

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 1759 **Hearing date:** December 9, 2020

**CLAIMANT:**

MADISYN JANES

**REOPENING REQUEST**

On December 10, 2020, the claimant requested reopening of a hearing scheduled to be held December 9, 2020, which the claimant did not attend. The claimant did not provide a telephone number for the December 9,2020, which was then dismissed. It should be noted the interested employer did provide a telephone number and was ready to proceed at the scheduled time of hearing.

In the request to reopen, the claimant stated in part as follows;

“…I did not realize I had to call ahead of time to leave my phone number, I called and left my number and then tried to call to speak to someone about my hearing but when I call the numbers left of the Office of Appeals website I only get automated messages. I am curious if there is anything I can do to still have an appeal hearing.

The instructions on the notice are quite specific and read in part, as follows:

AS SOON AS YOU RECEIVE THIS NOTICE, YOU MUST CALL the Appeals Office (see number below) to provide a telephone number for your hearing – EVEN IF YOU HAVE ALREADY GIVEN YOUR NUMBER TO THE UNEMPLOYMENT OFFICE or some other agency. IF YOU DID NOT CALL, you will not be called for your hearing, and the hearing may be dismissed.

The notice also provides information that a party should call within ten minutes of the start time of the hearing if the party has not been called. The claimant did not call and provide a number before the hearing and did not call within ten minutes of the start time of the hearing.

**STATUTORY PROVISIONS**

**AS 23.20.420. HEARING PROCEDURE AND RECORD**.

(a) Each party shall be promptly given a reasonable opportunity for fair hearing. An appeal tribunal shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory and common law rules. The appeal tribunal shall include in the record and consider as evidence all records of the department that are material to the issues.

**8 AAC 85.153. HEARING PROCEDURES**.

(f) A hearing may be postponed, continued or reopened on the appeal referee's own motion or at the request of an interested party. All requests must explain in detail the reasons for the request. If a party fails to appear in person or by authorized agent at a hearing, the appeal referee may reopen the hearing only if the party failed to appear because of circumstances beyond the party's control. All other requests may be granted only if there is good cause. The following rules apply to requests:

1. A request for postponement may be either written or oral but must be received by the appeal referee before the hearing starts.
2. A request for continuance must be made orally to the appeal referee during the hearing.
3. A request for reopening must be made in writing to the appeal referee and must be delivered or mailed within 10 days after the scheduled date of the hearing. The 10‑day period may be extended for a reasonable period on a showing that the request was delayed as a result of circumstances beyond the party's control.

(4) If a request for reopening is not allowed, the appeal referee will mail a written ruling and a statement of the right of appeal from that ruling to each party.

(5) The appeal referee will rule upon requests for continuance or postponement either orally or in writing. The rulings may be contested before the appeal referee at the hearing. If a postponement or continuance is denied, the appeal referee will make a decision on the issue under appeal, and the denial of postponement or continuance may be appealed in an appeal from the referee's decision.

**CONCLUSION**

A hearing may be reopened if a party requests reopening within ten days of the date of the hearing, and if a circumstance beyond the control of the party caused the failure to appear. (AS 23.20.415 and 8 AAC 85.153).

In Biessel, Com. Dec. No. 9224963, May 27, 1992, the Commissioner of Labor stated:

The phrase "circumstances beyond a claimant's control" was not intended to mean simply mislaying, forgetting about, or losing a claim certification.

"A late appeal may be accepted only if the appellant can show some incapacity, 'be it youth, illness, limited education, delay by the post office, or excusable misunderstanding...' Borton v. Employment Sec. Div., No. IKE-84-620 Civ. (Alaska Superior Ct., 1st J.D., October 10, 1985)"; as cited in Aleshire, Com. Dec. 9028559, January 30, 1991….

The claimant failed to read and follow the instructions on the notice of hearing. True, she within the ten day window provided to timely request a reopening. Unfortunately, a failure to read the hearing instructions and call the Appeals Office ahead of the scheduled hearing is not a circumstance beyond the claimant’s control causing her to miss her hearing. Therefore, her request to reopen cannot be granted.

**DECISION**

The claimant’s request to reopen the hearing is **DENIED.**

**APPEAL RIGHTS**

This decision is final unless an appeal is filed to the Commissioner of Labor and Workforce Development within **30 days** of the date of the decision. The appeal period may be extended only if the appeal is delayed by circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on February 22, 2021.

Michael Swanson

Michael Swanson, Appeals Officer