

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 0901 **Hearing date:** October 12, 2021

**CLAIMANT:**

CYNTHIA IZON

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Cynthia Izon None

**STATEMENT OF THE CASE**

The claimant timely appealed an April 23, 2021 determination that denied benefits under AS 23.20.406(b) and 409(3). The issue is whether the claimant met the definition of “exhaustee” in order to receive extended benefits for the weeks ending April 10, 2021 and April 17, 2021.

#### FINDINGS OF FACT

The claimant was remodeling a house in Palmer for about two weeks in April. She did not check her mail during that period of time. The Division of Employment and Training Services mailed the claimant a notice on April 7, 2021 and another notice on April 13, 2021 that advised her that her benefit year had ended. The notice advised her to file a new claim to determine eligibility for the extension of benefits or eligibility for a new claim.

The claimant did not get the notice until about April 23, 2021. She filed a new claim for benefits on that date.

#### PROVISIONS OF LAW

**AS 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

(2) has otherwise satisfied the requirements of this chapter for the receipt of regular benefits.

**AS 23.20.409**. **Definitions For AS 23.20.406 - 23.20.409.**

(1) "applicable benefit year" means, with respect to an individual, the current benefit year if, at the time an initial claim for extended benefits is filed, the individual has an unexpired benefit year only in the state against which the claim is filed, or, in any other case, the individual's most recent benefit year; the most recent benefit year, for an individual who has unexpired benefit years in more than one state when the initial claim for extended benefits is filed, is the benefit year with the latest ending date or, if the benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed; extended benefits are not payable under this section unless the "applicable benefit year" was a benefit year established under this chapter;

(2) "eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within the extended benefit period, any weeks thereafter which begin in that period;

(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.

#### CONCLUSION

Under state and federal guidelines for extended benefits, a claimant must be tested for regular benefit eligibility at the end of each benefit year and/or the beginning of each new calendar quarter. The Division notified the claimant on April 7, 2021 and April 13, 2021 of the requirement to test for a new benefit year.

*Once a notice has been properly mailed to an individual's last known address, the Department has discharged its "notice" obligation. Once received at that address, it comes into the control of the person to whom addressed. The appellant's asserted failure to receive the notice does not establish cause for an extension of the appeal period. Andrews, Comm. Dec. 76H-167, Oct. 8, 1976; aff'd Andrews v. State Dept. of Labor, No. 76-942 Civ. (Alaska Super. Ct. 1st J.D., April 13, 1977). There is a rebuttable presumption that a notice placed in the mail will be timely delivered. Rosser, Comm. Dec. 83H-UI-145, June 15, 1983.*

Although Andrews is concerning an appeal, the principle is the same. The Division met its obligation to notify the claimant. The claimant had the ability to check her mail during the period in which it was mailed. She has not shown that a circumstance beyond her control prevented her receipt of the mail.

#### DECISION

The determination issued on April 23, 2021 is **AFFIRMED**. Benefits are denied for the weeks ending April 10, 2021 through April 17, 2021.

#### 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 October 12, 2021.

Tom Mize

Hearing Officer