

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0978 **Hearing date:** October

**CLAIMANT:**

AMOL AKOI

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Amol Akoi None

#### CASE HISTORY

The claimant timely appealed a May 10, 2021 determination which denied benefits under AS 23.20.375. The issue before the Appeal Tribunal is whether the claimant met the filing requirements.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective July 26, 2020. When the claimant filed a certification to claim benefits for the week ending, December 12, 2020, he exhausted the regular unemployment benefits available on his claim.

The Division mailed notices to the claimant on December 8, 2020 and December 15, 2020, which advised that his regular benefits were about to be exhausted and that he may be eligible for extended benefits. The notice advised him to call to apply. On December 15, 2020, the Division mailed a notice to the claimant that advised he had exhausted his regular unemployment benefits and advised that he call the Division if he had questions.

On December 22, 2020 the Division mailed a notice to the claimant that advised him he had not received benefits for a specific week he had claimed because he had exhausted his regular unemployment benefits. The notice advised the claimant that extended benefits may be available and advised him to call to apply. The Division continued to mail that notice each week when the claimant filed a weekly certification, through February 23, 2020.

The claimant received the Division’s mailed notices. He understood the instruction to call and apply for extended benefits. The claimant recalled that he waited a few weeks after he stopped receiving benefits to try to call the Division. When he did call, he found the Division’s phone system was consistently busy and he could not get through to speak to a representative due to the high volume of calls. The claimant attempted to call the Division about twice a day throughout January 2021, then stopped trying to call. He believed the Division should automatically add the extended benefits to his claim, since he was unable to get through by phone.

The claimant continued to file weekly certifications through the week ending February 27, 2021 and then stopped filing. The claimant contacted the Division by phone during the first week of May 2021 and his application for federal Pandemic Emergency Unemployment Compensation (PEUC) was taken and made effective Sunday May 2, 2021. The claimant requested the initial claim be made effective December 13, 2020. His request was denied.

#### 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 AS 23.20.360, 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.

**8 AAC 85.102 Intrastate filing: continued claims**

(a) An intrastate claimant located in this state is eligible for waiting week credit or benefits for a week if the claimant

(1) files a continued claim for the week as required in this section; and

(2) meets all requirements of AS 23.20 and this chapter.

(b) A claimant shall file a continued claim with an unemployment insurance claim center of the division by

(1) an electronic means designated by the director;

(2) telephone; or

(3) mail, with the prior approval of the director.

(c) A continued claim for a week is filed when an unemployment insurance claim center of the division receives a certification for a continued claim.

(d) The filing date of a continued claim filed by mail is the postmark date of the mailing of the completed claim form.

(e) The date of filing of a continued claim filed by telephone is the date that the claimant accesses the telephone filing system and provides claim information for the week using the claimant's personal identification number.

(f) For each week claimed, the claimant shall answer specific eligibility questions and shall certify to the truthfulness and completeness of the answers.

(g) A continued claim for a week may not be filed before the end of the week claimed. A continued claim may not be filed later than seven calendar days after the end of the week claimed, except that

(1) if the director authorizes the filing of bi-weekly claims, the claim may not be filed later than seven days after the end of the bi-weekly period authorized by the director;

(2) a claim for benefits for a week of partial unemployment may not be filed later than seven days after the claimant receives wages for that week.

(h) The director shall extend the time allowed in (g) of this section for filing a continued claim if the claimant has good cause for filing a late claim and the claimant files the claim as soon as possible under the circumstances.

(i) For the purposes of (h) of this section, "good cause" means circumstances beyond a claimant's control that the division determines leave the claimant with no reasonable choice but to delay filing the claim; "good cause" includes illness or disability of the claimant, processing delays within the division, or failure of the division to provide sufficient or correct information to the claimant in order to file a continued claim.

#### 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 during the first week of May 2021. The claimant did file weekly certifications timely, but he did not have an initial claim for extended benefits that was effective before May 2, 2021.

The U.S. Department of Labor holds that PEUC claims are subject to the reporting requirements of the state in which the claimant is eligible for benefits. 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 Division met its obligation to notify the claimant that his regular unemployment benefits were ending and that extended benefits were available. The claimant was advised how to apply for extended benefits. The Division continued to notify the claimant each week that he was required to call to apply for benefits. The claimant received the notices, but waited several weeks to try to call the Division. He stopped trying to call after he did not get through in January. The claimant contacted the Division over two months later and applied for PEUC.

Regulation 8 AAC 85.100 holds that an initial claim is effective Sunday of the week in which the claimant files the claim or requests to file the claim. The claimant did not request to file a claim until the first week of May 2021. While the high volume of calls to the Division’s phone system was not within the claimant’s control, it was within his control to call as soon as he received the Division’s notice instructing him to call, and it was within his control to continue trying calling until he reached a representative.

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.*

In Scott, Com. Dec. 87H-EB-162, June 18, 1987, the Commissioner held in part:

*Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law.*

The Tribunal concludes the claimant’s PEUC claim was properly made effective May 2, 2021. He is not eligible for benefits for weeks ending before that date.

#### DECISION

The determination issued on May 10, 2021 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending December 19, 2020 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 October 29, 2021.

Rhonda Buness, Appeals Officer