



## **APPEAL TRIBUNAL DECISION**

**Docket number:** 21 1042 **Hearing date:** December 1, 2021

### **CLAIMANT:**

HOUSTON CARDWELL

### **CLAIMANT APPEARANCES:**

Houston Cardwell

### **DETS APPEARANCES:**

None

## **CASE HISTORY**

The claimant timely appealed an April 23, 2021, determination which denied benefits under 23.20.406-409. The issue before the Appeal Tribunal is whether the claimant meets eligibility requirements by testing for a new claim within seven days of the prior benefit claim ending date.

## **FINDINGS OF FACT**

The claimant established a claim for unemployment insurance benefits, which expired on March 13, 2021. The claimant needed to file a new claim test within seven days of the prior claim expiring. The claimant denies receiving any documents from the unemployment office advising him of the need to file a claim test.

The Divisions documents provided for the hearing show automated notices sent to the claimant only back to April 2, 2021. There was nothing in the packet to show the claimant was mailed any notice that the claim was expiring or that further action was required.

The claimant believed he began calling the unemployment office soon after his payments started. He had a difficult time getting in touch with the claim center. The claimant had only a general recollection of the conversations with the unemployment office, but he recalls several times being told that his claim was still being processed and to just keep filing.

## **PROVISIONS OF LAW**

### **Sec. 23.20.406. Extended benefits.**

- (a) Except when the result would be inconsistent with other provisions of this chapter, the provisions of this chapter which apply to claims for or the payment of regular benefits apply to claims for and the payment of extended benefits.
- (b) An individual is eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period if the department finds that with respect to that week the individual
  - (1) is an "exhaustee" as defined in AS 23.20.409 ; and

### **Sec. 23.20.409. Definitions for AS 23.20.406 — 23.20.409.**

- (3) "exhaustee" means an individual who, with respect to any week of in the individual's eligibility period, has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act or under other federal laws which are specified in regulations issued by the United States Secretary of Labor and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking these benefits and the appropriate agency finally determines that the individual is not entitled to benefits under that law the individual is considered an exhaustee; and either
  - (A) has received, before that week of unemployment, all of the regular benefits that were available to the individual under this chapter or any other law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. 8501-8525, in the individual's current benefit year that includes that week; however, for the purposes of this paragraph, an individual is considered to have received all of the regular benefits that were available to the individual even though the individual may subsequently be determined to be entitled to added regular benefits as a result of a pending appeal with respect to wages in covered employment that were not considered in the original monetary determination to be in the individual's benefit year; or
  - (B) the individual's benefit year having expired before that week, has no or insufficient wages in covered employment on the basis of which the individual could establish a new benefit year that would include that week.

**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.

### CONCLUSION

Under state and federal guidelines for extended benefits, a claimant must be tested for regular benefit eligibility at the beginning of each new calendar quarter and at the end of each benefit year. Additionally, Alaska regulation specifies that initial claims (quarter claim tests and new claims) are effective Sunday of the week filed, unless the claim was delayed due to a circumstance beyond the claimant's control.

*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).*

There was nothing in the hearing file to establish the claimant was notified by the Division to test for eligibility under a new claim year or to take some other action within a specific timeframe. Therefore, the Tribunal chooses to give the claimant the benefit of the doubt and finds he met the filing requirements as soon as reasonable under the circumstances.

### DECISION

The determination issued on April 23, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 20, 2021 through April 17, 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 December 2, 2021.

*Kimberly Westover*

Kimberly Westover, Appeals Officer