



APPEAL TRIBUNAL DECISION

Docket Number: 23 0094 **Hearing Date:** March 29, 2023

CLAIMANT:

JIMMY WILLIAMS
[REDACTED]

DETS:

BPC
[REDACTED]

CLAIMANT APPEARANCES:

Jimmy Williams

DETS APPEARANCES:

Sue Nichols

CASE HISTORY AND FINDINGS OF FACT

(Timeliness)

The claimant filed an appeal against a December 9, 21022 determination that denied benefits under AS 23.20.378 and 387 and required repayment of benefits received under AS 23.20.390 on the grounds that failed to report travel. The Division mailed the determination to the claimant's address of record on December 12, 2022. The claimant's appeal was filed on February 1, 2023, giving rise to the issue of the timeliness of the claimant's appeal.

The claimant had difficulty with his mail. He was not receiving mail for a period of time as his name was not on the mailbox. He straightened that out and received his mail in late January. He appealed the determination on February 1, 2023.

PROVISIONS OF LAW

AS 23.20.340. Determination of claims.

- (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.

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 claimant has shown that a circumstance beyond his control prevented his filing of the appeal within 30 days.

DECISION

The claimant's appeal from the notice of determination issued on December 9, 2022 is **ACCEPTED** as timely filed.

CASE HISTORY

The claimant filed an appeal against a December 9, 21022 determination that denied benefits under AS 23.20.378 and 387 and required re-payment of benefits received under AS 23.20.390 on the grounds that failed to report travel.

The issues before the Tribunal are whether the claimant

- was available for work during a period of travel;
- knowingly made a false statement or misrepresentation in connection with the claim; and
- is liable for the repayment of benefits and the payment of a penalty.

FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective April 5, 2020. The claimant traveled to Texas from Anchorage, Alaska on Tuesday, July 21, 2020. The claimant remained in Texas until Wednesday, September 9, 2020, when he returned to Anchorage, Alaska. He did not report that he traveled on his claim certifications for the weeks ending July 25, 2020 through September 12, 2020. The claimant stated that he answered the travel question “no” because he did not consider himself to be traveling when going to Texas or returning to Alaska. He did not look for work while traveling in Texas. He did not reopen his claim after four weeks traveling in Texas.

The claimant traveled to Washington on or about November 8, 2020. He traveled to California, to Arizona, to Texas, to Louisiana, and back to Texas for the weeks ending November 15, 2020 through December 4, 2021. He used his bank card in each of the states over this period. He filed using IP addresses in each of these states. He did not report travel and did not reopen his claim after four weeks of travel. He did not search for work in the areas in which he traveled.

The claimant alleged that his sister had his phone and bank card while she traveled in these states. He alleged that he logged into his phone from Alaska using an app on his computer to file his claim certifications. The claimant could not remember the name of the app he used to log into his phone to file his certifications. He alleged that it was easier than logging into the MyAlaska system directly from his computer. He alleged that he had a card to get money from another source than the bank in which his benefits were deposited.

The hearing record was held open until March 31, 2023 for him to provide documentation of the app and the other source of money. He contacted the Appeals Office that Friday and advised the bank required 30 days to provide his request of the transaction history for the period in question. He was given

until May 1, 2023 to provide the documentation. As of May 19, 2023 he has not provided any documentation or made contact with the Appeals Office.

PROVISIONS OF LAW

AS 23.20.378: Able to work and available for suitable work.

- (a) An insured worker is entitled to receive waiting-week credit or benefits for a week of unemployment if for that week the insured worker is able to work and available for suitable work ...

8 AAC 85.350: Able to work and available for suitable work:

- (a) A claimant is considered able to work if the claimant is physically and mentally capable of performing work under the usual conditions of employment in the claimant's principal occupation or other occupations for which the claimant is reasonably fitted by training and experience.
- (b) A claimant is considered available for suitable work for a week if the claimant
 - (1) registers for work as required under 8 AAC 85.351;
 - (2) makes independent efforts to find work as directed under 8 AAC 85.352 and 8 AAC 85.355;
 - (3) meets the requirements of 8 AAC 85.353 during periods of travel;
 - (4) meets the requirements of 8 AAC 85.356 while in training;
 - (5) is willing to accept and perform suitable work which the claimant does not have good cause to refuse;
 - (6) is available, for at least five working days in the week, to respond promptly to an offer of suitable work; and
 - (7) is available for a substantial amount of full-time employment.

8 AAC 85.353: Able to work and available for suitable work: travel claims.

- (a) The requirements of this section apply to any period during which a claimant travels outside the area in which the claimant resides, unless the claimant travels while exempted from availability requirements under AS 23.20.378(a) or in connection with training approved under AS 23.20.382.
- (b) A claimant is available for work each week while traveling only if the claimant is traveling to
 - (1) search for work and is legally eligible to accept work in the area of travel;
 - (2) accept an offer of work that begins no later than 14 days after the claimant's departure; or

- (3) establish or return to a residence immediately following the claimant's discharge from the armed forces.
- (c) A claimant who travels in search of work must be legally eligible to accept work and make reasonable efforts to find work each week in the area of the claimant's travel, by
- (1) contacting in person an employment office;
 - (2) making at least two in-person employer contacts;
 - (3) registering in person with the local chapter of the claimant's union that has jurisdiction over the area of the claimant's travel; a claimant who has previously registered with the local union that has jurisdiction over the area of the travel is available for work if the claimant makes contacts as required by the union to be eligible for dispatch in the area of the travel; or
 - (4) attending in person a pre-arranged job interview.
- (d) A claimant is not available for work after the claimant travels for more than four consecutive calendar weeks to search for work. A claimant is not available for work after the claimant travels for more than seven days if traveling to
- (1) accept an offer of work that begins 14 days after the claimant's departure; or
 - (2) establish or return to a residence immediately following the claimant's discharge from the armed forces.

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.
- (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.

CONCLUSION

The first issue is whether the claimant was available for work during a period of travel. 8 AAC 85.353(a) provides that the requirements of this section apply to any period during which a claimant travels outside the area in which the claimant resides.

8 AAC 85.353(b) provides that a claimant who travels away from their area of residence during their customary workweek is considered available for work only if they travel for one of the three allowable reasons stated in section (c). Furthermore, under 8 AAC 85.350, a claimant must be available for work at least five working days of their customary workweek.

Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law. Scott, Com. Dec. 87H-EB-162, June 18, 1987.

The Tribunal finds the claimant was not available for work in the weeks under review.

The second issue is whether the claimant knowingly made a false statement or misrepresentation in connection with the claim.

A presumption of intent to defraud arises on the basis of a falsified claim instrument itself. 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, once established that a claim instrument has been falsified, the burden of proof shifts to the individual [to establish there was no intent to defraud.]
Morton, Com. Dec. 79H-149, 9/14/79.

The claimant certified each of the weeks in question. In reaffirming that simply contending a mistake or oversight fails to rebut the presumption of fraud, the Commissioner held as follows in the matter of Gillen, Com. Dec. 9121667, December 6, 1991:

If we were to allow this kind of excuse, the fraud provision would become a dead letter. Any claimant can come into a hearing and testify that the false claim was a mistake, or that he doesn't know or doesn't remember how the false entries were made.

As the claimant has failed to produce the alleged evidence of another source of money to live on and the name of the app on which he used his computer to access his phone to file claim certifications, the Tribunal finds his testimony to lack credibility and to be self-serving.

Based upon Morton and Gillen, the Tribunal must hold that the claimant misrepresented his eligibility for benefits for the weeks under review.

The third issue is whether the claimant is liable for the repayment of benefits and the payment of a penalty.

AS 23.20.390 states 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. 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.

The evidence presented shows that the claimant received benefits to which he was not entitled and that he intentionally misrepresented his eligibility in order to receive benefits to which he was not entitled. The Tribunal holds that the claimant is liable to the fund the amount of benefits he received to which he was not entitled and the payment of a penalty under AS 23.20.387.

DECISION

The notice of determination and determination of liability issued in this matter on December 9, 2022 is **AFFIRMED**.

- That portion of the determination holding that the claimant was not available for work during a period of travel is **AFFIRMED**. Benefits remain denied under AS 23.20.378 for
 - the weeks ending July 25, 2020 through September 12, 2020 and November 14, 2020 through December 4, 2021.
- That portion of the determination holding that the claimant committed fraud or misrepresentation is **AFFIRMED**. A disqualification under AS 23.20.387 is imposed, and benefits are denied for
 - the weeks ending July 25, 2020 through September 12, 2020, November 14, 2020 through December 4, 2021, and December 10, 2022 through December 2, 2023.
- 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 the fund for benefits he received to which he is not entitled and the payment of the assessed penalty.

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 by circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on May 19, 2023.

Tom Mize

Tom Mize
Appeals Officer



Alaska Department of Labor and Workforce Development Instructions for Appeals to the Commissioner And Reopen Requests

Please read carefully the enclosed Appeal Tribunal decision. Any Interested party (claimant, employer, 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). Interested parties who failed to attend a hearing may request that the Appeal Tribunal **reopen** the hearing (AS 23.20.420 and 8 AAC 85.153(f)).

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 mailing address or email 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.

A party who failed to participate in a hearing may **request reopening** of the Appeal Tribunal hearing. The reopening request **must be made in writing**. The request must be delivered or mailed to the assigned hearing officer **within ten days after the close of the hearing**. Reopening may be granted if circumstances beyond the party's control prevented the party from participating in the hearing. Send reopening requests to the Appeal Tribunal address shown on the hearing officer's decision or to the email address listed below.

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
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