

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 1092 **Hearing date:** November 18, 2021

**CLAIMANT:**

ILAISAANE WHELAN

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Ilaisaane Whelan None

Don Whelan

**STATEMENT OF THE CASE**

The claimant timely appealed a May 28, 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 through May 22, 2021.

#### FINDINGS OF FACT

The claimant established a benefit year effective April 5, 2020. On March 16, 2021, the Division of Employment and Training Services sent the claimant a notice that advised the claimant that her benefit year was about to end and that she would be required to file a new claim after April 3, 2021. The notice also advised of the extension of multiple programs in pandemic benefits.

The claimant began attempting to reach the Division by telephone on April 5, 2021. The claimant has records of 158 attempts to reach the Division by telephone. The claimant would hear a message about the volume of calls and then be disconnected. On two occasions, the claimant was able to leave a call back number. The claimant did not receive a call back. The claimant was finally able to get through on May 27, 2021. A new claim was taken at that time.

#### 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 of the requirement to test for a new benefit year on March 16, 2021.

The claimant began attempts to reach the Division beginning April 5, 2021. She continued calling through May 27, 2021 when she finally reached someone with the Division.

Regulation 8 AAC 85.100(g) provides that 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.

Although it was beyond the Division’s ability to predict the pandemic and its resulting

issues created for the Division, the failure of the Division to provide sufficient

employees to answer the phones is an oversight of the Division.

Therefore, the effective date of the claimant’s new claim is backdated to the week in

which she first attempted to file her new claim, April 4, 2021.

#### DECISION

The determination issued on May 28, 2021 is **REVERSED**. Benefits are allowed for the weeks ending April 10, 2021 through May 22, 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 Tom Mize.

 Tom Mize

 Hearing Officer