

**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 009 **Hearing Date:** August 3, 2020

**CLAIMANT:**

JAMES WADE

**OPENING REQUEST ORDER**

On August 19, 2020, the claimant requested reopening of a hearing scheduled to be held August 3, 2020, but which the claimant did not attend. In his reopening request, the claimant stated among other things that he did not attend the hearing because, “I was wrongfully imprisoned on July 23, 2020.” “I was in custody 7/23/20 – 08/15/20.” “I was only able to contact my wife the Saturday (08/1/20) for the first time. She reapeatedy(sic) attempted to call both numbers given on the instructions (she has a screen shot showing this). Sshe was not able to get thru….”

Included in the reopening request is a screen shot of the instructions for a hearing by telephone with a handwritten note at the bottom “Tried at 7:05 AM.”

There is no record in the appeals office for this telephone call.

The instructions on the notice are quite specific and read in part, as follows:

AS SOON AS YOU RECEIVE THIS NOTICE, YOU MUST CALL the Appeals Office (see number below) to provide a telephone number for your hearing – EVEN IF YOU HAVE ALREADY GIVEN YOUR NUMBER TO THE UNEMPLOYMENT OFFICE or some other agency. IF YOU DID NOT CALL, you will not be called for your hearing, and the hearing may be dismissed.

The notice also provides information that a party should call within ten minutes of the start time of the hearing if the party has not been called by the assigned hearing officer. There is no appeals office record of the claimant or his wife calling for a postponement within ten minutes of the start time of the hearing.

**STATUTORY PROVISIONS**

**AS 23.20.420. HEARING PROCEDURE AND RECORD**.

(a) Each party shall be promptly given a reasonable opportunity for fair hearing. An appeal tribunal shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory and common law rules. The appeal tribunal shall include in the record and consider as evidence all records of the department that are material to the issues.

**8 AAC 85.153. HEARING PROCEDURES**.

(f) A hearing may be postponed, continued or reopened on the appeal referee's own motion or at the request of an interested party. All requests must explain in detail the reasons for the request. If a party fails to appear in person or by authorized agent at a hearing, the appeal referee may reopen the hearing only if the party failed to appear because of circumstances beyond the party's control. All other requests may be granted only if there is good cause. The following rules apply to requests:

1. A request for postponement may be either written or oral but must be received by the appeal referee before the hearing starts.
2. A request for continuance must be made orally to the appeal referee during the hearing.
3. A request for reopening must be made in writing to the appeal referee and must be delivered or mailed within 10 days after the scheduled date of the hearing. The 10‑day period may be extended for a reasonable period on a showing that the request was delayed as a result of circumstances beyond the party's control.

(4) If a request for reopening is not allowed, the appeal referee will mail a written ruling and a statement of the right of appeal from that ruling to each party.

(5) The appeal referee will rule upon requests for continuance or postponement either orally or in writing. The rulings may be contested before the appeal referee at the hearing. If a postponement or continuance is denied, the appeal referee will make a decision on the issue under appeal, and the denial of postponement or continuance may be appealed in an appeal from the referee's decision.

**CONCLUSION**

In Traylor, Comm. Decision No. 88H-UI-140, March 6, 1989, the Commissioner of Labor stated, in part:

*…, it must be determined whether [the claimant's] absence was "intentional." The department holds that it was. While he may not have intended the act for which he was incarcerated to sever the employment, he knew or reasonably should have known it would have jeopardized his employment. Sherman-Bertram v. Ca. Dept. of Employment, 21 Cal. Rptr. 130 (Ca. App., 1962 (claimant's felonious act was willful and resultant unemployment was his fault.)*

The above cited case involves whether a claimant is guilty of misconduct because of absences from work while incarcerated. It relates to this case because the claimant is requesting reopening. He was not able to attend his hearing because of his incarceration. As in Traylor, the claimant’s actions precipitated the incarceration. He knew or should have known that his actions and the resultant incarceration would prevent his appearance at his hearing. Also, there is no record of the claimant or his wife contacting the appeals office until after the hearing had been dismissed for failure by the claimant to attend.

Therefore, the claimant has not shown a circumstance beyond his control prevented his participation in the hearing.

**DECISION**

The claimant’s request to reopen the hearing is **DENIED.**

**APPEAL RIGHTS**

This decision is final unless an appeal is filed to the Commissioner of Labor and Workforce Development within **30 days** of the date of the decision. The appeal period may be extended only if the appeal is delayed by circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on November 27, 2020.

Michael Swanson

Michael Swanson, Appeals Officer