

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 1679 **Hearing date:** November 30, 2020

**CLAIMANT: EMPLOYER:**

SHANE CLARKE ALL GOOD HOMES LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Shane Clark None

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a July 24, 2020 determination that denied benefits under AS 23.20.379 on the grounds that was discharged for misconduct. The Division mailed the determination to the claimant’s address of record on July 27, 2020. The claimant’s appeal was filed on September 22, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant does not recall receiving the determination under appeal. The claimant receives his mail at a mailbox which belongs to a family member. His mail has in the past been picked up and placed in various places in the house without his knowledge. The claimant does not know if that occurred in this case. The claimant received a notice that he had been overpaid benefits on August 28, 2020. He learned about the determination at that time. He decided to wait to appeal until he could get a letter from his doctor’s office to support his case on appeal. He called the doctor’s office, but did not get a response. He had started a new job and he waited until he could pay his car insurance and drive to the office to get his documents. He then contacted the Division on September 22, 2020 and filed his appeal.

#### 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.

*Once a notice has been properly mailed to an individual's last known address, the Department has discharged its "notice" obligation. The appellant's asserted failure to receive the notice does not establish cause for an extension of the appeal period. Andrews, Com. Dec. 76H-167, Oct. 8, 1976; aff'd Andrews v. State Dept. of Labor, No. 76-942 Civ. (Alaska Super. Ct. 1st J.D., April 13, 1977). There is a rebuttable presumption that a notice placed in the mail will be timely delivered. Rosser, Com. Dec. 83H-UI-145, June 15, 1983.*

*The failure of a party's agent or employee to act is not such a circumstance [to grant reopening]. Anderson, Com. Dec. 84H-UI-186, July 20, 1984.*

Although Anderson is regarding request to re-open a hearing, the principle here is the same. While it is unfortunate the claimant’s family member may have failed to give him the notice, the claimant had, in effect, made his family member his agent for the collection of his mail. That the claimant’s family member may have failed to give the

claimant his mail does not create a circumstance beyond the claimant’s control for a delayed appeal.

The claimant learned of the determination shortly after the 30-day appeal period ended. He did not file his appeal then because he wanted to get a document. The Commissioner has held:

*The Department has long held that waiting for supporting documents is not good cause for delaying the filing of an appeal. Hail, Com. Dec. No. 8924805, November 16, 1989. Dingler, Com, Dec. No. 9428375, October 5, 1994.*

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*

The claimant in this case has not established that his delayed appeal was due to circumstances beyond his control.

#### DECISION

The claimant’s appeal from the notice of determination issued on July 24, 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 December 4, 2020.

Rhonda Buness, Appeals Office