

*This opinion is nonprecedential except as provided by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
A21-0316**

Peggy J. Green,
Relator,

vs.

Hazelden Foundation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 27, 2021
Affirmed
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File No. 41062490-3

Peggy J. Green, Amery, Wisconsin (pro se relator)

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

Hazelden Foundation, Center City, Minnesota (respondent employer)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Relator Peggy J. Green challenges the decision of an unemployment-law judge (ULJ) dismissing her unemployment-benefits administrative appeal as untimely. Because Green failed to substantially comply with the appeal deadline, we affirm.

FACTS

On June 4, 2020, respondent Hazelden Foundation discharged Green for medical-privacy violations after she released confidential medical records pertaining to the incorrect patient. Green applied for unemployment benefits from respondent Department of Employment and Economic Development (DEED). DEED then issued two determinations of ineligibility, the second of which is at issue in this appeal.¹

On July 27, 2020, DEED mailed Green the second determination of ineligibility, stating that she was ineligible for unemployment benefits due to her employment misconduct and that any administrative appeal of that determination had to be filed by August 17, 2020. Green appealed that determination of ineligibility 109 days after that deadline, on December 4, 2020. On December 21, 2020, the ULJ dismissed her appeal as untimely.

¹ Although the first determination of ineligibility is not in the record before us, DEED represents that, on July 13, 2020, DEED issued a determination of ineligibility reducing Green's benefits for the weeks between June 21, 2020, and August 8, 2020, because Green received a retirement payment upon her discharge from the Hazelden Foundation. Green appealed that determination, and the ULJ made a decision on that appeal on September 3, 2020. That decision is not before us.

Green filed a request for reconsideration, arguing that she was unaware that the employment-misconduct determination of ineligibility entailed a separate hearing and, further, that any disclosure of medical information was unintentional. The ULJ denied Green's request for reconsideration, finding that DEED mailed the second determination of ineligibility to the address provided by Green and that DEED did not receive any correspondence from Green that could be reasonably interpreted as an appeal before the statutory deadline.

Green appeals.

DECISION

The only issue on appeal is whether the ULJ properly dismissed Green's appeal as untimely. "A determination of eligibility or determination of ineligibility is final unless an appeal is filed by the applicant or employer within 20 calendar days after sending." Minn. Stat. § 268.101, subd. 2(f) (2020). "The date of mailing commences the time for appeal." *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 112 (Minn. App. 1992). If an appeal is untimely, the ULJ "must" dismiss the appeal for lack of jurisdiction. Minn. Stat. § 268.105, subd. 1(a)(c) (2020); *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012).

"[A] ULJ's decision to dismiss an appeal as untimely is a question of law, subject to de novo review." *Godbout v. Dep't of Emp't & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013). Typically, the statutory time period "is absolute and unambiguous," *Semanko v. Dep't of Emp't Servs.*, 244 N.W.2d 663, 666 (Minn. 1976), and "there are no statutory provisions for extensions or exceptions to the appeal period," *Kennedy v. Am. Paper*

Recycling Corp., 714 N.W.2d 738, 740 (Minn. App. 2006). However, in *In re Murack*, we determined that the governor’s Executive Order No. 20-05 for the COVID-19 peacetime emergency suspended strict compliance with the 20-day administrative appeal deadline. 957 N.W.2d 124, 127 (Minn. App. 2021). “The suspension of strict compliance did not, however, eliminate the deadline.” *Id.* at 125. Rather, substantial compliance was required. *Id.* at 130. We explained:

A party may be said to have substantially complied with a statute where she has a reasonable explanation for failing to strictly comply, has taken steps to comply with the statute, and has generally complied with the statute’s purpose; and there is reasonable notice and a lack of prejudice to other parties.

Id. Because Green’s failure to comply with the appeal deadline occurred during the peacetime emergency, we address whether Green was in substantial compliance with the deadline. *See id.* at 125.

The substantial compliance standard may relax the 20-day administrative deadline, but it does not eliminate it or permit noncompliance without reason. *Id.* The record shows that Green filed her appeal 109 days after the statutory 20-day deadline. Green explains that she found the process “very confusing” and that she “just did not realize that these were separate issues”—presumably referring to the two determinations of ineligibility. Even if confusion in these circumstances were a reasonable explanation for failing to strictly comply, Green points to nothing in the record showing that she took any steps to comply with the appeal requirement over the statutory period following notice of the determination or the 109 days. We conclude that Green did not substantially comply with the appeal deadline under *Murack*.

Green also asserts that she “filed an Appeal on time, through [her] account on the website, which [she] could not print or copy and paste, and do not see this anywhere.” It is unclear whether Green is referring to an appeal of the first determination of ineligibility or the second. To the extent that Green is claiming that she appealed the second determination of ineligibility—the only determination at issue here—the argument is forfeited because Green did not present this argument to the ULJ. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Finally, Green argues that she did not intentionally commit privacy violations and therefore did not engage in employment misconduct. But, when a ULJ dismisses an appeal for lack of jurisdiction because it is untimely, we may only consider whether the relator’s appeal was timely. *See Christgau v. Fine*, 27 N.W.2d 193, 199 (Minn. 1947). Because Green’s appeal was not timely, even under the substantial-compliance standard, the ULJ did not err by dismissing the appeal.

Affirmed.