



APPEAL TRIBUNAL DECISION

Docket Number: 23 0348 **Hearing Date:** May 31, 2023

CLAIMANT:

TREVOR WEISSLER
[REDACTED]

EMPLOYER:

DOMINO'S PIZZA
[REDACTED]

CLAIMANT APPEARANCES:

Trevor Weissler

EMPLOYER APPEARANCES:

None

DETS APPEARANCES:

None

CASE HISTORY AND FINDINGS OF FACT (Timeliness)

The claimant filed an appeal against a March 7, 2023 determination that denied benefits under AS 23.20.379 on the grounds that voluntarily left work without good cause. The Division mailed the determination to the claimant's address of record on March 8, 2023. The claimant's appeal was filed on May 15, 2023, giving rise to the issue of the timeliness of the claimant's appeal.

The claimant was in an auto accident on February 19, 2023. He relocated to Texas to stay with family on February 27, 2023. He did not receive the determination mailed on March 8, 2023. He learned of the determination upon receipt of an overpayment notice. He appealed the determination on Monday, May 15, 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.

*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. 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 established that a circumstance beyond his control prevented the filing of his appeal within the 30 day time period.

DECISION

The claimant's appeal from the notice of determination issued on March 7, 2023 is **ACCEPTED** as timely filed.

FINDINGS OF FACT

(Separation)

The claimant began work for the employer on or about October 28, 2022. He last worked on December 28, 2022. At that time, he worked part time as a delivery driver. He was paid an hourly wage plus tips. The claimant established a claim for unemployment insurance benefits effective March 20, 2022.

The claimant had an accident on icy roads on December 28, 2022 while working for the employer. His car was damaged to the point that it was not drivable. He contacted the employer about continuing to work in a position other than as a delivery driver. He was advised that he could work in the store but would be paid less and that he would receive fewer tips.

The claimant checked on the cost of taking an Uber or Lyft ride. He determined it would be equal to two hours work. He checked on riding the bus but found the walk from the bus stop to the store and back was too lengthy in the winter weather. He requested that he be transferred to a store nearer to his residence. The manager told the claimant he could not speak for the other store. The claimant did not get transferred.

The claimant chose not to work inside the store due to the reduction in pay and cost of transportation.

PROVISIONS OF LAW

AS 23.20.379 provides in part:

- (a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker...

- (1) left the insured worker's last suitable work voluntarily without good cause....

8 AAC 85.095 provides in part:

- (c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:
 - (1) leaving work due to a disability or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;
 - (2) leaving work to care for an immediate family member who has a disability or illness;
 - (3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;
 - (4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's
 - (A) discharge from military service; or
 - (B) employment;
 - (5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;
 - (6) leaving work in order to protect the claimant or the claimant's immediate family members from harassment or violence;
 - (7) leaving work to accept a bonafide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reasons for the work not materializing must not be due to the fault of the worker;
 - (8) other factors listed in AS 23.20.385(b).

AS 23.20.385(b) provides, in part:

- (b) In determining whether work is suitable for a claimant and in determining the existence of good cause for leaving or refusing work, the department shall, in addition to determining the existence of any of the conditions specified in (a) of this section, consider the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training, experience, and earnings, the length of the claimant's unemployment, the prospects for obtaining work at the claimant's highest skill, the distance of the available work from the claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.

CONCLUSION

A discharge is "a separation from work in which the employer takes the action which results in the separation, and the worker does not have the choice of remaining in employment." 8 AAC 85.010(20). Voluntary leaving means a separation from work in which the worker takes the action which results in the separation, and the worker does have the choice of remaining in employment. Swarm, Com. Dec. 87H-UI-265, September 29, 1987. Alden, Com. Dec. 85H-UI-320, January 17, 1986.

The claimant chose to cease reporting to work due to the cost of transportation and distance involved. He attempted to get a transfer but was unsuccessful. As the claimant made the choice to cease working, the separation is a voluntary quit. He must show good cause for leaving.

Unless it is part of a hiring agreement, transportation to and from work is the responsibility of the worker. The claimant has not shown that he left work for one of the allowable reasons as listed in Regulation 8 AAC 85.095(c). He has not shown good cause under AS 23.20.385.

DECISION

The determination issued on March 7, 2023 is **AFFIRMED**. Benefits are denied for the weeks ending December 31, 2022 through February 4, 2023. The three weeks are reduced from the claimant's maximum benefits. The claimant may not be eligible for extended benefits under AS 23.20.406-409.

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 June 1, 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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