

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1142 **Hearing date:** July 19, 2021

Previously: 20 2018

**CLAIMANT:**

JAMIE MCCOLLEY-EDWARDSON

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Jamie McColley-Edwardson None

#### CASE HISTORY

The claimant timely appealed an October 28, 2020 determination which denied benefits under AS 23.20.375. The issue before the Appeal Tribunal is whether the claimant met the filing requirements.

The Tribunal also takes under review a determination issued October 29, 2020 which denied the claimant’s benefits under the same statute and regulation.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective March 22, 2020.

The claimant filed certifications through the week ending August 29, 2020 using the Division’s website form created for that purpose. The claimant stopped filing weekly certifications for a time when she was overcome by the death of her significant other.

The Division’s records noted that the claimant’s application for Pandemic Extended Unemployment Benefits should be effective August 9, 2020. The Division’s note was dated October 9, 2020. There is no indication of when the claimant established her claim for an extension to her benefits. The claimant was not sure when she had contact with Division, as her memory of that period is unclear.

The claimant recalled that she tried to contact the Division by phone many times beginning about September 29, 2020. She could not get through because the Division’s phone lines were too busy to accept her call. At one point she waited on the phone over three hours and then the call disconnected. The claimant did have phone contact with a Division representative on October 26, 2020. The claimant’s claim for benefits was re-opened effective Sunday of that week, October 25, 2020. The claimant’s request to back-date her claim to Sunday, October 4, 2020 was denied.

The claimant also filed certifications for the weeks ending October 10, 2020 and October 17, 2020 by phone with the claim center representative. The claimant filed a certification for the week ending October 24, 2020 on the Division’s website on October 28, 2020. The claimant’s benefits were denied for those weeks because the weeks ended before the effective date of the claimant’s initial claim, October 25, 2020.

#### 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, including re-opened claims, are effective Sunday of the week in which the claim is filed or requested to be filed. The regulation also holds that a claimant must re-open a claim after a break in filing before they can start filing certifications.

The claimant had a break in filing due to personal circumstances. She began trying to contact the Division on September 29, 2020 to begin filing again. The claimant did reach the Division by phone on October 26, 2020, and possibly even before that date. The claimant attempted to request her claim be re-opened starting on September 29, 2020. The Division has a responsibility to ensure its phones are answered and it was not within the claimant’s control that she was denied the opportunity to establish an initial claim in the week ending October 3, 2020.

The Tribunal finds the claimant’s re-opened claim should be made effective Sunday, September 27, 2020.

#### DECISION

The determinations issued on October 28, 2020 and October 29, 2020 are **REVERSED**. Benefits are **ALLOWED** for the weeks ending October 10, 2020 through October 24, 2020, if the claimant is otherwise eligible.

#### 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 July 22, 2021.

Rhonda Buness, Appeals Officer