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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1015**

Michael Parise,  
Relator,

vs.

Weber Electric, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 2, 2012  
Affirmed  
Crippen, Judge\***

Department of Employment and Economic Development  
File No. 26199523-11

Michael Parise, Brooklyn Park, Minnesota (pro se relator)

Weber Electric, Inc., Henrietta, New York (respondent)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul,  
Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Crippen,  
Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**CRIPPEN**, Judge

Relator challenges the dismissal of his appeal from a determination of ineligibility for unemployment benefits, contending that he did not receive the determination letter in the mail and the unemployment-law judge (ULJ) failed to find possible mail theft as an excuse for the untimeliness of his appeal. Because governing laws do not permit us to question whether a mailed notice of decision was received, we affirm.

### FACTS

Relator Michael Parise was employed by respondent Weber Electric, Inc. for two days in June 2010. The Minnesota Department of Employment and Economic Development determined that relator is ineligible to receive unemployment benefits because he quit his employment. The department mailed a determination letter to relator's address on October 15, 2010, which advised relator that the department determination would become final unless an appeal was filed by November 4, 2010.

Relator sought review on November 22, 2010. The ULJ dismissed relator's appeal as untimely, but granted his subsequent request for reconsideration and ordered an evidentiary hearing. At the telephonic hearing that followed, relator testified that the address on file with the department is his current address, but that he did not receive the determination letter and suspected that it was stolen because of past incidents of mail theft in his neighborhood. The ULJ admitted into evidence a copy of the determination letter addressed to relator and a Certificate of Mailing signed by a department employee that details the department's mailing procedures.

The ULJ found that a determination letter was mailed to relator's address on October 15, 2010, and concluded that there is no exception to the clear, unambiguous, and absolute time limit for filing an appeal, even for good cause. The ULJ concluded that he lacked the legal authority to address the merits of the appeal. Relator filed a request for reconsideration, and the ULJ affirmed the earlier decision.

### **D E C I S I O N**

This court can reverse or modify the ULJ's decision only if it was affected by an error of law, unsupported by substantial evidence in the record, or otherwise arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010). A ULJ's factual findings are reviewed in the light most favorable to the decision and will not be disturbed on appeal if there is evidence that reasonably tends to sustain those findings. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). "An agency decision to dismiss an appeal as untimely is a question of law, which we review de novo." *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

A "determination of ineligibility is final unless an appeal is filed by the applicant . . . within 20 calendar days after sending." Minn. Stat. § 268.101, subd. 2(f) (2010). The time limit begins running on the date the determination letter is mailed to the applicant's last known address and expires at the time provided by statute, regardless of whether the applicant receives the determination letter. *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992). The statutory time period for appeal is "absolute and unambiguous," *Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976), and there are no exceptions to the time limit. *Cole v. Holiday*

*Inns, Inc.*, 347 N.W.2d 72, 73 (Minn. App. 1984). The time limit for appeal is to be strictly construed, regardless of mitigating circumstances. *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986).

It is undisputed that relator did not appeal the determination of ineligibility within the 20-day statutory period, and relator does not contend that the determination letter was not mailed or that it was mailed to the incorrect address; indeed, the record contains a copy of the determination letter addressed to relator, and relator testified that he has lived at that address for approximately eight years. Relator argues that he never received the determination letter and asserts that it may have been stolen.

There are no exceptions to the statutory time limit for appealing a determination of ineligibility. *Cole*, 347 N.W.2d at 73. This is true even if the applicant never receives the determination letter or if other mitigating circumstances exist. *Smith*, 483 N.W.2d at 112; *King*, 387 N.W.2d at 677.

Moreover, even if mitigating circumstances were relevant, the record here does not support relator's assertion that his mail was stolen. Although the record contains a police report indicating that mail theft has occurred in relator's neighborhood in the past, this report is dated more than one year before the department sent the determination letter at issue here. The record contains no other evidence of mail theft, and no direct evidence that the department's determination letter was stolen. We need not address assignments of error based on mere assertions and not supported by argument or authority, unless prejudicial error is obvious on mere inspection. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997).

Relator also contends that it is “unjust [that] documents of this importance are only sent once.” But the department is not statutorily required to mail multiple copies of a determination letter. *See* Minn. Stat. § 268.101, subd. 2 (2010). The statutory requirements for appealing a determination have been strictly construed and are not subject to equitable considerations. *See Semanko*, 309 Minn. at 430, 244 N.W.2d at 666 (observing that statutory time period for appeal is “absolute and unambiguous”); *Smith*, 483 N.W.2d at 112 (observing that applicant’s receipt of determination letter is not determinative when considering timeliness of appeal); *cf.* Minn. Stat. § 268.069, subd. 3 (2010) (providing that Minnesota’s unemployment-insurance statute does not permit equitable considerations in the denial or allowance of unemployment benefits).

Because relator’s appeal was untimely under Minn. Stat. § 268.101, subd. 2(f), the ULJ did not err by dismissing relator’s appeal.<sup>1</sup>

**Affirmed.**

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<sup>1</sup> Relator also argues that the department’s determination that he quit his employment is erroneously based on incomplete information provided by the employer in response to the department’s request for information. But because relator’s appeal was untimely and this issue was not considered or decided by the ULJ, it is beyond the scope of this appeal.