



APPEAL TRIBUNAL DECISION

Docket Number: 23 0232 **Hearing Date:** April 18, 2023

CLAIMANT:

JOSEPH NORMAN
[REDACTED]

CLAIMANT APPEARANCES:

Joseph Norman

DETS APPEARANCES:

None

CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a February 14, 2023 determination that denied benefits under AS 23.20.375 on the grounds that the claim for week ending February 4, 2023 was filed late. The Division mailed the determination to the claimant's address of record on February 15, 2023. The claimant's appeal was filed on March 28, 2023, giving rise to the issue of the timeliness of the claimant's appeal.

The claimant had initially been denied benefits on another matter. He received the determination but believed that it was a notice that the week was denied because of the other matter. He remained in contact with the Division concerning the other matter. The claimant received a payment in March for multiple weeks. He contacted the Division concerning the weeks for which he had received payment.

The representative told him that he had not been paid for the week ending February 4, 2023, because it had not been filed in a timely manner. He appealed the determination at that time.

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.

The purposes and policies of the Act are not served by a strict application of the procedural requirements to the detriment of a person the statute is intended to serve, especially when no apparent prejudice would otherwise be caused to the Department. Estes v. Department of Labor, 625 P.2d 293 (Alaska 1981).

The claimant filed his appeal upon learning of the determination and that the determination concerned a specific week which was denied for different reason that the previous and following weeks into March.

As in Estes, there is apparent prejudice caused to the Department and the claimant was dealing with multiple issues.

DECISION

The claimant's appeal from the notice of determination issued on February 14, 2023 is **ACCEPTED** as timely filed.

FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective January 15, 2023. During the week February 5, 2023 through February 11, 2023, the claimant had difficulty with his MyAlaska account. He made multiple calls to the Division but did not get through to speak to someone. He tried multiple computers to gain access and file his certification for the week ending February 4, 2023.

On or about February 14, 2023, the was able to speak to a representative, who advised him on how to regain access to his MyAlaska account. The claimant filed for the week ending February 11, 2023 and February 4, 2023 on February 14, 2023.

PROVISIONS OF LAW

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

Regulation 8 AAC 85.102(i) provides that 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.

In this case, the claimant suffered processing or access delays, including contact delays by telephone, to file his weekly claim certifications. The circumstances were beyond his control. Therefore, good cause for filing late has been shown.

DECISION

The determination issued on February 14, 2023 is **REVERSED**. Benefits are allowed for the week ending February 4, 2023, if otherwise eligible.

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 April 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
COMMISSIONER'S HEARING OFFICER**

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