

## APPEAL TRIBUNAL

OKLAHOMA EMPLOYMENT SECURITY COMMISSION

P.O. BOX 53345

OKLAHOMA CITY, OK 73152

In re: Claim of: SSA# XXX-XX-9816 Docket No. 22-015461

CHOU VANG  
7944 N 187<sup>TH</sup> EAST AVE  
OWASSO OK 74055

### ORDER OF DECISION

Now on OCTOBER 24, 2022, this cause comes on for consideration pursuant to regular assignment and hearing on OCTOBER 17, 2022, before JAMES EVENSON JR, HEARING OFFICER, at 11:25 A.M. by telephone at which time the claimant appeared. A Hmong interpreter was provided for the claimant. The Commission was not represented. This case was first heard on SEPTEMBER 12, 2022, before JAMES EVENSON JR, HEARING OFFICER, at 8:00 A.M. by telephone at which time the claimant failed to appear. The Commission was not represented.

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

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On SEPTEMBER 16, 2022, the claimant filed a request to reopen this cause under the provisions of Appeal Tribunal Rule 240:10-13-40. **The first issue to be resolved is whether there is good cause for reopening due to the non-appearance of the claimant at the original scheduled hearing.**

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The claimant received notice of the September 12, 2022, hearing and registered to participate. When the Hearing Officer tried to call the claimant, the claimant's phone did not ring so he was unable to participate in the hearing. The claimant subsequently filed his request to reopen the hearing.

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Appeal Tribunal Rule 240:10-13-40 provides that if the non-appearing party requests the case be reopened within ten (10) days after the mailing of the Appeal Tribunal's Order of Decision, and good cause for non-appearance can be shown, the matter will be heard on its merits. Rule 240:10-13-37

defines good cause as a situation beyond the control of the party. If good cause cannot be shown, the original decision will be reinstated.

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The claimant gave persuasive, sworn testimony asserting that he did not know that the Hearing Officer was calling him for the September 12, 2022, hearing because his phone did not ring. Nothing in the record contradicts the claimant's testimony. The claimant should not be penalized for whatever unknown circumstance prevented his phone from ringing when the Hearing Officer called. Therefore, the Hearing Officer finds that good cause has been shown for the non-appearance of the claimant at the original hearing scheduled SEPTEMBER 12, 2022. The matter is reopened for consideration. **The next issue to be resolved before jurisdiction of the Appeal Tribunal can be invoked, is whether an untimely appeal has been filed and, if so, whether the untimely filing of the appeal can be excused for good cause shown pursuant to Section 2-614 of the Act.**

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On JANUARY 3, 2022, the claimant appealed the Commission's determination mailed on DECEMBER 20, 2021, 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.

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The Notice of Determination (NOD) was mailed to the claimant's correct address on December 20, 2021. The claimant received the NOD, but he is not sure of the date it was delivered. The claimant disagreed with the determination. He waited two or three days before preparing a letter to appeal the determination on January 1, 2022. The claimant then submitted the appeal on January 3, 2022. The 10-day appeal period had ended on December 30, 2021.

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In order to show good cause for the late filing of an appeal, a claimant has the burden to show that something beyond the claimant's control prevented them from filing the appeal within the 10-day appeal period. The claimant here acknowledged receiving the NOD, and nothing in the record indicates that the NOD was delivered untimely. And while the claimant may have needed assistance in preparing the NOD due to English not being his first language, as he asserted, nothing in the record shows that something beyond the claimant's control prevented him from submitting his appeal earlier. Therefore, 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.

BY ORDER OF:

JAMES EVENSON JR, HEARING OFFICER

Copy to: APPELLANT