

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 2291 **Hearing date:** April 8, 2020

**CLAIMANT:**

KATHERINE PLATTS

**CLAIMANT APPEARANCES:**

Katherine Platts

#### CASE HISTORY AND FINDINGS OF FACT

The claimant’s appeal was initially denied as untimely filed on the record at the time of the hearing. That order is vacated, and the appeal is accepted as timely filed as follows:

The claimant filed an appeal against a July 8, 2020 determination that denied benefits under AS 23.20.378 on the grounds that the claimant was not available for work during a period of travel. The Division mailed the determination to the claimant’s address of record on July 9, 2020. The claimant’s appeal was filed on December 9, 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 was out of town until July 30, 2020, and she was required to quarantine for two weeks after that because of COVID-19 requirements. She was first able to check her mail August 14, 2020. The claimant did not review her mail immediately because she was busy getting ready to return to work on August 17, 2020. The claimant’s work requires her to travel each week to villages surrounding Bethel and she was sometimes delayed in those villages longer because of weather and other factors. When the claimant did review her mail, she noted that she had received notice from the Division that her benefits had been denied, but she did not contact the Division at that time because she was busy with work. She was aware that she had not received benefits she had filed for, and she intended to contact the Division at some point to find out why she was denied. She did not recall that those notices provided any information about appeal rights.

The claimant received a notice in December that advised her she had been overpaid for some of the weeks that were denied and she was required to repay the benefits she had received. She contacted the Division on December 9, 2020 and her appeal was taken that day.

#### 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 claimant in this case has overcome the presumption that the notice was delivered to her because the Post Office did not accept mail addressed to the claimant around the time the determination was mailed.

While the claimant received some notices that benefits had been denied, it has not been established that those notices contained a statement of the claimant’s appeal rights. When the claimant received the overpayment notice, she was advised of her right to appeal and she did so at that time.

#### DECISION

The claimant’s appeal from the notice of determination issued on July 8, 2020 is **ACCEPTED** as timely filed.

#### 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 April 13, 2021.

Rhonda Buness, Appeals Officer