

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2276**

Balkrishna Jadhav,
Relator,

vs.

Medtronic Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 15, 2009
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 21001677-3

Balkrishna S. Jadhav, 14525 48th Place North, Plymouth, MN 55446 (pro se relator)

Medtronic, Inc., c/o Talx UCM Services, P.O. Box 283, St. Louis, MO 63166-0283
(respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,
E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for
respondent Department of Employment and Economic Development)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the unemployment law judge's (ULJ) dismissal of his appeal of a determination that he was ineligible to receive unemployment benefits. Because we conclude that the ULJ correctly determined that relator's appeal was not filed within the required statutory time frame, we affirm.

FACTS

Relator Balkrishna Jadhav ended his employment with Medtronic on September 25, 2007. Relator applied for unemployment benefits and established a benefit account with the Minnesota Department of Employment and Economic Development (DEED) that became effective on October 28, 2007. On September 11, 2008, DEED sent relator a notice of ineligibility and overpayment of benefits in the amount of \$5,380 based on DEED's determination that relator had earnings from Medtronic during the period of October 28, 2007, to January 5, 2008, that exceeded his weekly benefit amount. Relator filed an appeal on October 6, 2008, arguing that Medtronic made no payments to him during that period. Following a hearing, the ULJ dismissed the appeal on the ground that relator had not challenged the determination of ineligibility within the statutory time period. The ULJ denied relator's request for reconsideration. This certiorari appeal follows.

DECISION

“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). Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007), provides:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may 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.

“A[n unemployment benefits] determination of eligibility or . . . ineligibility is final unless an appeal is filed by the applicant or notified employer within 20 calendar days after sending” a notice of ineligibility. Minn. Stat. § 268.101, subd. 2(f) (Supp. 2007). We have repeatedly held that the appeal period may not be extended or altered. *Smith v. Masterson Personnel, Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992).

Relator argues that his appeal should not have been dismissed on the ground that he received his notice of ineligibility late because his mail was being forwarded to him from Minnesota to California. But the supreme court has held that the time period for an appeal is “absolute and unambiguous.” *Semanko v. Dep’t of Employment Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976). It is undisputed that DEED mailed relator

a notice of ineligibility on September 11, 2008. By operation of law, this determination became final on October 1, 2008. Relator did not file his notice of appeal until October 6, 2008. Because the notice of appeal was filed five days late, the ULJ properly dismissed the appeal.

Relator also maintains that the determination of overpayment was incorrect because it was based on an inaccurate payroll history. Because relator's appeal was not timely, we do not reach this issue.

Affirmed.