

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 2012 **Hearing date:** May 25, 2022

**CLAIMANT: EMPLOYER:**

JASON THOMASSON RIAD SICILY'S PIZZA LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Jason Thomasson None

#### CASE HISTORY

The claimant filed an appeal against two determinations. First is a July 13, 2021 determination that denied benefits under AS 23.20.379 on the ground that the claimant voluntarily left suitable work without good cause or was discharged for work-related misconduct. The Division mailed the determination to the claimant’s address of record on July 14, 2021. The claimant’s appeal was filed on October 11, 2021, giving rise to the issue of the timeliness of the claimant’s appeal.

The second determination was issued on September 23, 2021, and denied the claimant’s benefits under AS 23.20.406(h), on the ground that the claimant had not purged the previously imposed disqualification from extended benefits. That determination was appealed timely.

**FINDINGS OF FACT**

The claimant did not recall receiving the Division’s determination mailed on July 14, 2021. The claimant at that time, and to this date, received his mail at the Post Office box of his ex-girlfriend. The claimant does not have a key to the box and must make arrangements to meet his ex-girlfriend to get the mail he receives at her address. This was further complicated during the appeal period because the claimant had car problems and it was more difficult to meet to receive his mail. The claimant does not have a consistent address at which he can receive his mail and he was unaware at that time that he could have mail sent to him “general delivery” and pick it up at the Post Office.

The claimant filed his appeal on October 11, 2021 when he learned that he was not eligible for extended benefits because of the July 13, 2021 determination.

The claimant believed he returned to work during the first six weeks of unemployment, January 17, 2021 to February 27, 2021. The claimant’s weekly benefit amount on his unemployment claim was $168. He was not sure if he had earned eight times his weekly benefit amount, or $1,344 in that period. The record was left open for the claimant to provide wage proof for that period, but none was received by close of business on June 1, 2022, the date the claimant was advised the hearing record would be closed.

#### 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.

#### AS 23.20.406 provides in part:

#### (h) An individual is not eligible to receive extended benefits for any week of unemployment in the individual's eligibility period if the individual has been disqualified for benefits because the individual voluntarily left work, was discharged for misconduct, or refused an offer of suitable work, unless the disqualification imposed for those reasons has been terminated in accordance with AS 23.20.379(d).

#### AS 23.20.379 provides in part:

1. An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker

(1) left the insured worker's last suitable work voluntarily without good cause; or

(2) was discharged for misconduct connected with the insured worker's last work.

1. The disqualification required in (a) and (b) of this section is terminated if the insured worker returns to employment and earns at least eight times the insured worker's weekly benefit amount.

**8 AAC 85.095 provides, in part:**

1. A disqualification under AS 23.20.379 (a) and (b) remains in effect for six consecutive weeks or until terminated under the conditions of AS 23.20.379 (d), whichever is less. The disqualification will be terminated immediately following the end of the week in which a claimant has earned, for all employment during the disqualification period, at least eight times his weekly benefit amount, excluding any allowance for dependents. The termination of the disqualification period will not restore benefits denied for weeks ending before the termination. The termination does not restore a reduction in maximum potential benefits made under AS 23.20.379 (c).

#### CONCLUSION

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

In Garcia, Com. Dec. 95 1413, August 7, 1995 (other cites omitted), we affirmed Department policy that holds:

*The claimant filed his appeal late because he chose to have his mail received at his aunt's house in Oregon while he resided at a different location. He therefore did not learn of the determination until some time after it was mailed to his proper address, and as a result, his appeal was filed 10 days beyond the appeal period. We have previously held that once a determination is mailed to a person's last known address, the agency has discharged it's "notice" obligation and any error by the person's agent in delivering the mail is not to be held to the detriment of the division. In re Roberts, Com. Review 82H-UI-190, November 19, 1982.*

While it is unfortunate the claimant’s ex-girlfriend may have failed to give him the notice, the claimant had, in effect, made her his agent for the collection of his mail. That the claimant’s ex-girlfriend failed to give the claimant his mail does not create a circumstance beyond the claimant’s control for filing a late appeal. The determination issued July 13, 2021 has become final and the Tribunal has no authority to review it.

From the Division’s Benefit Policy Manual, MS 160.05:

*B. Purge of Disqualification*

*A claimant who has been disqualified from receiving benefits because of voluntary leaving work without good cause, misconduct in connection with the work, or failure to apply for or to accept suitable work is not eligible for EB. The claimant can purge the disqualification by returning to work during the disqualification period and earning eight times their weekly benefit amount, or possibly through a timely appeal process. No other factors or circumstances may be considered (Storm, Docket 98 0622, April 7, 1998.)*

The claimant did not establish that he purged the penalty imposed under AS 23.20.379(a) by returning to work during the disqualification period and earning eight times the weekly benefit amount. The claimant is not eligible for extended benefits under AS 23.20.406.

#### DECISION

The claimant’s appeal of the determination issued on July 13, 2021 is **DISMISSED**. The determination remains unchanged

The determination issued on September 23, 2021 is **AFFIRMED**. Extended benefits remain denied.

#### 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 June 3, 2022.

Rhonda Buness, Appeals Officer