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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1866**

Tami Kraker,
Relator,

vs.

CentraCare Health System Melrose,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 22, 2019
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 36339713-5

Tami Kraker, Melrose, Minnesota (pro se relator)

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

CentraCare Health System, Melrose, Minnesota (respondent employer)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this certiorari appeal, relator Tami Kraker challenges the decision of an unemployment-law judge (ULJ) dismissing her unemployment-benefits appeal as untimely. We affirm.

FACTS

Relator was discharged from her job at Centracare Health System for “multiple job-performance issues.” Relator applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED). DEED mailed a determination of ineligibility to relator on March 21, 2018, informing her that she was ineligible to receive unemployment benefits because she had been discharged for employment misconduct. The letter notified relator that the ineligibility determination “will become final unless an appeal is filed by Tuesday, April 10, 2018.” The letter explained that the “filed” date is the postmark date, if mailed, or the date received by the Unemployment Insurance Program, if transmitted electronically. The letter also informed relator that “[t]he recommended method for filing an appeal is by internet” and that relator could complete an appeal by logging into DEED’s online system and “following the prompts.”

On March 30, relator attempted to file an appeal through DEED’s online system using a public library computer. However, relator did not complete all of the fields needed to submit the appeal. According to relator, the computer’s time limit expired while she was using the DEED system. While completing the online process, relator wrote down a

copy of the statement that she had entered into the computer, but did not mail or fax that statement, or any other statement explaining her disagreement with the ineligibility determination, to DEED by the April 10, 2018 filing deadline.

On April 25, 2018, relator phoned a DEED representative, who informed relator that DEED had not received an appeal from relator—either on March 30 or any other date. Relator then submitted a handwritten appeal to DEED by facsimile on April 26, 2018—16 days after the filing deadline.

A ULJ dismissed the April 26 appeal as untimely. Relator requested that the ULJ’s decision be reconsidered. After receiving relator’s request for reconsideration, the ULJ set aside the prior dismissal and ordered an evidentiary hearing on whether relator’s appeal was timely filed. Another ULJ conducted the evidentiary hearing. Relator testified that when she attempted to submit the appeal online, she remembered “clicking through” several screens while completing the information, but was never notified by the system that an appeal had been successfully filed.

After the hearing, the ULJ determined that relator’s appeal was untimely, the determination of ineligibility was final, and therefore the ULJ did not have jurisdiction to issue a decision on the merits. Relator requested reconsideration, and the ULJ affirmed the earlier decision.

This appeal followed.

DECISION

Relator argues that the ULJ erred in dismissing her April 26 appeal as untimely. She argues that her actions on March 30 should be considered sufficient to preserve that date as the date of a timely appeal.¹

The timeliness of an appeal presents 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); *Rowe v. Dep't of Emp't & Econ. Dev.*, 704 N.W.2d 191, 194 (Minn. App. 2005). On review of a ULJ's findings of fact, "we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We may affirm the ULJ's decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2018). Alternatively, we may reverse or modify the decision of the ULJ if a relator's substantial rights were prejudiced. *Id.* We examine a ULJ's "findings, inferences, conclusion, or decision" to determine whether a relator's substantial rights were prejudiced by (1) a violation of constitutional provisions, (2) the department's exceeding its statutory authority or jurisdiction, (3) unlawful procedures, (4) errors of law, (5) findings not supported by substantial evidence, or (6) a decision that is arbitrary and capricious. *Id.*, subd. 7(d)(1)-(6).

¹ Relator also makes arguments about DEED's initial ineligibility determination concerning her termination for employment misconduct, but because we do not reach those issues in this appeal, those claims are not further addressed. *See Eley v. Southshore Invs., Inc.*, 845 N.W.2d 216, 222 (Minn. App. 2014) (explaining that scope of review in appeal from summary dismissal of unemployment-benefits appeal does not extend to underlying eligibility determination). The only question here is whether the ULJ erred in dismissing the appeal, not the merits of the underlying appeal. *See Christgau v. Fine*, 27 N.W.2d 193, 199 (1947).

A determination of ineligibility is final unless an appeal is filed by the applicant within 20 calendar days. Minn. Stat. § 268.101, subd. 2(f) (2018). An appeal is considered filed the day it is received by DEED if made by electronic transmission or the postmark date if submitted by mail. Minn. Stat. § 268.035, subd. 17 (2018). “A written statement delivered or mailed to the department that could reasonably be interpreted to mean that an involved applicant is in disagreement with a specific determination or decision is considered an appeal.” Minn. Stat. § 268.103, subd. 2(b) (2018). “No specific words need be used for the written statement to be considered an appeal.” *Id.* All information requested by the commissioner when an appeal is filed by electronic transmission must be supplied or the communication does not constitute an appeal. *Id.*, subd. 1(c) (2018).

If a party fails to file an appeal before the statutory time period lapses, the ULJ lacks jurisdiction over the appeal and “must issue a decision dismissing the appeal as untimely if the judge decides the appeal was not filed within 20 calendar days after the sending of the determination.” Minn. Stat. § 268.105, subd. 1a(c) (2018); *see Rowe*, 704 N.W.2d at 196 (stating that when a decision becomes final, the department is deprived of jurisdiction to conduct further review). The ULJ may either summarily dismiss the appeal or hold an evidentiary hearing to determine whether the appeal was timely. Minn. Stat. § 268.105, subd. 1a(c).

The statutory deadline for appealing from unemployment-benefits decisions is absolute and unambiguous, and mitigating circumstances do not create an exception to the statutory deadline. *Kangas v. Indus. Welders & Machinists, Inc.*, 814 N.W.2d 97, 100 (Minn. App. 2012); *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739-40

(Minn. App. 2006); *Rowe*, 704 N.W.2d at 195; *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992).

Relator argues that her appeal should be considered as having been filed on March 30, the date when she attempted to file an appeal using DEED's online system. But the record does not reflect that relator successfully filed an appeal or that DEED received her appeal on that date. At the evidentiary hearing, relator explained that she began filing an appeal online, but did not complete the forms on the screen allowing her to choose a date and time for a hearing. The record supports the ULJ's determination that those screens would have been the screens immediately before the confirmation screen. Relator agreed that it was possible that she missed the button that said "next" after she completed her appeal statement. She did not reach a screen that confirmed the filing of her appeal.

Relator did not complete the online appeal on March 30 and did not timely attempt to file another appeal. DEED did not receive her faxed appeal until 16 days after the filing deadline. As the ULJ noted, DEED had provided relator with clear notice that she must appeal the ineligibility determination by April 10, 2018. That notice included instructions on how to file an appeal online, by fax, or by mail. On this record, the partial information relator entered online on March 30 cannot be construed as an appeal. Minn. Stat. § 268.103, subd. 2(b) (a written statement that could reasonably be interpreted to mean that an involved applicant disagrees with a determination is considered an appeal). Relator could have filed a written appeal after March 30 and until April 10. She did not.

Although DEED recommends online appeals, the online system may not be clear to all users, and may not be the most effective system for all users. But the statutory deadlines

are clear. There are simply no exceptions to the rule. Because relator's appeal was untimely, the ULJ properly determined that it lacked jurisdiction to address relator's appeal on the merits.

Affirmed.