

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0779 **Hearing date:** October 12, 2021

**CLAIMANT:**

LINDA LEIGH

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Linda Leigh None

#### CASE HISTORY

The claimant timely appealed an April 21, 2021 determination which denied benefits under 23.20.406-409. The issue before the Appeal Tribunal is whether the claimant meets eligibility requirements to receive extended benefits.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective March 29, 2020. That benefit claim year came to an end on March 27, 2021. The claimant had exhausted the regular unemployment insurance benefits available on that claim and was receiving extended benefits from the federal Pandemic Emergency Unemployment Compensation (PEUC) program.

The claimant was aware her benefit year was coming to an end. She had received a notice that advised her she was required to test her eligibility. The claimant recalled that the letter gave her a deadline of April 14, 2021 to contact the Division or her benefits would be denied. The claimant was not sure what testing her eligibility required, but she called the Division before the deadline in the letter. The claimant found that she could not get through to speak to a representative because the Division’s phone system was continuously busy for days. The phone system played recordings with important messages. The claimant recalled that one message advised that some claimants had been notified in error about being denied benefits, and those claimants should not call in. The claimant believed this notice applied to her and she stopped trying to contact the Division. She continued to file weekly certifications to claim benefits.

When the claimant was still not receiving benefits after claiming the week ending April 10, 2021, the claimant decided to contact the Division. She reached a representative by phone on April 16, 2021 and a test claim application was taken that day, and made effective April 11, 2021.

#### PROVISIONS OF LAW

**Sec. 23.20.406. Extended benefits.**

(a) Except when the result would be inconsistent with other provisions of this chapter, the provisions of this chapter which apply to claims for or the payment of regular benefits apply to claims for and the payment of extended benefits.

(b) An individual is eligible to receive extended benefits with respect to any week of unemployment in the individual’s eligibility period if the department finds that with respect to that week the individual

(1) is an "exhaustee" as defined in AS 23.20.409 ; and



**Sec. 23.20.409. Definitions for AS 23.20.406 — 23.20.409.**

(3) "exhaustee" means an individual who, with respect to any week of unemployment in the individual’s eligibility period, has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act or under other federal laws which are specified in regulations issued by the United States Secretary of Labor and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking these benefits and the appropriate agency finally determines that the individual is not entitled to benefits under that law the individual is considered an exhaustee; and either

(A) has received, before that week of unemployment, all of the regular benefits that were available to the individual under this chapter or any other law, including dependents’ allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. 8501-8525, in the individual’s current benefit year that includes that week; however, for the purposes of this paragraph, an individual is considered to have received all of the regular benefits that were available to the individual even though the individual may subsequently be determined to be entitled to added regular benefits as a result of a pending appeal with respect to wages in covered employment that were not considered in the original monetary determination to be in the individual’s benefit year; or



(B) the individual’s benefit year having expired before that week, has no or insufficient wages in covered employment on the basis of which the individual could establish a new benefit year that would include that week.



**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.

#### CONCLUSION

Alaska Statute 23.20.406 holds that a claimant must meet the definition of “exhaustee” in order to be eligible to receive extended benefits. An exhaustee does not have right to any regular unemployment insurance benefits. The Division requires that claimants file a new claim each year and if ineligible, file a test claim each calendar quarter in order to see if they are eligible for regular unemployment benefits, to determine if they meet the definition of an exhaustee and are eligible for continued extended benefits.

Regulation 8 AAC 85.100(f) requires that a claimant who is in continued claim status at the end of a benefit year must file a new claim to determine if they are eligible for regular unemployment benefits. The regulation requires that the Division send a notice to the claimant at least two weeks before the end of the benefits year. A transitional claim is effective Sunday of the first week after the end of the benefits year if the claim is filed within seven days after the end of the benefit year. The time for filing is extended if the delay in filing the claim is sue to an error or oversight of the Division.

*When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant’s request. Murphy, Com. Dec. No 87H-UI-283, September 29, 1987.*

*We find no material errors in the Tribunal's findings. However, we have previously ruled in Murphy, Com. Decision 87H-UI-283, Sept. 29, 1997, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances. Vassar, Com. Dec. 96 0614, May 15, 1996.*

The claimant in this case called the Division in response to a notice from the Division. The Division’s phone system was too busy to accept the claimant’s call and the claimant heard a message telling claimants not to call that she believed applied to her. The claimant stopped calling until she noted she was not paid benefits for several weeks. As noted in the decisions of the Commissioner cited above, Division representatives have a responsibility to advise claimants correctly. The Division’s phone system provided an advisement that advised claimants not to call in and seemed to the claimant to apply to her. It is a circumstance beyond the claimant’s control that the message was not clear enough regarding which claimants it pertained to.

The Tribunal finds the claimant’s delayed test claim application was due to an error of the Division and her initial claim should be made effective March 28, 2021.

#### DECISION

The determination issued on April 21, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending April 3, 2021 and April 10, 2021, if the claimant is otherwise eligible.

The matter is **REMANDED** to the Division to change the effective date of the claimant’s claim to March 28, 2021.

#### APPEAL RIGHTS

This decision is final unless an appeal is filed in writing 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 rights and procedures is enclosed.

Dated and mailed on October 15, 2021.

Rhonda Buness, Appeals Officer