



ALASKA DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT  
EMPLOYMENT SECURITY DIVISION  
P.O. BOX 115509  
JUNEAU, ALASKA 99811-5509

## APPEAL TRIBUNAL DECISION

**Docket number:** 22 0318

**CLAIMANT:**

ANDREA MILLER

**EMPLOYER:**

GMRI INC  
TALX UCM SERVICES

### REOPENING ORDER

On July 19, 2022, a notice of telephonic hearing was mailed to the employer's correct address of record. The notice stated that a hearing was scheduled in this matter for August 2, 2022 at 8:30 a.m. Alaska time. The notice provided the issues to be heard, additional instructions for the hearing, and the Appeals office phone numbers.

The instructions on the notice read in part, as follows:

#### Telephonic Hearing Instructions-Read Carefully

**1. If you... are an employer or INTERESTED PARTY, CALL to submit a number BEFORE the scheduled date below.** It is your responsibility... if you do not update us, you may not be called in time for your hearing, and the hearing may be dismissed.

At the time of the hearing, the employer had not called to provide a phone number to participate in the hearing. Because the employer was the appellant, the hearing was dismissed on August 2, 2022 when the employer did not participate. On August 3, 2022, a letter to that effect was mailed to the employer's correct address of record. That notification also advised that a request to reopen the hearing must be delivered or mailed within ten days after August 3, 2022.

On August 18, 2022, five days after the deadline, the employer faxed a request to reopen the hearing. In the request, the employer representative stated the hearing notice was received late in the day on the day before the hearing and the employer failed to appear due to the short notice. The employer did not make contact to request postponement or continuance of the hearing.

## **STATUTORY PROVISIONS**

### **AS 23.20.420. HEARING PROCEDURE AND RECORD.**

- (a) Each party shall be promptly given a reasonable opportunity for fair hearing. An appeal tribunal shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory and common law rules. The appeal tribunal shall include in the record and consider as evidence all records of the department that are material to the issues.

### **8 AAC 85.153. HEARING PROCEDURES.**

- (f) A hearing may be postponed, continued or reopened on the appeal referee's own motion or at the request of an interested party. All requests must explain in detail the reasons for the request. If a party fails to appear in person or by authorized agent at a hearing, the appeal referee may reopen the hearing only if the party failed to appear because of circumstances beyond the party's control. All other requests may be granted only if there is good cause. The following rules apply to requests:
- (1) A request for postponement may be either written or oral but must be received by the appeal referee before the hearing starts.
  - (2) A request for continuance must be made orally to the appeal referee during the hearing.
  - (3) A request for reopening must be made in writing to the appeal referee and must be delivered or mailed within 10 days after the scheduled date of the hearing. The 10-day period may be extended for a reasonable period on a showing that the request was delayed as a result of circumstances beyond the party's control.
  - (4) If a request for reopening is not allowed, the appeal referee will mail a written ruling and a statement of the right of appeal from that ruling to each party.
  - (5) The appeal referee will rule upon requests for continuance or postponement either orally or in writing. The rulings may be contested before the appeal referee at the hearing. If a postponement or continuance is denied, the appeal referee will make a decision on the issue under appeal, and the denial of postponement or continuance may be appealed in an appeal from the referee's decision.

## **CONCLUSION**

A hearing may be reopened if a party requests reopening within ten days of the date of the hearing, and if a circumstance beyond the control of the party caused the failure to appear. (AS 23.20.415 and 8 AAC 85.153).

The employer had control of whether or not to attend the hearing. The employer made no preparations to attend the hearing by contacting the Tribunal office to provide a telephone number and party's name, nor did they make a timely request to postpone the hearing in order to properly secure a witness.

*In her appeal to the Department, the claimant alleges she never received the written decision by the Appeal Tribunal mailed to her on July 18, 2012. We note that the decision was mailed to her correct address of record. . . When a decision has been sent to the claimant's address of record, the Tribunal has completed its notice obligation and it is incumbent on the appellant to demonstrate some reason why the mail might not have been timely delivered. Pearson, Comm'r Dec. 12 1377, July 24, 2013.*

*We have previously held that "The failure of a party's agent or employee to act is not such a circumstance [to grant reopening]." In re Anderson, Comm'r Dec. 84H-UI-186, IC Unemp. Ins. Rptr. (CCH), AK 8101.08, 7/20/84. As the claimant in this case apparently did not get his mail for such a reason, we conclude his failure to appear at the hearing scheduled was not due to circumstances beyond his control. Gunia, Com. Decision No. 9322653, July 16, 1993.*

The telephonic hearing notice was mailed to the correct address for the employer's representative. The employer's representative presented no evidence of any circumstance that would have prevented the timely delivery of its mail. Additionally, the employer's request to reopen was untimely and the employer has not established that the request was delayed due to circumstances beyond the party's control.

Therefore, the employer has not established that its failure to participate in the scheduled hearing or to timely request a postponement was due to a circumstance beyond its control, and the request to reopen the hearing is denied.

### **DECISION**

The employer's request to reopen the hearing is **DENIED**.

### **APPEAL RIGHTS**

This decision is final unless an appeal is filed to the Commissioner of Labor and Workforce Development within **30 days** of the date of the decision. The appeal period may be extended only if the appeal is delayed by circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on August 23, 2022.

*Solara Ames*

Solara Ames, Appeals Officer