

State of Wisconsin



Labor and Industry Review Commission

Tracey D. Wellman  
Claimant

Unemployment Insurance  
Decision<sup>1</sup>

Dated and Mailed:

Hearing No. 24600600MW

April 18, 2024

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The commission **reverses** the appeal tribunal decision. Accordingly, the claimant is eligible for benefits in weeks 42 of 2023 through 1 of 2024, if otherwise qualified.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

<sup>1</sup> **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

### **Procedural Posture**

This case is before the commission to consider the claimant's eligibility for unemployment insurance benefits. An administrative law judge of the Unemployment Insurance Division of the Department of Workforce Development held a hearing and issued a decision. The commission received a timely petition for review. The commission has considered the petition, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

### **Findings of Fact and Conclusions of Law**

The claimant worked for a waste management company beginning in 2010. Her last day of work October 10, 2023, when her employment was terminated.

The claimant had previously been terminated in August of 2023 and filed for unemployment benefits, which she subsequently withdrew after her employment was reinstated. After her second termination on October 10, 2023, the claimant did not file her initial claim for benefits until January 20, 2024 (week 3).

In the time between her termination from employment and her initial claim for benefits the claimant was working with her union to try and get reinstated at her job. The claimant was suffering from Post Traumatic Stress Disorder (PTSD) and was struggling to understand the claim filing process. The claimant received and reviewed the claimant handbook but did not thoroughly read it due to her PTSD.

In weeks 42 of 2023 through 1 of 2024 the claimant failed to timely notify the department of an intention to initiate a benefit claim, but such failure was due to an exceptional circumstance within the meaning of Wis. Stat. § 108.08(1) and Wis. Admin. Code ch. DWD 129 and, as such, the notice requirement is waived for weeks 42 of 2023 through 1 of 2024. The claimant is eligible for benefits in weeks 42 of 2023 through 1 of 2024, if otherwise eligible.

### **Memorandum Opinion**

The issue before the commission is whether in weeks 42 of 2023 through 1 of 2024, the claimant failed to timely notify the department of an intention to initiate a benefit claim.

A claimant for unemployment insurance benefits must notify the department of an intent to initiate a claim during the week or within 7 days of the close of that week.<sup>2</sup> After initiating a claim, to be eligible for benefits a claimant must file a weekly certification with the department.<sup>3</sup> The weekly certification must be filed no later than 14 days following the end of the week for which benefits are claimed.<sup>4</sup> A claimant may not file a weekly certification for any week unless a timely

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<sup>2</sup> Wis. Admin. Code § DWD 129.01(1)(a).

<sup>3</sup> Wis. Stat. § 108.08(1); Wis. Admin. Code § DWD 129.01(2)(a).

<sup>4</sup> Wis. Admin. Code § DWD 129.01(2)(b)1.

certification for the immediately preceding week was filed or a timely initial claim was filed.<sup>5</sup>

Here, the claimant needed to file her initial claim for benefits by October 28, 2023, but did not file until January 20, 2024. The claimant, therefore, did not timely notify the department of her intention to initiate a benefit claim. The notice requirements set forth above can be waived if the failure to give timely notice was due to an exceptional circumstance.<sup>6</sup> The next issue, then, is whether the timely notice requirement can be waived due to exceptional circumstances.

Wisconsin Admin. Code § DWD 129.01(4)(f) provides that exceptional circumstances include “[o]ther exceptional circumstances over which the claimant has no control.” This definition of exceptional circumstances includes the broad array of possible events and actions in life that may reasonably justify a party’s failure to file a claim timely.<sup>7</sup> The commission has previously found that personal circumstances may qualify as exceptional circumstances, but those circumstances must also be the primary reason that the claimant failed to timely file.<sup>8</sup>

In this case, the claimant provided credible testimony that she was experiencing PTSD during the time she needed to initiate her claim and “mentally could not get it together.” Although she failed to thoroughly read the claimant handbook and was attempting to get reinstated at her job as well, the commission is persuaded the primary reason she failed to timely file was due to her mental health. The commission finds that the claimant’s failure to timely initiate her claim for benefits was due to an exceptional circumstance pursuant to Wis. Admin. Code § DWD 129.01(4)(f) and, as such, the notice requirement is waived.

NOTE: The commission did not consult with the administrative law judge because the reversal was not based on a differing view as to the credibility of witnesses whose testimony conflicted. Instead, the reversal was based on a differing conclusion as to what the hearing record in fact established and a differing interpretation of the relevant law.

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<sup>5</sup> Wis. Admin. Code § DWD 129.01(2)(b)2.

<sup>6</sup> Wis. Admin. Code § DWD 129.01(4).

<sup>7</sup> *Tatum L. Smith*, UI Dec. Hearing No. 23200301EC, 23200302EC (LIRC May 5, 2023).

<sup>8</sup> *Id.*