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### APPEAL TRIBUNAL DECISION

**Docket number:** 20 1250 **Hearing date:** August 24, 2020

**CLAIMANT:**

BRIAN ROE

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Brian Roe None

#### CASE HISTORY

The claimant timely appealed two determinations issued July 29, 2020, both of which denied benefits under AS 23.20.375. The issue before the Appeal Tribunal is whether the claimant met the Division’s filing requirements.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective December 8, 2019. He exhausted regular benefits on that claim with the week ending June 6, 2020. He received a notice that he may be eligible for extended benefits, and was directed to call the Division to apply. No option to apply online was offered. The claimant began trying to call during the week ending June 13, 2020. He called the Division dozens of times, at all times of the day, and only ever received a recording telling him that his call could not be accepted and to call again, before disconnecting. The claimant continued to file his weekly certifications.

On July 29, 2020, the claimant’s call was accepted and he was offered the option to leave his number to be called back. The claimant received a call back from the Division, and his claim for Pandemic Extended Unemployment Compensation was taken and made effective July 26, 2020. The claimant requested that his claim for extended benefits be backdated to week ending June 7, 2020. 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

http://www.legis.state.ak.us/sdimages/tab.gif(1) made an initial claim for benefits; and

http://www.legis.state.ak.us/sdimages/tab.gif(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

The claimant in this case was advised to contact the Division by phone to apply for Pandemic Extended Unemployment Compensation (PEUC). The volume of calls the Division was receiving prevented the claimant from getting through to the Division. He continued to file his weekly certifications while trying to reach the Division by phone.

Regulation 8 AAC 85.100(c) holds that (c) an initial claim is effective Sunday of the week in which the claimant files the claim; or 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.

The claimant in this case attempted to file his claim as directed in the week ending June 13, 2020 and again within five business days, and continuously for several weeks. Had he been able to reach the Division by phone on his initial attempts his claim would have been effective June 7, 2020. He continued to attempt to file the claim by calling multiple times each week until July 29, 2020, when he reaching a claim representative and his initial PEUC claim was made effective July 26, 2020. The claimant continued to file weekly certifications and made diligent efforts to contact the Division by phone as directed.

The Tribunal finds the claimant’s attempts to file an initial claim were delayed by circumstances beyond his control. The claimant’s PEUC claim should be made effective June 7, 2020.

#### DECISION

The determinations issued on July 29, 2020 are **REVERSED**. Benefits are **ALLOWED** for the weeks ending June 13, 2020 through July 25, 2020, if the claimant is otherwise eligible.

#### 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 September 3, 2020.

Rhonda Buness, Appeals Officer