



APPEAL TRIBUNAL DECISION

Docket number: 21 1415 **Hearing date:** February 4, 2022

CLAIMANT:

CRYSTAL ZOOK
[REDACTED]

CLAIMANT APPEARANCES:

Crystal Zook

DETS APPEARANCES:

None

CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against a February 1, 2021 determination that denied benefits under AS 23.20.375 on the grounds that the claimant did not meet filing requirements. The Division mailed the determination to the claimant's address of record on February 2, 2021. The claimant's appeal was filed on July 21, 2021, giving rise to the issue of the timeliness of the claimant's appeal.

The claimant received the determination in this matter and immediately contacted the Division about it. She was told the representative would "get that fixed" for her. The claimant waited for the matter to be fixed because she knew the Division's claim center was very busy. When the claimant called to inquire about her benefits, she was told there was no record she had filed an appeal and her appeal was taken that day.

PROVISIONS OF LAW - TIMELINESS

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;

- (b) 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.

CONCLUSION - TIMELINESS

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

When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant's request. Murphy, Com. Dec. No 87H-UI-283, September 29, 1987.

We find no material errors in the Tribunal's findings. However, we have previously ruled in Murphy, Com. Decision 87H-UI-283, Sept. 29, 1997, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances. Vassar, Com. Dec. 96 0614, May 15, 1996.

The claimant contacted the Division as soon as she received the determination under appeal. Her appeal was not taken at that time but she was advised that the matter would be fixed, which she reasonably understood to mean she would receive the benefits that were denied.

Considering the claimant's circumstances and the above cited decision of the Commissioner, the Tribunal must find that the claimant has established that the

delayed appeal was due to a circumstance beyond the claimant's control and the appeal may be accepted as timely filed.

DECISION - TIMELINESS

The claimant's appeal from the notice of determination issued on February 1, 2021 is **ACCEPTED** as timely filed.

CASE HISTORY - FILING

The determination issued February 1, 2021 denied the claimant benefits under AS 23.20.375. The issue before the Appeal Tribunal is whether the claimant met the filing requirements.

FINDINGS OF FACT - FILING

The claimant established a claim for unemployment insurance benefits effective July 5, 2020. She re-opened that claim effective December 13, 2020 and claimed benefits by filing weekly certifications using the Division's website set up for that purpose.

During the week ending January 16, 2021, the claimant was sick and lost track of what day it was. Because there was no work and no school, the claimant had trouble keeping track of what day of the week it was. The claimant was in the habit of filing her certification on Saturdays, although she knew she could file the certification starting on Sunday after the week being claimed ended. She forgot to file a certification to claim the week ending January 9, 2021 on Saturday, January 16, 2021 because she was confused about the date. The claimant tried to contact the Division by phone the next week, but the lines were busy and she was disconnected. The claimant reached the Division by phone on February 1, 2021 and her certification for the week ending January 9, 2021 was taken that day. Benefits for that week were denied because the certification was filed late.

PROVISIONS OF LAW - FILING

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 - FILING

Alaska Statute 23.20.375 holds that in order to be eligible for benefits for a week of unemployment, a claimant must have an initial claim in place and must file a certification for the week in accordance with regulations. Regulation 8 AAC 85.102 holds that a certification must be filed within seven days after the end of the week being claimed, or within 14 days of a two-week filing period. The regulation holds the Division may extend the time to file if the claimant has good cause to file a late certification. 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 certification.

The claimant in this case did not establish that she was prevented from filing a timely certification by her illness. That she waited until the last day of the filing period and

was confused about what day it was is not a circumstance beyond the claimant's control and good cause for late filing is not established.

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.

In Scott, Com. Dec. 87H-EB-162, June 18, 1987, the Commissioner held in part:

Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law.

The Tribunal concludes the claimant's benefits were properly denied.

DECISION - FILING

The determination issued on February 1, 2021 is **AFFIRMED**. Benefits remain **DENIED** for the week ending January 9, 2021.

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 February 24, 2022.

Rhonda Bunes, Appeals Officer