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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1450**

Victor Praxedis Escobedo Hinojosa,
Relator,

vs.

Talberg Lawn & Landscape, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 8, 2013
Affirmed
Chutich, Judge**

Department of Employment and Economic Development
File No. 29055266-5

Victor Praxedis Escobedo Hinojosa, Crystal, Minnesota (pro se relator)

Talberg Lawn & Landscape, Inc., Maple Grove, Minnesota (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Cleary, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Relator Victor Praxedis Escobedo Hinojosa challenges the dismissal of his appeal by respondent Minnesota Department of Employment and Economic Development (department). The department dismissed Hinojosa's appeal concerning eligibility for employment benefits after concluding that it was untimely. Because Hinojosa received notice of the determination of ineligibility and failed to appeal within the statutory period, we affirm.

FACTS

After claiming that he was laid off from respondent Talberg Lawn & Landscape, Inc. in November 2010, Hinojosa established an unemployment-benefit account with the department. Hinojosa received benefits for one year, and when he re-applied for benefits in November 2011, the department determined that he was ineligible because he had voluntarily quit his employment with Talberg, rather than being laid off.

The department thus determined that Hinojosa erroneously received benefits and mailed him a determination of ineligibility (determination) dated January 9, 2012, stating that he was responsible for overpayment in the amount of \$8,205. The determination stated that it "will become final unless an appeal is filed by Monday, January 30, 2012." The department sent the determination to the Crystal address listed in Hinojosa's file.

Hinojosa did not appeal the determination until February 25, 2012, and the unemployment-law judge issued an order dismissing the appeal as untimely. Hinojosa requested reconsideration, claiming that he did not receive notice of ineligibility or

overpayment until he got a billing statement on February 7, 2012. The judge granted Hinojosa an evidentiary hearing on the issue of whether the appeal was timely and, if so, to address the merits of the appeal.

The unemployment-law judge held a telephone hearing, and Hinojosa testified that he continues to live at the Crystal address listed in the department's file and that he lived at that address in January 2012. Hinojosa also stated that he remembered receiving the ineligibility determination in January 2012, but did not recall the portion of that mailing stating that he was responsible for the overpayment. He claimed that he did not find out about the overpayment until he received the billing statement in February. The department submitted an affidavit from a supervisor knowledgeable about the department's regular mailing policies and procedures stating that those procedures were followed in mailing the determination to Hinojosa on January 9.

The judge found that the preponderance of the evidence showed that the department mailed the determination to Hinojosa on January 9 at the address on file. The judge thus found that Hinojosa's appeal was due by January 30, that his February 25 appeal was untimely, and that no jurisdiction existed to address the merits of his appeal.

Hinojosa requested reconsideration, and the unemployment-law judge affirmed the decision. Hinojosa now makes this certiorari appeal.

D E C I S I O N

An unemployment-law judge's decision to dismiss an appeal as untimely is a question of law, which we review de novo. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012). A determination of ineligibility becomes

final unless the applicant files an appeal within 20 days after the department sends the determination. Minn. Stat. § 268.101, subd. 2(f) (2012). “An untimely appeal from a determination must be dismissed for lack of jurisdiction.” *Stassen*, 814 N.W.2d at 29. The time limit for appeal is “absolute and unambiguous” and the law provides no extensions or exceptions. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739–40 (Minn. App. 2006).

The unemployment-law judge found that the department mailed the determination of ineligibility and overpayment notice to Hinojosa on January 9, 2012. This finding is supported by substantial evidence. Hinojosa admits that he received notice of his ineligibility for benefits in January 2012, but asserts that he was not aware of the overpayment until he received the February billing statement. As the judge noted, however, the overpayment notice was clearly stated in the determination, along with the instruction that any appeal was due by January 30, 2012. Hinojosa’s February 25, 2012, appeal was therefore untimely and the judge lacked jurisdiction to hear the merits of his appeal. Because Hinojosa failed to appeal within the statutory period, the unemployment-law judge correctly dismissed his appeal.

Affirmed.