OES-461

**APPEAL TRIBUNAL**

**OKLAHOMA EMPLOYMENT SECURITY COMMISSION**

**P.O. BOX 53345**

**OKLAHOMA CITY, OK 73152**

In re: Claim of: SSA# XXX-XX-2827 Docket No. 21-010327

CHA P XIONG

8723 E 9TH ST

TULSA OK 74112

ORDER OF DECISION

Now on AUGUST 27, 2021, this cause comes on for consideration pursuant to regular assignment and hearing on AUGUST 27, 2021, before MONAE TOWNSEND, HEARING OFFICER, at 9:30 A.M. by telephone at which time the claimant appeared. The claimant presented a witness Mai Xiong, Daughter. Hmong Interpreter services were provided by ID# 253639, Language Line. The Commission was not represented.

The Appeal Tribunal having considered the evidence and records on file, FINDS AND ORDERS AS FOLLOWS:

-1-

On APRIL 14, 2021, the claimant appealed the Commission’s determination mailed on MARCH 26, 2021, regarding Section 2-205.1, finding the claimant disallowed benefits. The claimant’s appeal was recorded by the Commission indicating a date filed not within the 10-day period provided under Section 2-603 of the Oklahoma Employment Security Act. **The first issue to be resolved before jurisdiction of the Appeal Tribunal can be invoked, is whether the untimely filing of the appeal can be excused for good cause shown pursuant to Section 2-614 of the Act.**

-2-

The Notice of Determination (“Notice”) was mailed to the claimant’s correct address of record on March 26, 2021. (App. Div. Exh. 4) A timely appeal was due within ten (10) days of the mail date, or Monday, April 5, 2021. The claimant’s native language is Hmong, and he cannot read English. The claimant delegated Mai Xiong, Daughter, to interpret his mail for him and handle his unemployment claim. Ms. Xiong lives out of state, so whenever the claimant’s Wife receives his mail, she forwards the mail to Ms. Xiong through text message for Ms. Xiong to interpret for the claimant. The claimant does not recall when he received the Notice, but Ms. Xiong recalls that her Mother forwarded the Notice through text to her around mid-March or early April 2021. Ms. Xiong read the Notice, and saw the claimant’s appeal rights, which stated that he had 10 days from the mail date on the Notice to file a timely appeal. Ms. Xiong also read on the Notice the different methods the claimant could file his appeal, such as, “by mail, fax, e-mail, or telephone.” (App. Div. Exh. 4) Sometime after reading the Notice, Ms. Xiong and the claimant made multiple attempts to file an appeal by phone, but were unsuccessful with reaching anyone due to the long hold times. Ms. Xiong did not attempt to use any alternative methods to file the claimant’s appeal. Ms. Xiong also had instances where she could not assist the claimant with filing his appeal by phone because she was preoccupied with her own personal matters. On April 14 2021, Ms. Xiong and the claimant were able to reach the Commission by phone and filed the claimant’s appeal that same day. (App. Div. Exh. 5)

-3-

The claimant bears the burden to prove good cause for the untimely appeal. Good cause is defined as a situation beyond the control of the party. Rule 240:10-13-37. Here, the burden has not been met. At the hearing, the claimant testified that since his native language is Hmong and he cannot read English, he delegated his Daughter Ms. Xiong, to interpret his mail for him. Ms. Xiong testified that she handled the claimant’s unemployment claim on his behalf. The claimant stated that he did not recall when he received the Notice, but Ms. Xiong stated that her Mother sent a copy of the Notice through text message around mid-March or early April 2021. Since Ms. Xiong’s Mother sent a copy of the Notice to Ms. Xiong sometime around mid-March or early April 2021, and the last day to file a timely appeal was April 5, 2021, best evidence indicates that it was more likely than not that the Notice was delivered to the claimant timely. Further, Ms. Xiong testified that after she received the text message with a copy of the Notice from her Mother, she read the appeal rights and the different methods to file an appeal. Ms. Xiong argued that the appeal was late because she and the claimant made multiple attempts to reach the Commission by phone to file an appeal, but were unsuccessful with reaching anyone due to the long hold times. However, Ms. Xiong did not present any evidence to indicate that she used any of the alternative methods to file an appeal. Lastly, Ms. Xiong conceded that she had instances where she could not assist the claimant with filing his appeal by phone because she was preoccupied with her own personal matters. While it is unfortunate that Ms. Xiong and the claimant were unsuccessful with reaching anyone by phone to file an appeal because of the long hold times, best evidence indicates that the claimant received the Notice timely. Moreover, Ms. Xiong was aware of the claimant’s appeal rights, and the alternative methods to file an appeal. Therefore, her decision not to use any of the alternative methods to ensure the appeal was filed timely was within her control. As a result, the claimant has not demonstrated that circumstances beyond his control caused his appeal to be late, and good cause has not been shown.

-4-

The Appeal Tribunal finds that good cause has not been shown and the Appeal Tribunal is without authority to waive the 10-day period for the filing of the appeal. The appeal is DISMISSED for lack of jurisdiction and the determination of the Commission is final and binding.

**Notice to the Claimant**

If you need unemployment assistance due to the COVID-19 pandemic, you can apply for relief through OESC’s website, located at www.ui.ok.gov. There, you may create an account and complete an application for Pandemic Unemployment Assistance, after which you will receive an e-mail advising whether your application is approved or denied. In addition, this process will allow you to receive important updates and get answers to frequently asked questions.

BY ORDER OF:

MONAE TOWNSEND, HEARING OFFICER

Copy to: APPELLANT

August 27, 2021

21-010327 / MT/JPU Page 2 of 3 Pages