

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0102**

Thaddeus L. Hinnenkamp,
Relator,

vs.

Minneapolis Special School District #001,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 2, 2021
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 41376938-3

Thaddeus L. Hinnenkamp, Minneapolis, Minnesota (pro se relator)

Minneapolis, Special School District #001, Minneapolis, Minnesota (respondent employer)

Anne B. Froelich, Keri A. Phillips, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Segal, Chief Judge; Ross, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Thaddeus Hinnenkamp ended his brief employment as a special-education assistant with a Minneapolis school district and unsuccessfully sought unemployment benefits

through the department of employment and economic development. An unemployment-law judge dismissed his appeal from that decision as untimely, rejecting Hinnenkamp's contention that the governor's executive order suspended strict compliance with the statutory appeal period. We hold that the unemployment-law judge erroneously failed to recognize that the executive order gave authority to the department to consider expanding the appeal period if the applicant demonstrated substantial compliance, but we affirm the dismissal because Hinnenkamp failed to identify facts showing that he substantially complied with the appeal period.

FACTS

Thaddeus Hinnenkamp left his position as a special-education assistant with a Minneapolis school district in June 2020 after 21 months of employment. He then applied for unemployment benefits with the Minnesota Department of Employment and Economic Development. For statutory reasons not relevant to this appeal, the department found him ineligible to receive benefits. The department sent Hinnenkamp its written determination of ineligibility, explaining that the decision would become final unless he filed an appeal by September 8, 2020 under the 20-day deadline established in Minnesota Statutes section 268.101, subdivision 2(f) (2020). Hinnenkamp appealed the determination, but not until after the deadline had passed. An unemployment-law judge (ULJ) dismissed the appeal as untimely.

Hinnenkamp asked the ULJ to reconsider. He asserted that the governor's Executive Order 20-05 suspended strict compliance with the appeal period. *See* Emergency Executive No. Order 20-05, Providing Immediate Relief to Employers and Unemployed Workers

During the COVID-19 Peacetime Emergency (Mar. 16, 2020). He asserted alternatively that he had been unable to comply with the appeal period because he was out of town when the ineligibility decision arrived and remained so until after the appeal period ended. The ULJ rejected the argument. Hinnenkamp appeals.

DECISION

Hinnenkamp challenges the dismissal of his claim for unemployment benefits, maintaining that the ULJ should have reached the merits of his appeal despite its untimeliness. Whether a department properly dismissed an appeal as untimely is a question of law that we review de novo. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012). An ineligibility determination is final unless it is appealed within the statutorily permitted appeal period. Minn. Stat. § 268.101, subd. 2(f). Typically, the department must dismiss an untimely appeal for lack of jurisdiction, *Stassen*, 814 N.W.2d at 29, but after the governor issued Executive Order 20-05, this court held that a ULJ may address the merits of an untimely appeal if a party can establish substantial compliance with the appeal period. *In re Murack*, 957 N.W.2d 124, 131 (Minn. App. 2021). The department may conclude that a party has substantially complied with the appeal period if he “has a reasonable explanation for failing to strictly comply, has taken steps to comply with the statute, [] has generally complied with the statute’s purpose, and there is reasonable notice and a lack of prejudice to other parties.” *Id.* at 130. The ULJ, who decided this case before our court issued the *Murack* decision, of course was unaware of the parameters *Murack* would establish. But under those parameters, the ULJ improperly

rejected Hinnenkamp's appeal as untimely without determining whether Hinnenkamp had substantially complied with the appeal period.

Despite the ULJ's understandable failure to consider the factors later clarified in *Murack*, we hold that the ULJ came to the right conclusion by dismissing the appeal. We do so because Hinnenkamp failed to identify for the ULJ (or for us) any facts from which the ULJ could have determined that he substantially complied with the appeal period. Hinnenkamp's contention that his travel constituted a reasonable explanation for failing to substantially comply with the appeal period fails. Without dispute, he received the determination of ineligibility electronically. Despite having received the notice, he failed to appeal the determination for about two months. He does not contend that his travel prevented his notice, and he also did not contact the department after he returned. Neither Hinnenkamp's briefing nor our review of the record reveal any reason for the ULJ to have concluded that Hinnenkamp substantially complied with the appeal period.

Affirmed.