

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 1162 **Hearing date:** September 14, 2020

**CLAIMANT:**

SAMUEL VOLK

**CLAIMANT APPEARANCES:**

Samuel Volk

####  CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a April 2, 2020 determination that denied benefits under AS 23.20.378 on the grounds that the claimant was not available for work. The Division mailed the determination to the claimant’s address of record on April 3, 2020. The claimant’s appeal was filed on July 29, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant received the determination. He tried calling the Division about four times, but he did not get through to a representative due to the high volume of calls the Division was receiving. The claimant was discouraged and stopped trying to call. He went to work June 10, 2020.

On July 29, 2020, the Division contacted the claimant about another matter related to his claim. He filed his appeal at that time.

#### 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.

In Borton v. Emp. Sec. Div., a decision of the Alaska Superior Court in October 10, 1985, the court held:

*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*

In Demit, Com. Dec. 87H-EB-099, May 1, 1987, the Commissioner held, in part:

*It is the claimant's responsibility to thoroughly read all information provided to him by the Division so that he will have the necessary knowledge needed to properly handle his claim.*

In Thompson, Com. Dec. 07 1164 , October 9, 2007, the Commissioner held, in part:

*In Commissioner Decision 03 2368, January 8, 2004, we concluded that an “employer is responsible to ensure its mail is reviewed and acted upon in a timely fashion.” This holds true for claimants and other interested parties. The claimant in this matter knew after an initial glance that a determination and notice of liability had been issued that she believed to be incorrect, and yet she put it aside to be dealt with at a later date.*

*While we agree that it can at times be tempting to put matters aside, it does not remove one’s obligation to ensure appeal rights are protected. We do not believe the claimant in this case has distinguished her situation such that her appeal delay can be attributed to a cause beyond her control and thus excused.*

The claimant in this case received the determination. He made four attempts to contact the Division by phone and then put the matter aside because he was discouraged. The Tribunal does not findc that the claimant took sufficient action to protect his appeal rights and his delayed appeal was not due to circumstances beyond his control.

#### DECISION

The claimant’s appeal from the notice of determination issued on April 2, 2020 is **DISMISSED**.

#### 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 September 15, 2020.

 Rhonda Buness, Appeals Officer