



APPEAL TRIBUNAL DECISION

Docket number: 24 0016 **Hearing date:** January 22, 2024

CLAIMANT:

ROSE SANCHEZ
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Rose Sanchez

CASE HISTORY

The claimant timely appealed a November 27, 2023 determination which denied benefits under Alaska Statute 23.20.350. The issue before the Appeal Tribunal is whether the claimant had wages in the base period that would make her eligible for an unemployment benefit claim.

FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective November 5, 2023. The base period her claim was based on includes the third and fourth calendar quarters of 2022 and the first and second calendar quarters of 2023. The claimant worked for the State of Alaska Department of Revenue as an assistant compliance officer during that period.

When the claimant established her claim, there were no wages reported for her by the State for the base period. The claimant was requested to provide payroll advice showing her earnings in the base period. The claimant provided copies of check stubs and the Division determined that the claimant was eligible for a weekly benefit amount of \$370 based on that information. The claimant filed certifications and received benefits through the week ending December 2, 2023.

The Division contacted the claimant's employer and requested information about the claimant's work for the State. The Division learned that the claimant's position was considered to be an investment officer therefore her wages had not been required to be reported to the Division. The Division removed the claimant's wages from the base period, which made the claimant

ineligible for benefits. The benefits paid to the claimant were considered to have been overpaid and the claimant was required to repay them.

PROVISIONS OF LAW

AS 23.20.340 Determination of Claims, in part:

- (b) Within one year from the date of the initial determination of the weekly benefit amount and the maximum potential benefit amount established under AS 23.20.350, the department shall reconsider the determination or any subsequent determination under this chapter and shall issue a redetermination amending the determination if the department finds that
- (1) an error in computation or identity has been made;
 - (2) additional wages or other facts pertinent to the claimant's insured status or eligibility for benefits have become available;
 - (3) the determination resulted from a nondisclosure or misrepresentation of a material fact; or
 - (4) the determination resulted from a misapplication of law by the department.

23.20.350 Amount of Benefits, in part:

- (a) An individual who is paid at least \$2,500 in wages during the individual's base period for employment covered by this chapter is eligible to receive benefits under this chapter if those wages were paid in at least two of the calendar quarters of the individual's base period.

Sec. 23.20.526. Exclusions from definition of "employment".

- (d) For the purposes of AS 23.20.525 (a)(4) and (12), the term "employment" does not apply to service performed

(8) in the employ of the state or a political subdivision of the state if the service is performed by an individual in the exercise of duties

(A) as a judicial officer, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of a department in the executive branch, a person hired or appointed as the director of a division of a department in the executive branch, an assistant to the governor, a chair or member of a state commission or board, state investment

officers and the state comptroller in the Department of Revenue, an appointed or elected municipal officer, any other elected official, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

8 AAC 85.075 Monetary Determinations, in part:

- (b) Extension of the base period of an individual will be made according to the following standards:
 - (1) An individual will be considered incapable of work during the greater part of his working time in a calendar quarter if he was unable to work for at least seven weeks during the calendar quarter because of an incapacitating illness or injury.
 - (2) A medical certification, signed by a physician, will be required as evidence of incapacity.
 - (3) The extension of the base period may not exceed one calendar quarter for each calendar quarter of incapacity, and in no case will the extension exceed the 12-month period immediately before the base period.
 - (4) The first quarter immediately before the base period will be the first to be included in the extension, with the next preceding quarters included in regular regression for each quarter of incapacity. However, if the individual was incapacitated for the greater part of a quarter to be included in the extension, that quarter will be omitted and the next preceding quarter used if this action will benefit the individual. A quarter may not be omitted for any other reason.

CONCLUSION

The claimant established a claim for benefits and provided wage proof which resulted in a determination that the claimant was eligible for benefits. The Division later learned that the claimant worked as an investment officer for the Department of Revenue.

Alaska Statute 23.20.526(d)(8)(A) holds that service as an investment officer for the Department of Revenue is one of several specified government offices that does not constitute employment for unemployment insurance purposes. Therefore the claimant's wages from that work are not usable for an unemployment claim and the claimant is not entitled to benefits based her wages.

It is unfortunate that the claimant was asked to provide wage proof which resulted in the claimant receiving benefits she was not entitled to. However, the Division's procedures in such cases are designed to get benefits to unemployed persons as soon as practical.

This Appeal Tribunal does not have any jurisdiction to hold contrary to the clear wordage of the law. Scott, Com. Dec. 87H-EB-162, June 18, 1987.

The claimant's wages were properly classified as unusable for a claim and benefits were properly denied.

DECISION

The determination issued on November 27, 2023 is **AFFIRMED**. The claimant is not eligible for benefits from an unemployment insurance claim effective November 5, 2023.

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.

Dated and mailed on January 25, 2024.



Rhonda Bunes, Appeals Officer