****

**APPEAL TRIBUNAL DECISION**

**Docket Number:** 21 1741 **Hearing Date:** February 11, 2022

**CLAIMANT: EMPLOYER:**

VERNON AULIYE F & W CONSTRUCTION CO

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Vernon Auliye None

#### CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a June 1, 2020 determination that denied unemployment benefits under AS 23.20.379 on the ground that the claimant voluntarily left employment without good cause. The Division mailed the determination to the claimant’s address of record on June 2, 2021. The claimant filed an appeal on September 2, 2021, bringing forth the issue of timeliness of the appeal.

The claimant believed the notice of determination was lost after he received it. The claimant was busy taking care of his mother at that time. He was traveling with his mother to Anchorage and visiting with his sister. The claimant was also trying to get paperwork from his employer regarding his injury.

The claimant contacted the Division after he ceased to receive benefits in September. He filed his appeal at that time.

#### PROVISIONS OF LAW

**AS 23.20.340. Determination of claims.**

(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.

Once a notice has been properly mailed to an individual's last known address, the Department has discharged its "notice" obligation. 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.

The claimant has not shown that a circumstance beyond his control prevented his appeal being filed within the 30 day time period. Therefore, the determination has become final and the Appeal Tribunal is without jurisdiction in the matter.

#### DECISION

The claimant’s appeal from the notice of determination issued on June 2, 2021 is **DISMISSED**.

#### 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 February 11, 2022.

Tom Mize

Tom Mize

Appeals Officer