

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 1370 **Hearing date:** November 3, 2021

**CLAIMANT: EMPLOYER:**

JOANNE FRIEMERING PAPA JOHN’S

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

JOANNE FRIEMERING NONE

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against A December 14, 2020 determination that denied benefits under AS 23.20.379 on the grounds that she quit suitable work without good cause. The Division mailed the determination to the claimant’s address of record on December 15, 2020. The claimant’s appeal was filed on July 12, 2021, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant last filed for week ending November 28, 2020 before being incarcerated from then until June 2021. She did not have an address to receive mail until her release when she reopened her claim for benefits and provided a current address to the Division. She filed her appeal proximate to being informed of the determination by a Division representative.

#### PROVISIONS OF LAW

**AS 23.20.340 provides in part;**

(e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant's control.

(f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 ‑ 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

**8 AAC 85.151 provides in part;**

1. An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant’s last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

#### CONCLUSION

An appellant has the burden to establish some circumstance beyond the appellant’s control prevented the timely filing of the appeal.

*The purposes and policies of the Act are not served by a strict application of the procedural requirements to the detriment of a person the statute is intended to serve, especially when no apparent prejudice would otherwise be caused to the Department. Estes v. Department of Labor, 625 P.2d 293 (Alaska 1981).*

The claimant is this case has shown a circumstance beyond her control for her late filing. She did not have an active address while incarcerated and filed her appeal immediately upon getting out of jail, getting a current address, and becoming aware of the determination.

#### DECISION

The claimant’s appeal from the notice of determination issued on December 14, 2020 is **ACCEPTED** as timely filed.

A new notice of hearing will be issued with a date and time for the hearing regarding

the claimant’s separation from employment. The parties must follow the instructions on the Notice of Hearing. The case may be assigned to any Appeals Officer.

**SO ORDERED.**

#### 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 November 4, 2021.

Jan Carran, Appeals Officer