



APPEAL TRIBUNAL DECISION

Docket number: 21 1579 **Hearing date:** December 16, 2021

CLAIMANT:

MAMADOU DIENG

EMPLOYER:

SALA LLC

CLAIMANT APPEARANCES:

Mamadou Dieng

EMPLOYER APPEARANCES:

None

CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a June 17, 2021, determination that denied benefits under AS 23.20.379 on the grounds that the claimant quit work. The Division mailed the determination to the claimant's address of record on June 18, 2021. The claimant's appeal was filed on July 31, 2021, giving rise to the issue of the timeliness of the appeal.

The claimant's roommate checked the mail and forgot to give the claimant the mail. The claimant realized at some point that he was not getting payments. He did not try to call the unemployment office to ask about the payments or make any other attempts to find out why he was not getting paid. On July 29, 2021, the claimant asked his roommate if he had received any letters in the mail. At that point, the roommate gave the claimant the mail from the unemployment insurance office. That same day, the claimant wrote up his appeal letter and emailed it to the Appeals office on July 31, 2021.

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;

- (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

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

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

If the Department were to accept an appeal, whenever filed, simply on an appellant's assertion that he did not receive the determination, the statutory appeal period would become a meaningless requirement. An appellant cannot be held to any standard of timeliness, if he need only state that he did not receive the determination. Berger, Com. Dec. No. 9224196, April 16, 1992. Jones, Com. Dec. 9225322, July 6, 1992. Only if it can be shown that some circumstances occurred

which prevented or reasonably can be shown to have prevented the delivery of the mail can the presumption of timely delivery be overcome. Whitlock, Com. Dec. No. 9229240, March 17, 1993.

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 failed to establish a circumstance beyond his control prevented him from filing his appeal timely. The failure of the claimant's roommate to properly distribute the mail does not meet the criteria. Furthermore, it was within the claimant's control to call the unemployment office when he realized he was not getting paid and ask for an explanation.

DECISION

The claimant appeal from the notice of determination issued on June 17, 2021, is **DISMISSED**.

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 December 17, 2021.

Kimberly Westover

Kimberly Westover, Appeals Officer