 2019. His appeal could have been timely filed at that time. In applying Murphy and Vassar, the Tribunal concludes the claimant’s failure to file a timely appeal was outside of his control.

#### DECISION

The claimant’s appeal from the notice of determination issued on November 1, 2019 is **ACCEPTED** as timely filed. A hearing notice will follow with the time and date of the hearing to be scheduled in the matter of the claimant’s denial of benefits.

#### 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 May 7, 2020.

 Rhonda Buness, Appeals Officer