

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE DEPARTMENT OF LABOR AND WORKFORCE
DEVELOPMENT**

In the Matter of)	
)	
MARIA YAMAT)	OAH No. 22-0097-LUI
_____)	Agency No. 21 2227 03,74,33,32

APPEAL DECISION

Docket Number: 21 2227 03,74,33,32 **Hearing Date:** March 29, 2022

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Maria Yamat

None¹

CASE HISTORY

The claimant, Maria Yamat, appealed a Department of Labor determination which imposed penalties under AS 23.20.387 and AS 23.20.390 after finding she knowingly made false statements or misrepresentations during the unemployment claim process. Her appeal was not filed within 30 days of the decision date. The Department of Labor referred the appeal to the Office of Administrative Hearings. Under the agreed terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to UI appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on March 29, 2022.

The matter was referred to the ALJ to consider several issues, in sequence: 1) whether the lateness of Ms. Yamat’s appeal disqualified her from challenging the denial, and if not, 2) whether her claim contained material misstatements of fact, 3) whether the claimant knowingly made those misrepresentations with the intent to defraud, and 4) whether the claimant is liable for repayment of benefits, payment of a penalty, and temporary disqualification.

TIMELINESS OF THE APPEAL

Under AS 23.20.340 and 8 AAC 85.151 the appeal of an agency determination or redetermination must be filed within 30 days after the determination or redetermination is made. However, the 30-day period may be extended for a reasonable time if the appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control. In addition, due process

¹ The OAH did not receive notice from the Division that it wished to participate before the hearing. During the hearing, Division representative Simeona Galletes-Fenumiai contacted the OAH. However, a return call went unanswered.

requires claimants “be provided a meaningful opportunity to understand, review, and where appropriate, challenge the department’s actions.”²

The determination in this case is dated August 2, 2021. It was mailed August 3, 2021. To be timely, the appeal should have been filed by September 1, 2021. Ms. Yamat lives in Cordova, Alaska. Ms. Yamat did not file her appeal until November 23, 2021, eighty-two days late.

Ms. Yamat testified she did not remember whether she did or did not receive the determination in August 2021. Mail has taken longer to reach Cordova during the pandemic. She testified that even if the letter came to her home in early August, negative events in her personal life had delayed her responses to many important matters. The delay in her appeal was caused by those events. According to Ms. Yamat, her 35-year-old nephew died the second week in August 2021. He complained of abdominal or stomach pain at work, and then died on the way to the hospital. His mother, Ms. Yamat’s older sister, died approximately two weeks later of a heart attack. Ms. Yamat believed the heart attack was at least partially caused by stress and grief over her son’s death. Ms. Yamat was responsible for many of the financial and other details related to the funerals. Then, her daughter’s childhood friend committed suicide. Ms. Yamat testified that between working for the school district, taking care of the funeral arrangements for her sister and nephew, and dealing with her own and her daughter’s grief, she did not go through her mail for several weeks. When she did, she found the DOL notice and appealed.

This Tribunal finds that under the circumstances described it is reasonable to extend the time to appeal. This Tribunal finds the appeal was timely.

FINDINGS OF FACT

Maria Yamat established a claim for UI benefits. The Division initially approved the claim and benefits were paid. Subsequently the Division concluded Ms. Yamat failed to correctly report her work and wages and, as a result, received a benefit overpayment. The Division asserted wages were incorrectly reported the benefit week June 5, 2021. In support of that assertion the Division prepared a grid showing the claim week, the amount reported by the claimant, and the amount subsequently reported by the employer.³

The grid showed the following:

² *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1007 (Alaska 2008); *see also Allen v. State, Dept. of Health & Social Services*, 203 P.3d 1155, 1168-70 (Alaska 2009)(discussing recoupment).

³ Ex. 1.

Claim Week	Claimant Reported Wages	Employer Reported Wages
06/05/2021	\$0	\$97.28

The Division identified a state benefit overpayment of \$198 and a federal benefit overpayment amount of \$300 resulting from the inaccurate wage reporting. Because the Division also concluded the inaccuracy was knowingly made with the intent to defraud, the Division imposed a 50% penalty on the overpaid state benefit amount, totaling \$99. The Division, therefore, made a repayment demand of \$597. The Division also imposed a six-week disqualification from future benefits for each week of alleged fraudulent reporting for a total disqualification of 6 weeks.⁴

Ms. Yamat appealed.

The hearing took place March 29, 2022.

Ms. Yamat moved to Cordova, Alaska in 1990 to work in the local cannery. She worked in the cannery until early 2020. During that period, Ms. Yamat was promoted from “slime line” to manager. She was laid off in 2020 due to the COVID-19 pandemic. After commercial fishing was declared “essential infrastructure” by the State of Alaska, Ms. Yamat was hired by Icicle Seafoods (Icicle) to supervise a portion of its Dutch Harbor operations. Ms. Yamat remained in Dutch Harbor until April 2021.

Ms. Yamat returned to her home in Cordova in April 2021. She filed a UI claim apparently effective the benefit week April 10, 2021, and subsequently filed weekly claims submissions. Her UI benefits were approved. Later, the DOL received a report from Alaska Wild Seafood Partners, LLC (Alaska Wild) that she was paid \$97.23 in gross wages the benefit week June 5, 2021.

The electronic claim submission entered by Ms. Yamat contained the following warning⁵:

Alaska Law provides severe penalties for collecting, or attempting to collect UI Benefits that you are not entitled to. UI fraud is KNOWINGLY making a false statement, misrepresenting a material fact or withholding information to obtain benefits. All fraud cases are subject to criminal prosecution, fines and imprisonment. Third party vendors, including mobile device applications, cannot be used to complete your application. You will be required to certify the answers you provided at the end of this application.

⁴ *Id.*

⁵ *Id.*

Under that warning, she checked the box that:

I have read and understand this UI fraud advisory

She then submitted the following answer for each claim week.

Did you work for any employers? Yes No

Lastly, at the conclusion of the claim submission, Ms. Yamat certified that the answers she “provided were true and correct” for each week she claimed benefits.⁶

At the hearing Ms. Yamat admitted that she did not report her work at Camtu’s Alaska Wild or the wages she was paid. Unlike Icicle and other seafood processors, Alaska Wild is a small, family-owned processor that produces wholesale fresh and frozen fish and green roe for several local Cordova fisherfolk. Like Ms. Yamat, the owners of Alaska Wild are Philippine immigrants.

Ms. Yamat explained that she had worked off and on for Alaska Wild for many years as a side job. She worked “on call” meaning she might work a few hours or several days, depending on catch size and employee availability. She testified that the sum reported would mean she worked less than a full day for Alaska Wild. When she returned to Cordova after working for Icicle in Dutch Harbor, she was trying to get a job with the school district, but she must have responded to a call to work, although at the time of the hearing she did not remember working for Alaska Wild in August 2021. She testified she must simply have forgotten about it at the time she submitted her UI claim. Ms. Yamat apologized for her inaccuracy, but testified it was the product of a mistake, and not a subjective intent to defraud.

THE UNEMPLOYMENT INSURANCE FRAUD INVESTIGATION FRAMEWORK

An individual is eligible for unemployment compensation under Alaska labor law if the individual’s employment is covered by the Alaska Employment Security Act EASA, AS 23.20.005-535 as implemented in 8 AAC 85.010-842 and detailed in the Department’s Benefit Policy Manual (BPM).⁷ Under those rules the employment and training services division of the Department of Labor and Workforce

⁶ *Id.*

⁷ The BPM fulfills the mandate in 8 AAC 85.360 that the Department “maintain a policy manual interpreting the provisions of AS 23.20 and this chapter.” The Alaska supreme court has referred to the BPM as the “Precedent Manual” and looks to the BPM to interpret labor issues. *See, Calvert, supra; Westcott v. State, Dep’t of Labor*, 996 P.2d 723 (Alaska 2000). The BPM is divided into eight sections: Able and Available, Evidence, Labor Dispute, Miscellaneous Misconduct, Suitable Work, Total and Partial Unemployment, and Voluntary Leaving with individual subsections addressing specific issues and incorporating recent updates.

Development conducts a two-part analysis of each claim filed by an unemployed worker. The first step in the analysis is the “non-monetary determination” of whether the claimant is eligible to for benefits.⁸ If the claimant is eligible, the division conducts the second step and issues a “monetary determination” calculating the benefit amount payable to the claimant.⁹

Benefit claimants are required to be accurate in their initial and weekly claims submissions.¹⁰ Inaccuracies can lead to incorrect unemployment claims determinations, including overpayment. A person who knowingly submits a material misrepresentation of fact or who knowingly fails to provide material information commits statutory unemployment fraud and may be assessed administrative disqualification and penalties under AS 23.20.387 and AS 23.20.390 including repayment of overpaid benefits; payment of penalties; and disqualification from future benefits.¹¹

Criminal prosecution is possible.¹² As such the claimant has the right to remain silent during the unemployment insurance appeal.

There are four steps in determining whether the claimant committed unemployment fraud. Unemployment fraud- like worker’s compensation fraud- is a statutory creation that does not require proof of all the elements of common law fraud.¹³

The first issue is always whether the nature of the claimant’s separation from employment makes them ineligible for benefits. For example, a person who voluntarily leaves employment without good cause is ineligible for immediate or full unemployment benefits.¹⁴ In this case the Division determined the claimant was eligible and that decision will not be overturned.

The second issue is whether an error of material fact appears or is missing in the claimant’s submission to the Division.¹⁵ A material fact is one that is “relevant to the determination of the claimant’s right to benefits. It need not actually affect the

⁸ 8 AAC 85.010(a)(14); 8 AAC 85.085.

⁹ 8 AAC 85.010(a)(12).

¹⁰ AS 23.20.340; AS 23.20.387; 8 AAC 85.104.

¹¹ AS 23.20.387;AS 23.390; 8 AAC 85.220; 8 AAC 85.320.

¹² AS 23.20.485.

¹³ *See, Shehata v. Salvation Army*, 225 P.3d 1106 (Alaska 1106); *Municipality of Anchorage v. Devon*, 124 P.3d 424,429 (Alaska 2008)(interpreting identical language in AS 23.30.250(b), the worker’s compensation fraud statute).

¹⁴ AS 23.20.379; 8 AAC 85.095: good cause for quitting a job includes disability or illness of yourself or an immediate family member, safety conditions, harassment, violence, to attend vocational training, to follow spouse who is moving for a job of military service and leaving for a job with better wages or benefits. If a person does not have one of those reasons for quitting, they are not eligible for unemployment.

¹⁵ AS 23.20.387.

outcome of that determination.”¹⁶ The failure to report earnings over \$50.00 a week is always material.¹⁷ The failure to accurately report the reason for separation from employment is also always material.¹⁸ Such facts are material because they are a causal link in obtaining benefits.

The third issue requires determination of the claimant’s mental state at the time the error was made. The controlling statute, AS 23.20.387(b), states:

A person may not be disqualified from receiving benefits under this section unless there is documented evidence that the person has made a false statement or a misrepresentation as to a material fact or has failed to disclose a material fact. Before a determination of fraudulent misrepresentation or nondisclosure may be made, **there must be a preponderance of evidence of an intention to defraud**, and the false statement or misrepresentation must be shown to be knowing and to involve a material fact.¹⁹

The Alaska supreme court held that “knowingly” as used in AS 23.20.387(b) requires proof of **subjective intent to defraud**.²⁰ AS 23.20.387(b) does not establish an objective, reasonable person standard. Whether the claimant had a subjective intent to defraud is often a credibility determination.²¹

The fact that the misrepresentation is one that a person of ordinary care and intelligence in the maker’s situation would have recognized as false is not enough standing alone to impose liability but is evidence from which the person’s lack of honest belief can be inferred. Thus, the reasonableness of the claimant’s belief is a matter to be considered in evaluating testimony about whether the claimant believed the representation to be true *and* whether the claimant intended to defraud.²²

The Division provides access to The Unemployment Insurance Claimant Handbook (Handbook) to assist claimants in properly submitting claims.²³ Pages nine through

¹⁶ *Blas v. State, Dept. of Labor and Workforce Development, Div. of Employment Sec.*, 331 P. 3d 363, 366 (Alaska 2014).

¹⁷ Department Policy and Procedure Manual (DPM), Fraud or Misrepresentation, MS 340.1.C.b.

¹⁸ *Id.*

¹⁹ Emphasis added.

²⁰ *Blas*, 331 P.3d at 373-74.

²¹ *See, e.g., ARTEC Services v. Cummings*, 295 P.3d 916 (Alaska 2013)(Worker’s Compensation Board determination that claimant did not subjectively intend to defraud because she considered her unpaid work at an herbal store to be a hobby was issue of credibility for the Board to determine).

²² *Id.*

²³ Prior to March 2020, the Division reliably provided a hard-copy of the Handbook to all claimants. Due to the exponential increase in unemployment assistance claims caused by the COVID-19 pandemic, it can no longer be said that the Division provides a hard copy to each claimant. However, the Handbook is available on-line at the Division’s website and a link

eleven of the Handbook include the following instructions on how to report wages and income:

WORK, WAGES, INCOME

We compare what you report with other sources to verify accuracy. Refer to the section on Fraud (Page 4) for information relating to misrepresentation of work or earnings.

Work

Reportable work includes time spent on self-employment or volunteer activities as well as anything you do for wages, whether paid or not, during the seven days of the week you claim. Even if you are only working part-time or temporarily, all work and earnings, including tips and commission, must be reported when you file your biweekly certifications

Wages

Wages are any kind of payment you receive for the work you do, including room and board, goods, barter, tips, commission, stipend, honorarium, per diem, COLA, payment for jury duty, bonuses and back pay.

You must report your gross wages **earned** each week, Sunday through Saturday, whether or not you have actually been paid. Report the amount earned before any deductions are taken out (your gross pay). Report the employer's name and address, dates and number of hours worked per week, and your employment status.

If you are unsure of the number of hours worked or how much you earned, you can file up to seven days after the date you were paid. However, if you wait, you will need to call the UI claim center to file and report these wages, and your payment may be delayed.

When called to active duty, National Guard members must report encampments and wages earned. Do not report weekend drills.

If you are currently employed on an alternating or rotating work schedule – such as two weeks on, two weeks off – you may not be considered to be unemployed during your scheduled time off. Report your work schedule to your UI claim center.

How wages affect your benefits

provided for electronic claim filers.
abor.alaska.gov/unemployment/documents/uihandbook.pdf

You **must report** all the wages you earned each week. Your benefit payment will be reduced by 75 cents for each dollar you earn more than \$50. If you do not know how much you earned at the time you if you do not know how much you earned at the time you report, call the UI claim center within seven days with the correct wage amount. Reporting less money than you earned could result in an overpayment of benefits that you will have to repay.

Excess earnings

If you have gross wages equal to or more than $1\frac{1}{3}$ times your weekly benefit amount plus \$50, you will not receive a benefit payment for that week. To locate your excess earnings amount, use your monetary determination or access it online **my.alaska.gov**. Click on "View Your Services," then "Unemployment Insurance Benefits," then "Current UI Claim Status" and "Work Search Requirements."

Other deductible income

When you are filing for benefits you must report the gross amount of any of the following payments: vacation, holiday, sick, pension, retirement, severance, commission, bonus, wages in lieu of notice and back pay awards. Changes in your gross pension amount must be immediately reported to the UI claim center. A deduction may be taken from your weekly benefits if you receive any of these payments. Social Security benefit payments are not deducted.²⁴

Since 1979 the Division has applied a rebuttable presumption of intent to defraud if the information in the claim filing is falsified. The Division's claim form has but one purpose. It is the instrument executed by an individual desirous of receiving unemployment insurance benefits for a specific week. To this end, it contains clear and unambiguous language detailing the material factors upon which the division will base its decision to pay or not to pay. In addition, the individual completing the form certifies as to the truth of the answers and as to his understanding that legal penalties otherwise apply. Thus, according to established Division procedure, once it is established that a claim submission is inaccurate or falsified, the burden of proof shifts to the individual to establish lack of subjective intent to defraud.²⁵

Notably, however, the Department has not codified this approach by regulation nor has the Alaska Supreme Court has addressed its continued validity following the decision in *Blas v. State, Dept. of Labor and Workforce Development, Div. of*

²⁴ Emphasis in the original.

²⁵ See e.g., *In the Matter of J. Halat*, Comm'r Dec. 19-0101 (Dept. of Labor and Workforce Development 2019) citing *In Re Morton*, Com. Dec. Comm'r Dec. 19-0101 (Dept. of Labor and Workforce Development 1979)(available on-line at <https://appeals.dol.alaska.gov/SearchRoot/comdecs>)

*Employment Sec.*²⁶ where the supreme court adopted the subjective intent element for unemployment fraud. Thus, this Tribunal will not impose a significant burden on rebuttal.

The final step involves determining the appropriate penalty if an inaccuracy or fraud is found. The claimant's reasons for making the statement are always material to the question of to how significant the penalty should be.²⁷

Typically, all overpaid benefits must be repaid.²⁸ Exceptions to repayment are set out by regulation and can include certain good faith errors and financial hardship.²⁹ However, if the error was fraudulently made a 50% penalty must be imposed.³⁰

A person found to commit unemployment fraud will also be disqualified for receiving future benefits. The future disqualification can be for as few as six (6) weeks or as many as fifty-two (52) weeks per incorrect report. The reasons the claimant made the misrepresentation are relevant to the duration of disqualification, and the maximum 52-week disqualification is typically reserved for claimants with prior reporting errors.³¹

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.360. Earnings deducted from weekly benefit amount.

The amount of benefits, excluding the allowance for dependents, payable to an insured worker for a week of unemployment shall be reduced by 75 percent of the wages payable to the insured worker for that week that are in excess of \$50. However, the amount of benefits may not be reduced below zero. If the benefit is not a multiple of \$1, it is computed to the next higher multiple of \$1. If the benefit is zero, no allowance for dependents is payable.

AS 23.20.387. Disqualification for misrepresentation.

- (a) An insured worker is disqualified for benefits for the week with respect to which the false statement or misrepresentation was made and for an additional period of not less than six weeks or more than 52 weeks if the department determines that the insured worker has knowingly made a false statement or misrepresentation of a material fact or knowingly failed to report a material fact with intent to obtain or increase benefits under this chapter. The length of the additional disqualification and the beginning date of that disqualification shall be determined by the department according to the circumstances in each case.

²⁶ 331 P. 3d 363, 366 (Alaska 2014).

²⁷ 8 AAC 85.380(b).

²⁸ AS 23.20.390.

²⁹ 8 AAC 85.220(b).

³⁰ AS 23.20.390.

³¹ AS 23.20.387; 8 AAC 85.380.

- (b) A person may not be disqualified from receiving benefits under this section unless there is documented evidence that the person has made a false statement or a misrepresentation as to a material fact or has failed to disclose a material fact. Before a determination of fraudulent misrepresentation or nondisclosure may be made, there must be a preponderance of evidence of an intention to defraud, and the false statement or misrepresentation must be shown to be knowing and to involve a material fact.

AS 23.20.390. Recovery of improper payments; penalty.

- (a) An individual who receives a sum as benefits from the unemployment compensation fund when not entitled to it under this chapter is liable to the fund for the sum improperly paid to the individual.
- (f) In addition to the liability under (a) of this section for the amount of benefits improperly paid, an individual who is disqualified from receipt of benefits under AS 23.20.387 is liable to the department for a penalty in an amount equal to 50 percent of the benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits under this chapter. The department may, under regulations adopted under this chapter, waive the collection of a penalty under this section. The department shall deposit into the general fund the penalty that it collects.

8 AAC 85.220. Recovery of overpayments

- (a) A determination of overpayment liability issued under AS 23.20.390 will include a statement of the right to request a waiver of repayment of the overpayment. An individual may request a waiver within 30 days after the date on which the determination of liability becomes final. The director may extend this period if the request is delayed by circumstances beyond the individual's control.
- (b) The director shall waive repayment of an overpayment of benefits to an individual under AS 23.20.390 if
 - (1) the individual has died or received the benefits in good faith;
 - (2) repayment would be against equity and good conscience; and
 - (3) the request for a waiver meets the requirements of this section.
- (c) Benefits have been received in good faith if the overpayment was received without fault by the individual, and the individual did not have the capacity to recognize that he or she was incorrectly overpaid. Benefits have not been received in good faith if the individual
 - (1) negligently reports or fails to report information, which results in the overpayment; or

(2) knew or should have known that the individual was not lawfully entitled to receive the benefits.

(d) Repayment of an overpayment is against equity and good conscience if

(1) repayment in 12 consecutive monthly installments would cause great hardship to the individual, considering the current and potential income and other financial resources available to the individual and the individual's family;

(2) the overpayment resulted from a decision of the department or a court overturning a determination of eligibility made at any level of appeal, and the individual did not withhold or conceal pertinent information on any claim for benefits or in any investigation or proceeding;

(3) the individual received the overpaid benefits by relying on clearly incorrect advice, given to the individual by the division or an employment security agency of another state, which the individual could not recognize as incorrect; or

(4) the overpayment cannot be waived under (1) - (3) of this subsection, but the department determines that recovery would be injurious to the individual after consideration of the standards in (1) - (3) of this subsection, and any extraordinary circumstances.

(e) A waiver of repayment of the overpayment will not be granted if the overpayment is the result of a false statement or misrepresentation of a material fact, or failure to report a material fact.

(f) The director may waive a portion of an overpayment if recovery of the full amount would be against equity and good conscience under (d) of this section.

(g) The director shall not waive an overpayment if waiving the overpayment would cause the individual to receive more than the individual's maximum weekly benefit amount or maximum entitlement of benefits.

(h) To recover an overpayment established under AS 23.20.390, the director may

(1) accept payment, in full, or as part of a repayment schedule under an agreement by the individual and the department, by cash, check, money order, or credit card;

(2) deduct the full weekly benefit amount for each week that benefits are payable to an individual until the overpayment is recovered; or

(3) upon request of the individual, deduct at a rate of 50 percent of the full weekly benefit amount if

(A) the individual received the overpaid benefits in good faith as described in (c) of this section;

(B) sufficient benefits are available to the individual when the overpayment liability is established to allow recovery of the overpayment at a rate of 50 percent of the full weekly benefit amount; and

(C) the amount of the overpayment is greater than two times the full weekly benefit amount.

(i) Repealed 7/19/2019.

(j) If the director is unable under (h) of this section to recover an overpayment owed by an individual, the director may pursue recovery of the overpayment through a

(1) claim against the individual's permanent fund dividend under 8 AAC 85.225; and

(2) civil action against the individual.

(k) For the purposes of this section,

(1) "family" includes all persons living in a single residence who are related to each other by blood, marriage, or adoption, including stepchildren and stepparents; however, it does not include an individual aged 18 or older who receives less than 50 percent of support from the family and who is not the principal earner or the spouse of the principal earner of the family;

(2) "financial resources" includes assets, such as stocks, bonds, interest in mutual funds, cash, and credit union or savings accounts; "financial resources" does not include an individual's home or furnishings, automobiles needed for transportation, clothing, or tools of the trade;

(3) "great hardship" means an individual's inability to obtain minimal necessities of food, medical care, and shelter for the individual or the individual's family for at least 30 days within a period of 90 days after the date of the waiver request;

(4) "full weekly benefit amount" means (A) the weekly benefit amount as set out in AS 23.20.350(d); plus (B) the allowance for dependents, if the individual receives one under AS 23.20.350(f); less (C) amounts deductible under AS 23.20.360, 23.20.362, and 8 AAC 85.140;

(5) "income" includes income from all sources, including benefits under AS 23.20.

8 AAC 85.380. Disqualification for misrepresentation

(a) A disqualification under AS 23.20.387 begins with the week in which the department makes the determination of disqualification, and may not exceed 52 weeks. The period of disqualification is at least six weeks for each week affected by the false statement, misrepresentation, or failure to report a material fact.

Additional weeks of disqualification will be imposed if the circumstances of the case require an increased penalty.

(b) To determine the period of disqualification under AS 23.20.387 the department will consider

- (1) the seriousness of the false statement, misrepresentation, or failure to report a material fact;
- (2) the amount of benefits affected by the false statement, misrepresentation, or failure to report a material fact; and
- (3) the extent to which the disqualification would deter others from committing a similar offense.

(c) The period of disqualification under AS 23.20.387 is 52 weeks if the claimant has been previously disqualified, within five years of the date of the determination, for making a false statement or misrepresentation, or failing to report a material fact.

APPLICATION

The first issue is whether the claimant worked and earned wages for the weeks in question. Under AS 23.20.360, the benefits a person is entitled to receive must be reduced by the amount of wages a person earns. The amount of the deduction is figured using the formula found within the statute. Here, the claimant had earnings as reported by the employer. An overpayment occurred.

The second issue is whether the claimant knowingly made a false statement or misrepresentation in connection with the claim. A person is prohibited from obtaining unemployment benefits through false or misleading statements or by concealing or withholding facts.³² The reasons for the inaccuracy must be assessed week by week.

In this case Ms. Yamat was a credible witness. According to the records presented, she accurately filled out her claims submission on multiple occasions. She testified the one week that contained an inaccuracy was because she simply forgot that she went into Alaska Wild and worked part of one day. It was clear from her testimony that Ms. Yamat is not a detailed record keeper, and she should improve that skill for future dealings with the DOL, but her testimony that she did not subjectively intend to defraud the DOL was believable.

Accordingly, the Division did not meet its burden of proof that an intentional misrepresentation under AS 23.20.387 occurred.

Claimant must repay \$498 in benefits obtained as a result of the inaccuracy. Claimant is not disqualified or penalized.

³² See, e.g., 8 AAC 85.104.

DECISION

The August 3, 2021 Notice of Determination and Determination of Liability is **MODIFIED**.

- Claimant submitted an inaccurate fact or omitted a material fact in the claims process.
- That portion of the determination holding that the claimant is liable for the repayment of benefits and for the payment of a penalty is **AFFIRMED**. The claimant remains liable to repay benefits she received to which she is not entitled.
- That portion of the determination holding that the claimant intentionally submitted inaccurate information to obtain a benefit, i.e., statutory unemployment fraud occurred, is **REVERSED**.
 - The claimant remains liable to repay benefits received to which the claimant was not entitled.
 - A disqualification under AS 23.20.387 is not imposed, and future benefits are not denied under AS 23.30.390(f).

DATED March 31, 2022.

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Carmen E. Clark
Administrative Law Judge

³³ Electronically signed to accommodate pandemic work restrictions.

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.

CERTIFICATE OF SERVICE

I certify that on April 1, 2022, this document was sent to: Maria Yamat (by mail and email to [REDACTED]); UICC Fraud Team (by email). A courtesy copy has been emailed to the DETS UI Appeals Team.

[REDACTED] _____
Office of Administrative Hearings



*Alaska Department of Labor and Workforce Development
Appeals to the Commissioner*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
COMMISSIONER'S HEARING OFFICER
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