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### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0815 **Hearing date:** July 23, 2020

**CLAIMANT:**

SHARYL J GALLAGHER

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Sharyl Gallagher None

#### CASE HISTORY

The claimant timely appealed three June 9, 2020 determinations 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 last worked in March 2020. Her work ended due to effects of the COVID-19 pandemic. The claimant established a claim for unemployment insurance benefits effective March 29, 2020, using the Division’s online application. On April 2, 2020, the claimant was advised that she would be eligible for a higher weekly benefit amount and more weeks of benefits if she waited and filed her claim the next calendar week, between April 5 and 11, 2020. Effective April 5, 2020, the Division’s calendar quarter changed and changed the calendar quarters of the claimant’s wage history used to calculate the claimant’s weekly benefit amount and duration.

The claimant was also advised that because she had worked in both Alaska and California, she could choose which state to file with, and whether or not to combine the wages from both states. The claimant was advised that she would be eligible for a higher weekly benefit amount and more weeks of benefits if she filed her claim with California, combined her wages from both states, and the claim was established between April 5 and 11, 2020, after the quarter change.

The claimant decided to withdraw the claim effective March 29, 2020 and re-file her claim the next week. The claimant talked to co-workers, and decided she should file her claim in California to receive the maximum benefits. The claimant applied for a claim on the State of California’s website, but when she answered the question, “did you work in another state?” in the affirmative, the application would not proceed and advised the claimant she was required to speak to a representative. The claimant tried continuously to reach a representative for the limited hours phone calls were accepted, for four weeks. At the end of April, the claimant again applied online for a claim on the State of California’s website and this time she answered that she had not worked out of stated, just so she could complete the application and established her claim without speaking to a representative. The claimant continued to try contacting the agency daily. When the claimant did reach representatives, they were unable to help her and promised callbacks that never came. On June 3, 2020, the claimant decided to abandon her attempts to get benefits from California because she could not contact anyone who could help her get benefits. She established a claim for benefits in Alaska effective May 31, 2020.

On June 8, 2020, the claimant requested her initial claim be made effective April 5, 2020. Certifications for the weeks ending April 11, 2020 through May 30, 2020 were taken. Benefits were denied for the weeks ending April 11, 2020 through May 23, 2020 on the ground that the certifications were filed late. The claimant’s request to back-date her claim to April 5, 2020 was denied. Benefits were denied for the weeks ending April 11, 2020 through May 30, 2020 because those weeks ended before the date of the claimant’s initial claim effective May 31, 2020.

On June 10, 2020 the claimant requested her claim for unemployment benefits in California be withdrawn, which was granted.

#### 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 was advised of her choices to file a claim and she chose file an initial claim effective April 5, 2020 with the State of California. The claimant established the claim, but then decided to withdraw it because she had not yet received benefits and she was frustrated by the inability to speak to a person who could assist her. The claimant established a claim in Alaska effective May 31, 2020.

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.*

The claimant in this case was not prevented from establishing a claim effective April 5, 2020 in Alaska. She chose to file her claim with California and was eventually successful in establishing a claim and would have likely received benefits from that claim if she had not withdrawn it. Alaska law does not provide for the back-dating of claims and the claimant’s circumstances do not indicate her claim should be effective before May 31, 2020, the week she requested to establish the claim. She is not entitled to benefits for any week ending before that date.

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’s circumstances do not provide good cause for filing certifications

late, as the delay was not caused by 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.

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 Tribunal finds the claimant’s claim for benefits was properly made effective May 31, 2020. She is not eligible for benefits for weeks ending before that date. She did not have good cause to file late certifications.

#### DECISION

The determination issued on June 9, 2020 is **AFFIRMED**. Benefits are **DENIED** for the weeks ending April 11, 2020 through May 23, 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 July 28, 2020.

 Rhonda Buness, Appeals Officer