

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 1805 **Hearing date:** January 20, 2021

**CLAIMANT:**

LEIA THOMPSON

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Leia Thompson None

#### CASE HISTORY

The claimant timely appealed a September 15, 2020 determination which denied benefits under AS 23.20.375 and 8 AAC 85.102 on a holding the claimant filed certifications late. The issue before the Appeal Tribunal is whether the claimant met the filing requirements.

The Division also issued a second September 15, 2020 determination which denied benefits under AS 23.20.375 and 8 AAC 85.100 on a holding the claimant was not eligible for weeks that ended before the date of an initial claim. The Tribunal takes this determination under review as well.

#### FINDINGS OF FACT

The claimant last worked in Alaska in October 2019. The claimant returned to the U.S. from China in January 2020. She planned to return to Alaska in February 2020 but she could not because she was very ill with an illness that may have been COVID-19. She stayed with her family in Virginia. The claimant started work in Virginia in March 2020 and was furloughed due to the COVID-19 pandemic. The claimant’s supervisor told her to contact the Virginia Department of Labor’s unemployment office to apply for benefits. The claimant established a claim on that state’s website effective March 29, 2020. She received a notice that she was not eligible for benefits. The claimant began trying to contact the Virginia unemployment office by phone to see what she needed to do to be eligible for benefits. She called all day for many weeks with no contact, due to the volume of calls that office was receiving because of the COVID-19 pandemic. The claimant sent emails that were not answered.

The claimant only stopped trying to contact the Virginia unemployment office when she started working part time in May 2020. The claimant was working remotely for the State of New York unemployment office, and as she learned how unemployment works, she understood that she may have been eligible for benefits through the State of Alaska. She contacted the Division on August 25, 2020 and filed a claim for Pandemic Unemployment Assistance benefits effective February 2, 2020. That program allows back-dating of claims based on the date of effect of the pandemic. She was advised that she was not eligible for benefits from that program because she was eligible for regular unemployment benefits. The claimant established a claim for regular benefits, which was back-dated to February 2, 2020, the effective date of her ineligible PUA claim. The Division took certifications for weeks ending February 8, 2020 through August 8, 2020. Weeks through August 8, 2020 weeks were denied as being filed more than seven days after the filing period allowed. Weeks ending August 15, 2020 and August 22, 2020 were denied because the weeks ended before the date of an initial claim.

#### 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 AS 23.20.360, 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

(1) made an initial claim for benefits; and



(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.

**8 AAC 85.102 Intrastate filing: continued claims**

(a) An intrastate claimant located in this state is eligible for waiting week credit or benefits for a week if the claimant

(1) files a continued claim for the week as required in this section; and

(2) meets all requirements of AS 23.20 and this chapter.

(b) A claimant shall file a continued claim with an unemployment insurance claim center of the division by

(1) an electronic means designated by the director;

(2) telephone; or

(3) mail, with the prior approval of the director.

(c) A continued claim for a week is filed when an unemployment insurance claim center of the division receives a certification for a continued claim.

(d) The filing date of a continued claim filed by mail is the postmark date of the mailing of the completed claim form.

(e) The date of filing of a continued claim filed by telephone is the date that the claimant accesses the telephone filing system and provides claim information for the week using the claimant's personal identification number.

(f) For each week claimed, the claimant shall answer specific eligibility questions and shall certify to the truthfulness and completeness of the answers.

(g) A continued claim for a week may not be filed before the end of the week claimed. A continued claim may not be filed later than seven calendar days after the end of the week claimed, except that

(1) if the director authorizes the filing of bi-weekly claims, the claim may not be filed later than seven days after the end of the bi-weekly period authorized by the director;

(2) a claim for benefits for a week of partial unemployment may not be filed later than seven days after the claimant receives wages for that week.

(h) The director shall extend the time allowed in (g) of this section for filing a continued claim if the claimant has good cause for filing a late claim and the claimant files the claim as soon as possible under the circumstances.

(i) For the purposes of (h) of this section, "good cause" means circumstances beyond a claimant's control that the division determines leave the claimant with no reasonable choice but to delay filing the claim; "good cause" includes illness or disability of the claimant, processing delays within the division, or failure of the division to provide sufficient or correct information to the claimant in order to file a continued claim.

**Sec. 23.20.095. Exchange of services, facilities, and information.** (a) The administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and those states and the appropriate federal agencies exchanging services and making facilities and information available.  
  
 (b) The department may make investigations, secure and transmit information, make available services and facilities, and exercise other powers provided in this chapter with respect to the administration of this chapter which the department considers necessary or appropriate to facilitate the administration of the unemployment compensation or public employment service law of another state or the federal government…

#### CONCLUSION

Alaska Statute 23.20.375 holds that in order to be eligible for benefits for a week of unemployment, a claimant must have established an initial claim for benefits and must file a certification for the week.

The claimant in this case filed an initial claim for unemployment insurance benefits against the State of Virginia effective March 29, 2020. The claimant was not eligible for a claim against that state because her work there had been too recent to be in her based period. The claimant did not understand why she was denied benefits and she tried to contact Virginia’s unemployment office diligently for weeks, but she was unable to get through due to the large volume of calls that office was receiving due to the COVID-19 pandemic. She only stopped trying to call when she began working.

The claimant was advised by her employer to file a claim with the State of Virginia at the point she was furloughed. The claimant’s actions in opening a claim in Virginia and then trying to find out why she was not eligible resulted in a considerable delay in contacting the Division establish a claim in Alaska. It can be reasonably assumed that the State of Virginia had access to nationwide unemployment claim information and therefore had an obligation to direct the claimant to contact Alaska to establish a claim within a reasonable time of her attempt to establish a claim in Nevada, if not for the unprecedented level of claim calls which prevented the claimant from receiving assistance.

The Division back-dated the claimant’s regular unemployment claim to the effective date of her Pandemic Unemployment Assistance claim. Regulation 8 AAC 85.100 holds that a claim for unemployment benefits is effective Sunday of the week in which it is filed. The claimant’s claim for regular unemployment benefits should not be backdated to February 2, 2020 because she had not attempted to file a claim at that time. Because the delayed processing of her claim was through no fault of the claimant’s, the Tribunal holds her claim should be made effective March 29, 2020, to reflect her first attempt to file an initial claim.

The claimant’s certifications for weeks ending April 4, 2020 through August 8, 2020 will be accepted as timely filed, as the claimant was not provided with proper information to file the certifications timely. The weeks ending August 15, 2020 and August 22, 2020 are not considered to have ended before the effective date of an initial claim.

#### DECISION

The determination issued on September 15, 2020 is **MODIFIED**. Benefits remain **DENIED** for the weeks ending February 8, 2020 through March 28, 2020. Benefits are **ALLOWED** for weeks ending April 4, 2020 through August 22, 2020, if the claimant is otherwise eligible.

The matter is **REMANDED** to the Division to change the effective date of the claimant’s claim to March 29, 2020.

#### 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 January 25, 2020.

Rhonda Buness, Appeals Officer