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**APPEAL TRIBUNAL DECISION**

**Docket Number:** 20 0865 **Hearing Date:** July 29, 2020

**CLAIMANT:**

MIRIAM JARAMILLO

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Miriam Jaramillo None

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a May 22, 2020 determination that denied unemployment benefits under AS 23.20.375 on the ground that the claimant did not respond to a request for additional information. The Division mailed the determination to the claimant’s address of record on May 26, 2020. The claimant filed an appeal on July 1, 2020, bringing forth the issue of timeliness of the appeal.

The claimant is not proficient in English. She understands very little English. She received the determination mailed to her on May 26, 2020 in late May or early June. She did not understand the determination. She called the Division on June 16, 2020 to speak to someone about the determination and appeal it if necessary. She spoke to a representative but her appeal was not taken at that time. She asked her employer to aid her in filing the appeal. The appeal was filed on July 1, 2020.

#### 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.

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 has shown that she attempted to file an appeal on the matter in June prior to the 30 day time period ending. Therefore, her appeal is accepted as timely filed.

#### DECISION

The claimant’s appeal from the notice of determination issued on May 22, 2020 is **ACCEPTED**.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits on

March 12, 2020, effective March 8, 2020. The claimant provided her current address. On March 23, 2020, the Division attempted to contact the claimant by telephone concerning her address. The Division’s mail to the claimant was being returned.

The claimant attempted to call the Division representative but could not get through on the phone. The claimant had provided the correct current address. Her previous address was the same apartment complex with a different apartment number. She does not understand why it was not delivered.

The claimant finally reached the Division and corrected the problem with her returned mail on or about May 1, 2020.

#### PROVISIONS OF LAW

**AS 23.20.045. Regulations.**

The department may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this chapter.

**8 AAC 85.104. Claims filing: claimant responsibilities**

(a) A claimant shall provide the division with timely, accurate, and complete information to determine or reexamine the claimant's eligibility for any claim under this chapter. The claimant shall provide information on eligibility

(1) when filing an initial claim;

(2) when requested by the division in order to evaluate a series of continued claims;

(3) in response to a claim audit conducted by the division or its representative; or

(4) when moving to a new location.

(b) The division will not allow benefits or waiting week credit for a week if the claimant has refused to provide the division with timely, accurate, and complete information on which to base a determination of eligibility.

(c) The division will treat information provided by a claimant on a telephone claim using the claimant's personal identification number with the same status as if the claimant provided the information on a complete claim form.

#### CONCLUSION

The claimant did not respond to the Division’s request for information until Friday, May 1, 2020. As the information was not provided to the Division until May 1, 2020, the benefits must be denied under Regulation 8 AAC 85.104, above. The determination is modified to reflect the date the claimant reported her correct information.

In Gilheany, Comm. Dec. 84H-UI-348, March 29, 1985, the Commissioner held that:

*"Regulations are subject to the same constructs as are statutes. Under the rules of statutory construction, words, if not specifically defined, are to be accorded their commonly accepted meaning."*

#### DECISION

The determination issued on May 22, 2020 is **MODIFIED**. Benefits are denied for the weeks ending March 23, 2020 through May 2, 2020.

#### 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 August 6, 2020.

Tom Mize

Appeals Officer