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### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0688 **Hearing date:** July 7, 2020

**CLAIMANT:**

ABRAHAM BAKLANOV

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Abraham Baklanov None

#### CASE HISTORY

The claimant timely appealed a June 12, 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 in 2019. The claimant re-opened that claim in April 2021 and began claiming benefits. In May 2021, the claimant received a notice from the Division that his benefit year was coming to an end and he was required to establish a new claim to continue receiving benefits. The claimant did not recall that the letter provide a deadline by which he was to take action. The claimant accessed the Division’s website on May 11, 2020. The website provided the option to file a certification for the week ending May 9, 2020. The claimant believed that was what the notice directed him to do to continue receiving benefits, so he completed the certification.

The claimant tried to contact the Division to find out why he did not receive benefits for the week ending May 9, 2020 but he could not get through due to volume of phone calls the Division was receiving. On May 15, 2020, the claimant again accessed the Division’s website and at that time he noted there was an option to file a new claim. He completed that application and his new claim was established effective May 10, 2020. The claimant requested that his new claim be made effective May 3, 2020 and his request was denied.

#### 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, 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.

#### CONCLUSION

Regulation 8 AAC 85.100(f) holds that 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. The regulation holds that the Division 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. The claimant is not sure when he received the Division’s notice.

Regulation 8 AAC 85.100(g) holds that 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 claimant filed his claim more than ten days after the end of his previous claim.

The regulation also holds that 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. The Division did not establish with the documents in the record that the claimant was notified in a timely manner of the requirement to open a new claim and the required time period in which he had to complete the action.

The Tribunal finds the claimant should be allowed additional time as in the regulation above. The claimant’s benefit year should be made effective May 3, 2020.

#### DECISION

The determination issued on June 12, 2020 is **REVERSED**. Benefits are **ALLOWED** for the week ending May 9, 2020, if the claimant is otherwise eligible.

The issue is **REMANDED** to the Division to change the effective date of the claimant’s benefit year.

#### 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 July 13, 2020.

 Rhonda Buness, Appeals Officer