

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2193**

Mekebeb Yohannes,
Relator,

vs.

Western Air Chef, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 1, 2013
Affirmed
Smith, Judge**

Department of Employment and Economic Development
File No. 29904306-4

Mekebeb Yohannes, St. Paul, Minnesota (pro se relator)

Western Air Chef, Inc., c/o TALX UCM Services, St. Louis, Missouri (respondent)

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

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

SMITH, Judge

Relator challenges the dismissal of his administrative appeal of an agency determination that he is ineligible for unemployment benefits. We conclude that the unemployment law judge (ULJ) properly dismissed the appeal because it was not filed within the 20-day appeal period and, therefore, affirm.

FACTS

Relator Mekebeb Yohannes, a native of Ethiopia, speaks English as his second language. In June 2012, respondent Western Air Chef, Inc., terminated Yohannes's employment, prompting Yohannes to apply for unemployment benefits. On August 6, 2012, respondent Minnesota Department of Employment and Economic Development (DEED) denied Yohannes such benefits because it found that Yohannes was discharged for employment misconduct. The document informing Yohannes of the denial of unemployment benefits explained that the determination would "become final unless an appeal is filed by Monday, August 27, 2012." On September 13, Yohannes appealed the determination of ineligibility, disputing the finding of misconduct and explaining that he has difficulty understanding the English language. The ULJ subsequently dismissed his appeal as untimely. Yohannes requested reconsideration of the dismissal, again citing the language barrier and his need to locate a translator as the cause of his tardiness, but the ULJ affirmed the dismissal. This certiorari appeal followed.

DECISION

A ULJ'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). If neither an applicant for unemployment benefits nor the employer appeals an ineligibility determination within 20 days after DEED sends its decision, the determination becomes final. Minn. Stat. § 268.101, subd. 2(f) (2012). When an appeal of a determination of ineligibility is untimely, Minnesota law requires a ULJ to dismiss the appeal for lack of jurisdiction. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 740 (Minn. App. 2006).

The parties agree that Yohannes failed to appeal the ineligibility determination within the 20-day statutory period, in spite of Yohannes receiving documentation informing him that the determination would become final unless appealed within 20 days. Yohannes concedes that the appeal timeline is "clearly defined." He asserts, however, that his limited understanding of English and need for a translator are mitigating circumstances that permit extension of the appeal deadline.

Despite Yohannes's plight, the deadline for appealing an ineligibility determination is absolute and no exceptions or extensions are permitted. *See id.* at 739-40. Minnesota courts have consistently held that statutory deadlines for appealing decisions from all levels of DEED are strictly construed. *See Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 428-30, 244 N.W.2d 663, 665-66 (1976) (upholding dismissal of appeal filed one day after applicable appeal period expired and stating that statutory time period for appeal was "absolute and unambiguous"); *King v. Univ. of Minn.*, 387 N.W.2d

675, 677 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986) (depriving this court of jurisdiction where appeal was untimely and stating that “statutes designating the time for appeal from decisions of all levels of [DEED] should be strictly construed, regardless of mitigating circumstances”). Although we recognize that mitigating circumstances are present here, the time period for appealing a determination of ineligibility is jurisdictional and, therefore, any untimely appeal must be dismissed. *See Kennedy*, 714 N.W.2d at 740 (stating that when “an appeal from [an ineligibility] determination is untimely, it must be dismissed for lack of jurisdiction”). Therefore, Minnesota law does not provide Yohannes relief. Because he failed to appeal within the statutory period, the ULJ correctly dismissed his appeal.

Despite our conclusion, we are concerned by DEED’s citation to *Oble v. Am. Bldg. Maint. Corp.*, No. A03-1487, 2004 WL 1327054 (Minn. App. June 15, 2004), as the “authority” that establishes that Yohannes’s English-language deficiencies do not excuse his untimely appeal. *Oble* is unpublished and is therefore not binding or precedential authority. *See* Minn. Stat. § 480A.08, subd. 3 (2012) (stating that “[u]npublished opinions of the Court of Appeals are not precedential”). And, in fact, the *Oble* court stated that “nothing in this opinion is meant to discourage [DEED] from providing a language block, already in use by [DEED] once an appeal is perfected, to recipients of determination notices.” *Oble*, 2004 WL 1327054, at *4.

Affirmed.