

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0830 **Hearing date:** September 17, 2021

**CLAIMANT:**

ANDRES AVENDANO

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Andes Avendano None

#### CASE HISTORY

The claimant timely appealed a March 31, 2021 determination which denied 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

The claimant established a claim for unemployment insurance benefits effective March 22, 2020. When the claimant filed a certification to claim benefits for the week ending January 23, 2021, he exhausted the regular benefits available on his claim.

The claimant recalled receiving a notice before his benefits were exhausted, which advised him to apply for extended benefits. The claimant did not really read the Division’s notice thoroughly and he did not ask anyone for assistance in understanding the instructions on the notice. The claimant went to the Division’s website, but he did not see an application for extended benefits. The claimant continued to file weekly certifications, but he was not paid benefits for any weeks after January 23, 2021.

After a week or two without benefits, the claimant attempted to contact the Division by phone, calling 2-3 times, but he did not get through and he believed there was no hope he would receive benefits, so he stopped calling. The claimant did reach the Division’s claim center by phone in the week ending March 6, 2021. His application for Pandemic Emergency Unemployment Compensation (PEUC) was taken and his initial claim was made effective Sunday of that week, February 28, 2021.

#### PROVISIONS OF LAW

**AS 23.20.375. Filing requirements**

(a) 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

Alaska Statute 23.20.375 holds that in order to be eligible for benefits for a week, the 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 in the week ending March 6, 2021. The claim was made effective February 28, 2021.

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;*

By the claimant’s own admission, the Division met its obligation to inform him of the requirement to call to establish a claim for extended benefits. The claimant did not thoroughly read the Division’s notice and did not ask anyone to help him understand what was required to establish an extended benefit claim. He made two or three attempts to contact the Division by phone.

In Olson, Com. Dec. No. 9122650, January 29, 1992, the Commissioner of Labor stated, in part:

*The regulation is clear that any initial claim must bear the date it is filed. There is no provision for backdating such claims at all, for good cause or otherwise.*

The Tribunal finds that the claimant’s first contact with the Division to request to apply for extended benefits was in the week ending March 6, 2021. His initial claim for PEUC benefits was properly made effective February 28, 2021. Benefits for weeks ending before the effective date were properly denied.

#### DECISION

The determination issued on March 31, 2021 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending January 30, 2021 through February 27, 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 September 22, 2021.

Rhonda Buness, Appeals Officer