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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-411**

Angela Benes,
Relator,

vs.

G2 Secure Staff, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 1, 2011
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 26181553-3

Angela M. Benes, Apple Valley, Minnesota (pro se relator)

G2 Secure Staff, LLC, c/o Talx Employer Services, Cincinnati, Ohio (respondent)

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

Considered and decided by Wright, Presiding Judge; Shumaker, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) dismissal of her appeal of a determination that she is ineligible for unemployment benefits. Because the appeal was untimely, we affirm.

FACTS

Relator Angela Benes applied for unemployment benefits and established a benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). In her application, Benes indicated that she quit her employment in order to attend school. On September 30, 2010, DEED issued a determination of ineligibility, finding that Benes was not available for suitable employment because she was attending school. *See* Minn. Stat. § 268.085, subd. 1(4) (2010) (stating that an applicant for unemployment benefits must be available for suitable employment). Benes filed a timely appeal of that determination on October 4. An October 25 notice of decision indicates that a ULJ found that she was eligible for benefits with respect to that particular issue.

But DEED had issued a second determination of ineligibility on October 14, finding that Benes had quit her employment. *See* Minn. Stat. § 268.095, subd. 1 (2010) (stating that an applicant who quits his or her employment is generally ineligible for unemployment benefits). That determination provided that it would become final unless Benes filed an appeal by November 3. Benes appealed the October 14 determination of ineligibility on December 27. The ULJ dismissed the appeal as untimely. Benes filed a

request for reconsideration, arguing: “It was not made clear that I was denied benefits for 2 different reasons and that I would have to appeal both situations. That is why I did not file an appeal to this determination on or before November 3, 2010.” On reconsideration, the ULJ affirmed the dismissal. This appeal follows.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010). An agency’s 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 for unemployment benefits is final “unless an appeal is filed by the applicant . . . within 20 calendar days” after the determination is mailed. Minn. Stat. § 268.101, subd. 2(f) (2010). The statutory time limit for filing an appeal is strictly construed. *See Semanko v. Dep’t of Employment Serv.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976) (holding that time limit for appeal is “absolute and unambiguous”); *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992) (observing that “there are no extensions or exceptions to the . . . appeal period.”);

Johnson v. Metro. Med. Ctr., 395 N.W.2d 380, 382 (Minn. App. 1986) (stating that time for appeal from DEED determination “is absolute and there are no provisions for extensions or exceptions”). An untimely appeal from an ineligibility determination must be dismissed for lack of jurisdiction. *Kennedy*, 714 N.W.2d at 740; *Johnson*, 395 N.W.2d at 382.

The October 14 ineligibility determination clearly advised Benes that the decision would become final unless an appeal was filed by November 3. But Benes filed her appeal on December 27, over seven weeks after the November 3 deadline. Benes’s claim that she was confused and did not realize that she needed to file two separate appeals from DEED’s two ineligibility determinations does not provide a basis for relief. *See* Minn. Stat. § 268.069, subd. 3 (2010) (“There is no equitable or common law denial or allowance of unemployment benefits.”); *Christgau v. Fine*, 223 Minn. 452, 463, 27 N.W.2d 193, 199 (1947) (holding that when an agency dismisses an appeal on jurisdictional grounds, we consider only whether the jurisdictional determination was correct without examining the merits of the decision). Because the time limit for appealing the determination of ineligibility is absolute and unambiguous, and because Benes did not file a timely appeal, we affirm the ULJ’s dismissal of the appeal.

Affirmed.

Dated:

Judge Michelle A. Larkin