

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 0642 **Hearing date:** June 25, 2020

**CLAIMANT:**

TRISTAN DURAN

**CLAIMANT APPEARANCES:**

Tristan Duran

####  CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a April 16, 2020 determination that denied benefits under AS 23.20.378 on the grounds that the claimant was not available for work while attending school. The Division mailed the determination to the claimant address of record on April 17, 2020. The claimant appeal was filed on June 5, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant received the determination under review close to the time it was mailed. He did not agree with the determination and immediately began trying to contact the Division. The claimant tried calling at least three times a week and was never able to contact a claim center representative due to the volume of calls to the Division as a result of the COVID-19 pandemic. The claimant was not contacted when he left his number when directed to do so in order to be called back by a representative. The claimant eventually reached the claim center on June 5, 2020. His appeal was taken that day.

#### 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 purposes and policies of the Act are not served by a strict application of the procedural requirements to the detriment of a person the statute is intended to serve, especially when no apparent prejudice would otherwise be caused to the Department. Estes v. Department of Labor*,* 625 P.2d 293 (Alaska 1981).

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).

The claimant in this case tried to preserve his appeal rights very shortly after he received the determination. He was unable to get through by phone because the claim center’s phones were overhwelmed with callers. The claimant’s appeal was filed within a reasonably short period consider the Division’s inability to accept calls. The Tribunal

finds the claimant’s delayed appeal was a result of circumstances beyond his control and therefor may be accepted as timely filed.

#### DECISION

The claimant’s appeal from the notice of determination issued on April 16, 2020 is as timely filed.

**CASE HISTORY**

The determination issued April 16, 2020denied the claimant’s benefits under Alaska Statute 23.20.378(c) and 8 AAC 85.350. The issue is whether the claimant was available for full-time suitable work while attending school.

 **FINDINGS OF FACT**

The claimant established a claim for unemployment insurance benefits effective March 29, 2020.

The claimant is pursing a degree from the University of Alaska, Anchorage campus. The claimant was taking classes worth 16 credits in the semester that began in January 2020 and ended May 4, 2020. The claimant’s campus closed for Spring break in early March and did not re-open to in-person classes due to the COVID-19 pandemic. The claimant began taking classes online in mid-March. For the first two weeks, the claimant attended two of his 3-credit classes classes by logging in during the scheduled class time. He attended classes from 1:00 pm to 2:15 pm Tuesday and Thursday and 5:30 pm to 8:15 pm Tuesday. By the beginning of April, the claimant had no required class times and he completed all his course work at his own pace.

Before the campus closed, the claimant had worked 4-10 hours per week in student activities. The claimant was laid off when the campus closed.

**PROVISIONS OF LAW**

**AS 23.20.378 provides in part:**

(c) An insured worker is disqualified for waiting-week credit or benefits for a week of unemployment while the insured worker is pursuing an academic education. A disqualification under this subsection begins with the first week of academic instruction and ends with the week immediately before the first full week in which the insured worker is no longer pursuing an academic education. However, an insured worker who has been pursuing an academic education for at least one school term and who was working at least 30 hours a week during a significant portion of the time that the worker was pursuing an academic education is not disqualified for waiting-week credit or benefits under this subsection if the worker's academic schedule does not preclude full-time work in the worker's occupation and if the insured worker became unemployed because the worker was laid off or the worker's job was eliminated. In this subsection,

(1) "pursuing an academic education" means attending an established school in a course of study providing academic instruction of 10 or more credit hours per week, or the equivalent

(2) "school" includes primary schools, secondary schools, and institutions of higher education….

**8 AAC 85.350 provides:**

 (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 85.356 provides:**

 A claimant who is attending training is available for work if

(1) the claimant is not disqualified under AS 23.20.378 (c);

(2) the claimant is attached to the labor force and is ready and willing to immediately accept suitable full-time work for which the claimant is presently qualified; and

(3) the claimant

(A) while working full-time and attending training, became unemployed for reasons not attributable to the training, and the hours of training have not changed substantially;

(B) began attending training after becoming unemployed and no rearrangement of the training schedule would be necessary to accommodate at least one regular work shift in an occupation suitable for the claimant; or

(C) is willing and able to change the training schedule or leave the training to accept suitable work.

# CONCLUSION

Alaska Statute 23.20.378(c) holds that claimants who are pursuing an academic education taking 10 or more credits are disqualified from receiving benefits.

In Stayton, Commissioner Decision 00 2037, December 26, 2000, the Commissioner reiterated agency policy regarding distance learning stating, in part:

*We have previously held that participation in distance learning or correspondence courses does not serve to disqualify a claimant under AS 23.20.378(c)…*

At the point the claimant established his claim for benefits, all of his training was delivered online and he had no constraints on his time. His work did not end for any reason related to his training.

The Tribunal finds the claimant was available for work while pursuing his training online.

 **DECISION**

The determination issued on April 16, 2020 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending April 4, 2020 through May 9, 2020 if the claimant is otherwise eligible.

#### 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 June 29, 2020.

 Rhonda Buness, Appeals Officer