

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 2390 **Hearing date:** April 15, 2021

**CLAIMANT:**

NELLI FAYVILEVYCH

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Nelli Fayvilevych None

#### CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against an October 7, 2020 determination that denied benefits under AS 23.20.375 on the grounds that the claimant did not meet the Division’s filing requirements. The Division mailed the determination to the claimant’s address of record on October 8, 2020. The claimant’s appeal was filed on December 17, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant believed she received the determination under appeal and read it, but she did not understand the appeal rights contained in the notice. The claimant attempted to call the Division about the benefits that had been denied within the appeal period, but she could not get through to a representative. The claimant called the Division frequently, but was always advised by the Division’s phone system to “call later.” She believed the claim center was receiving a large number of phone calls due to the COVID-19 pandemic.

The claimant first spoke with a claim center representative on December 17, 2020, and her appeal rights were explained to her. The claimant filed her appeal that day.

#### PROVISIONS OF LAW - TIMELINESS

**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 - TIMELINESS

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 in this case was unable to contact the Division during the 30-day appeal period because of the high volume of calls the Division was receiving. This was a circumstance beyond the claimant’s control.

Considering the claimant’s circumstances and the above cited decision of the Commissioner, the Tribunal must find that the claimant has established that the delayed appeal was due to a circumstance beyond the claimant’s control and the appeal may be accepted as timely filed.

#### DECISION - TIMLINESS

The claimant’s appeal from the notice of determination issued on October 7, 2020 is  **ACCEPTED** as timely filed.

#### CASE HISTORY - FILING

## The determination issued October 7, 2020 denied the claimant benefits under

AS 23.20.375. The issue before the Appeal Tribunal is whether the claimant met the Division’s filing requirements.

#### FINDINGS OF FACT - FILING

The claimant established a claim for unemployment insurance benefits effective March 15, 2020. When the claimant filed a certification to claim benefits for the week ending August 22, 2020, she exhausted the regular unemployment benefits that were available. The claimant continued to file weekly certifications, but she was not paid benefits for weeks after that date.

Documents in the record indicate the Division mailed notices to the claimant beginning August 4, 2020, advising her that her regular benefits were about to end and that she should call to apply for extended benefits. After the claimant exhausted her benefits, the Division continued to send notices advising the claimant to call for extended benefits. The claimant received the notices. She attempted to contact the Division at the point that she stopped receiving benefits. The claimant would have expected to receive benefits for the week ending August 29, 2020 in the week ending September 5, 2020. The claimant was unable to reach the Division by phone, calling repeatedly. She was advised by the Division’s phone system to “call back later.”

The claimant reached a Division representative by phone on October 7, 2020. Her claim for Pandemic Emergency Unemployment Compensation was taken that day and was made effective October 4, 2020.

#### PROVISIONS OF LAW - FILING

**AS 23.20.375. Filing requirements**

1. 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, 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.

#### CONCLUSION - FILING

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

Regulation 8 AAC 85.100 holds that initial claims are effective Sunday of the week in which they are filed. The claimant in this case established an initial claim for PEUC benefits on October 7, 2020. The claim was made effective October 4, 2020.

U.S. Department of Labor’s Unemployment Insurance Program Letter- 1720 Pandemic Emergency Unemployment Compensation, Attachment 1, issued April 10, 2020:

*Applicability of State Law Provisions.*

*Under Section 2107 of the CARES Act, except where inconsistent with the CARES Act or with the operating instructions promulgated to carry out the CARES Act, all terms and conditions of the state UC law applicable to claims for and payment of regular UC apply to claims for and payment of PEUC. States are reminded that they may have certain flexibilities in applying their requirements in light of the efforts to mitigate COVID-19, in addition to the specific flexibilities for “actively seeking work” in Section 2107(a)(7). See UIPL No. 10-20.*

*The provisions of the applicable state law that apply to claims for PEUC include but are not limited to:*

*a. Claim Filing and Reporting;*

The claimant in this case was aware her benefits were being held for some reason. She repeatedly tried to call the Division to find out why starting with the week ending September 5, 2020. The claimant was unable to reach the Division by phone, which she believed was due to the large volume of calls the Division was receiving.

The Tribunal finds the claimant was prevented from establishing her claim for extended PUEC benefits in the week ending September 5, 2020 because of circumstances beyond her control. The Tribunal finds the claimant’s PEUC claim should be made effective August 30, 2020.

#### DECISION- FILING

The determination issued on October 7, 2020 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending August 29, 2020 through October 3, 2020, if the claimant is otherwise eligible.

#### 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 21, 2021.

Rhonda Buness, Appeals Officer