



APPEAL TRIBUNAL DECISION

Docket number: 21 1095 **Hearing date:** November 16, 2021

CLAIMANT:

MARILYN PITTMAN

CLAIMANT APPEARANCES:

Marilyn Pittman

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a June 11, 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 August 30, 2020. She filed online each week for benefit payments through the week ending March 13, 2021.

On March 2, March 9, and March 16, 2021, the Division sent a notice (ID 0301) to the claimant, which stated her regular unemployment insurance benefits were about to exhaust. The notice instructed the claimant to contact the UI Claim Center to see if she qualified for any extension programs. There was a variety of additional notices mailed to the claimant as shown in Exhibit 1, pages 16, 17 and 18. However, there was nothing included in the documents showing the instructions provided in the other notices. The claimant did not recall receiving any notice stating her benefits were ending or advising her to file for extended benefits. However, her spouse has Post Traumatic Stress and does not always give her the mail.

The claimant realized she did not receive a payment after the first missed week. However, she was hesitant to contact the unemployment office because the notice at the conclusion of the claim certifications she filed each week asked

claimants not to call the claim center to check on their claim filings. The claimant believed the delay must be due to the workload of the department and heeded the advisory.

When the claimant did not receive a payment for the second week, she went online and again saw several advisories asking claimants not to call the claim center and assuring filers that a representative would call if additional information was needed. Again, the claimant decided to wait to call based on the advisories.

After another missed week of payment, the claimant began calling the unemployment office for information. She called many times each day and received recordings that the lines were busy. She tried calling numbers for other numbers listed for unemployment insurance, but she was told several times that she had reached the wrong office. The claimant's friend told her to call the unemployment as soon as the office opened, which the claimant tried several times with limited success. She managed to get through and was placed in the hold queue; however, she held for hours and then the line would disconnect. The claimant attempted to use the call back feature but did not believe she ever received a return call from that feature.

On April 20, 2021, the claimant sent an email to the unemployment office explaining her situation and asking for assistance. She believed she received a call just a few days later and spoke with someone who took her extended benefits application. However, she still did not get any payment. The claimant eventually reached a representative for assistance and her extended benefits claim was entered on May 13, 2021.

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, 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 85.100 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.

- (h) A claimant shall file an additional claim to begin a new series of continued claims in a benefit year if the claimant had intervening work and
 - (1) stopped filing continued claims; or
 - (2) earned wages for a week greater than one and one-third times the weekly benefit amount plus \$50.

- (i) An claimant filing an additional claim shall provide
 - (1) the name and address of the claimant's last employer;
 - (2) the dates of employment; and
 - (3) the reason for separation from that employer.

- (j) A claimant who stopped filing continued claims for a reason other than work shall file a reopened claim to begin a new series of continued claims in the same benefit year. A claimant filing a reopened claim shall provide the reason why the claimant stopped filing continued claims.

CONCLUSION

8 AAC 85.100 states that a claimant is not eligible to receive benefits for any week prior to the initial claim filing, and initial claims are effective Sunday of the week they are filed. The claimant should have filed her extended benefits application no later than March 20, 2021.

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 Alaska Employment Security Act is a remedial statute with the primary purpose of 'ameliorat(ing) the negative effects that involuntary unemployment has on both the unemployed individual and society as a whole.' State v. Boucher, 581 P.2d 660, 662 (Alaska 1978). The Act specifically provides that its terms are to be liberally construed toward accomplishment of its purposes." Estes v. Alaska Dept. of Labor, Alaska Supreme Court. No. 2276, January 30, 1981.

The documentation provided by the Division was insufficient to establish whether the claimant was properly notified of the requirements to file her new claim application by a specific date. Furthermore, the claimant's testimony surrounding the difficulties she faced in contacting the unemployment office for assistance was credible. Therefore, the preponderance of the evidence is that the claimant met the filing requirements of the Division as soon as could reasonably be expected.

DECISION

The determination issued on June 11, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 20, 2021 through April 24, 4021, if the claimant is otherwise eligible.

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 November 23, 2021.

Kimberly Westover

Kimberly Westover, Appeals Officer