

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 2007 **Hearing date:** February 12, 2021

**CLAIMANT: EMPLOYER:**

FERMIN BREA HAIR SCIENCE

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Fermin Brea None

#### CASE HISTORY

The claimant filed an appeal against two determinations. First is a November 19, 2019 determination that denied benefits under AS 23.20.379 on the ground that the claimant voluntarily left suitable work without good cause or was discharged for work-related misconduct. The Division mailed the determination to the claimant’s address of record on November 20, 2019. The claimant’s appeal was filed on November 2, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The second determination was issued on May 20, 2020, and denied the claimant’s benefits under AS 23.20.406(h), on the ground that the claimant was not eligible for extended benefits. The Division mailed the determination to the claimant’s address of record on May 21, 2020. The claimant’s appeal was filed on November 2, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

**FINDINGS OF FACT**

The claimant received the determination of November 19, 2019 and decided that he would not bother appealing and accepted the penalties. He received the determination of May 20, 2020 and determined that he would not get the benefits and did not appeal the determination.

The claimant contacted the Division in November 2020 and was advised that he could still appeal the determinations. He chose to appeal November 2, 2020.

#### 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.

#### AS 23.20.406 provides in part:

#### (h) An individual is not eligible to receive extended benefits for any week of unemployment in the individual's eligibility period if the individual has been disqualified for benefits because the individual voluntarily left work, was discharged for misconduct, or refused an offer of suitable work, unless the disqualification imposed for those reasons has been terminated in accordance with AS 23.20.379(d).

#### AS 23.20.379 provides in part:

1. An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker

tab (1) left the insured worker's last suitable work voluntarily without good cause; or

tab(2) was discharged for misconduct connected with the insured worker's last work.

1. The disqualification required in (a) and (b) of this section is terminated if the insured worker returns to employment and earns at least eight times the insured worker's weekly benefit amount.

**8 AAC 85.095 provides, in part:**

1. A disqualification under AS 23.20.379 (a) and (b) remains in effect for six consecutive weeks or until terminated under the conditions of AS 23.20.379 (d), whichever is less. The disqualification will be terminated immediately following the end of the week in which a claimant has earned, for all employment during the disqualification period, at least eight times his weekly benefit amount, excluding any allowance for dependents. The termination of the disqualification period will not restore benefits denied for weeks ending before the termination. The termination does not restore a reduction in maximum potential benefits made under AS 23.20.379 (c).

#### CONCLUSION

An appellant has the burden to establish some circumstance beyond the appellant’s control prevented the timely filing of the appeal.

In Thomas, Com. Dec. 03-2368, January 8, 2004, the commissioner held:

*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 matter did not establish that his delay in filing an appeal against the November 19, 2019 and May 20, 2020 determinations was due to circumstances beyond his control. The Tribunal has no authority to review the matter.

#### DECISION

The appeal of the determinations issued on November 19, 2019 and May 20, 2020 are **DISMISSED** as untimely filed. The determinations remain unchanged

#### 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 February 18, 2021.

Tom Mize

Appeals Officer