



## **APPEAL TRIBUNAL DECISION**

**Docket number:** 21 1147 **Hearing date:** December 29, 2021

### **CLAIMANT:**

JOSHUA SMITH

### **CLAIMANT APPEARANCES:**

Joshua Smith

### **DETS APPEARANCES:**

None

### **CASE HISTORY**

The claimant timely appealed a May 25, 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 June 14, 2020. He reopened the claim effective December 13, 2020, and he filed weekly claim certifications thereafter.

The claimant exhausted regular unemployment benefits with the week ending April 10, 2021. The claimant continued to file weekly claim benefits every week. At the end of each certification, he received a message that his claim was accepted, which the claimant believed meant he was approved for payment. However, no benefit payments were issued for the weeks ending April 17, 2021 through May 22, 2021.

Exhibit 1, page 12, shows the unemployment office began mailing advisory notices to the claimant on March 23, 2021. Copies of the notices were not included in the exhibits.

The claimant did not receive the notices. He found out later that his partner was intercepting his mail and throwing it away. The claimant also believed mail was significantly delayed during this period due to COVID-19. He gave an example of a DMV document being received later than expected.

The claimant did not notice he was not getting his unemployment benefits deposited in his account because he did not check that bank account often as it was not his primary bank account.

In late May 2021, the claimant realized he had not received any unemployment benefits for quite some time. On May 25, 2021, he contacted the unemployment office, and a representative processed a pandemic emergency unemployment compensation claim, which was effective that week.

## **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.

### **CONCLUSION**

Alaska Statute 23.20.375 holds that in order to be eligible for benefits for a week, the claimant must have an initial claim in place and must file a certification for that week.

Regulation 8 AAC 85.100 holds that initial claims are effective Sunday of the week in which they are filed. The claimant, in this case, established an initial claim for PEUC benefits on May 23, 2021.

*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'r. 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'r. Dec. 83H-UI-145, June 15, 1983.*

*The failure of a party's agent or employee to act is not such a circumstance [to grant reopening]. Anderson, Com. Dec. 84H-UI-186, July 20, 1984.*

The claimant has not overcome the presumption of timely delivery of his mail. A general reference to one late mail delivery or the assertion that another person in the household mishandled the mail is not adequate to find good cause for late filing. Further, it was within the claimant's control to check his bank account to ensure his benefit payments were properly processed.

However, the documentation provided by the Division was insufficient to establish the claimant was properly notified of the requirements to file the PEUC claim on a specific date or to determine the content of the notices that

were mailed to the claimant. Therefore, the preponderance of the evidence is that the Division failed to properly notify the claimant of the filing requirements, and the claimant met the filing requirements of the Division as soon as could reasonably be expected, and his benefits are allowed accordingly.

### **DECISION**

The determination issued on May 25, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending April 17, 2021 through May 22, 2021, 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 December 30, 2021.

*Kimberly Westover*

Kimberly Westover, Appeals Officer