

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1904 **Hearing date:** April 8, 2022

**CLAIMANT:**

BRENDA LOPEZ

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Brenda Lopez None

#### CASE HISTORY

The claimant timely appealed a September 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 May 24, 2020. During the period under review, the claimant had issues with her phone and internet access, so she began filing certifications using the Division’s paper certification forms which she would send to the Division by fax and also by mail.

On September 3, 2021, the claimant contacted the Division because she had noted on her bark records that she had not received benefits as expected. The claimant was advised that the Division had not received a certification to claim benefits for the weeks ending August 7, 2021 and August 14, 2021. The filing period for those two weeks was August 15, 2021 through August 21, 2021. The claimant believed she had sent the certification for that week by fax and by mail during the filing period. The claimant could not find a receipt for sending the certifications by fax, but thought she may have forgotten to get a receipt. The claimant conceded it was possible she may have forgotten to send the certifications as she does experience medical issues which cause memory problems.

Certifications for the weeks ending August 7, 2021 and August 14, 2021 were taken by phone that day and benefits were denied because the weeks were filed late.

#### 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 85.102 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 to be eligible for benefits for a week of unemployment, a claimant must establish an initial claim for benefits and for each week must file a certification to claim benefits. Regulation 8 AAC 85.102 holds that a bi-weekly certification must be filed within seven days after the end of the bi-weekly period. The regulations holds that additional time to file will be allowed if the claimant has good cause to file late.

A Hearing Officer must base his decision on a "preponderance of evidence." See e.g. Patterson, Comm'r Dec. 86H-UI-233, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.28, 10/16/86. "Preponderance of evidence" has been defined as "that evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto." Adelman, Comm'r. Dec. 86H-UI-041, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.25, 5/10/86, *citing* S. Yamamoto v. Puget Sound Lumber Co., 146 P. 861, 863 (WA).

The claimant in this case believed she did send her certification for the period under review by fax and by mail during the period allowed for filing, however the Division’s claim center did not receive the certification in either form. The claimant was unable to find a receipt for faxing the certification. Further, the claimant admitted to having problems with her memory during that time. The preponderance of the evidence establishes that the claimant likely forgot to send the certification in this matter to the Division.

In Matchett, Com. Dec. 992621, January 10, 2000, the Commissioner held in part:

*The unemployment insurance system also requires the filing of continuing claims on a bi-weekly basis wherein claimants certify to among other things, their availability for work and any earnings they may have had. If the continued claims are not filed on a timely basis, memories fade and there is a danger they will not be filed accurately. Allowing claims to be backdated for substantial periods, works against that goal. The statute requiring timely filing of claims is not frivolous.*

Although the claimant had memory issues caused by a medical condition, she did not establish that she was prevented from filing a timely certification by her condition. The claimant has not established that she had good cause to file a late certification. The Tribunal finds the claimant’s benefits were properly denied for the weeks under review.

#### DECISION

The determination issued on September 10, 2021 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending August 7, 2021 and August 14, 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 April 15, 2022.

Rhonda Buness, Appeals Officer