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**APPEAL TRIBUNAL DECISION**

**Docket Number:** 20 2318 **Hearing Date:** April 19, 2021

**CLAIMANT: EMPLOYER:**

EDGAR DUQUE NN MANAGEMENT SVCS

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Edgar Duque None

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a May 7, 2020 determination that denied unemployment benefits under AS 23.20.379 on the ground that the claimant quit work without good cause. The Division mailed the determination to the claimant’s address of record on May 8, 2020. The claimant filed an appeal on December 9, 2020, bringing forth the issue of timeliness of the appeal.

The claimant was advised of the denial. He did not recall getting a copy of the determination in the mail. He accepted the six week denial and moved forward with receipt of benefits. He appealed the determination when he appealed the denial of extended benefits (EB).

#### PROVISIONS OF LAW

**AS 23.20.340. Determination of claims.**

(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.

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. Borton v. Emp. Sec. Div., Super. Ct., 1KE-84-620 CI, (Alaska, October 10, 1985).

The claimant has not shown that a circumstance beyond his control prevented his appeal from being filed within the 30 time period. Therefore, the determination is final and the Tribunal has no authority to hear the appeal.

#### DECISION

The claimant’s appeal from the notice of determination issued on May 7, 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 April 26, 2021.

Tom Mize

Appeals Officer