

*This opinion is nonprecedential except as provided by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
A21-1166**

Amina N. Addow,
Relator,

vs.

Monarch Bus Service Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 25, 2022
Reversed and remanded
Gaïtas, Judge**

Department of Employment and Economic Development
File No. 45798390-4

Amina N. Addow, St. Anthony, Minnesota (self-represented relator)

Monarch Bus Service, Inc., Hastings, Minnesota (respondent employer)

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

Considered and decided by Gaïtas, Presiding Judge; Frisch, Judge; and Halbrooks,
Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Relator Amina N. Addow challenges the dismissal of her unemployment benefits appeal as untimely. We reverse and remand.

FACTS

On May 20, 2021, Addow applied for unemployment benefits. Approximately one week later, the Minnesota Department of Employment and Economic Development (DEED) determined that Addow, who had provided contract services to a school district, was ineligible to receive unemployment benefits because she had a “reasonable assurance of employment in the next academic year or term,” and because the future employment would not be substantially less favorable than her employment in the preceding year. DEED’s determination of ineligibility, which was mailed to Addow’s home, provided that the determination would become final unless she filed an appeal by June 17, 2021.

On June 28, 2021, 11 days after the filing deadline, Addow appealed the ineligibility determination. The next day, an unemployment-law judge (ULJ) issued an order summarily dismissing Addow’s appeal as untimely because it was not filed within 20 calendar days of DEED’s determination of ineligibility letter.

Addow timely filed a request for reconsideration of the dismissal. Her request for reconsideration included the following statement:

I am requesting reconsideration. After I found out that I am not eligible for unemployment benefit, I called and spoke to an agent that told me that I don’t need to do anything as they are adjusting my benefit and it’ll be different wages and keep requesting benefit weekly and I’ll get the missing benefit as

soon as we adjust your account. I called again to ask that I didn't received any benefit payment and if my account is adjusted. That is when I found that I needed to appeal and I am already missed the deadline. If the agent didn't assure me that I didn't need to do anything I would take an appeal. I didn't work since 03/13/2020 for [my employer] they never called me and I never deny or refused any job.

A ULJ affirmed the decision to dismiss the ineligibility-determination appeal.

Addow appeals.

DECISION

“A ULJ’s decision to dismiss an appeal as untimely raises a jurisdictional question of law, which we review de novo.” *In re Murack*, 957 N.W.2d 124, 127 (Minn. App. 2021); *see also Godbout v. Dep’t of Emp. & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013). “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). Generally, this 20-day timeline is “strictly construed, regardless of mitigating circumstances.” *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986), *rev. denied* (Minn. Aug. 13, 1986).

But the governor’s March 16, 2020 Emergency Executive Order 20-05 (EEO 20-05) suspended strict compliance in response to the COVID-19 pandemic. Under EEO 20-05, an untimely appeal of an ineligibility determination could proceed so long as the applicant “substantially complied” with the statutory appeal timeframe. *See In re Murack*, 957 N.W.2d at 131 (stating that, under EEO 20-05, applicants need not strictly comply with the 20-day appeal period and remanding for a determination of whether the relator substantially complied with the statutory timeline); Emerg. Exec. Ord. No. 20-05,

Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency (Mar. 16, 2020).

In *Murack*, we considered what it means to substantially comply with the statutory appeal timeframe. 957 N.W.2d at 130. And we ultimately articulated several factors that a ULJ must consider in deciding whether a party substantially complied. *Id.* We explained that substantial compliance may be found when “[a] party . . . 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.*

More than 3 months after the *Murack* opinion was filed and more than 15 months after the governor issued EEO 20-05,¹ a ULJ summarily dismissed Addow’s appeal as untimely because she filed it 11 days after the statutory deadline. The ULJ emphasized that “[t]he determination [of ineligibility], in accordance with Minnesota Statutes, clearly stated that it would be **final** unless an appeal was filed within 20 calendar days from the date of mailing.” The order did not include any discussion of the suspension of strict compliance resulting from EEO 20-05, substantial compliance, or the *Murack* factors.

Addow, who is self-represented on appeal, argues that the ULJ erred by dismissing her administrative appeal as untimely because she was “misled” as to whether an appeal was required. She contends that, but for the misinformation, she would have timely appealed. We construe this argument—which Addow first made in her request for

¹ EEO 20-05 remained in effect for the duration of the administrative proceedings in Addow’s case.

reconsideration of the dismissal—as an assertion that she substantially complied with the appeal deadline.

In denying Addow’s request for reconsideration, the ULJ referenced substantial compliance. The ULJ’s order states, “Addow made no efforts to file an appeal within the 20-day appeal period. As such, Addow did not substantially comply with the appeal deadline under Executive Order 20-05. The appeal, therefore, was not timely.”

The ULJ’s focus on whether Addow substantially complied *within* the 20-day timeframe for appeal was too narrow, however. *Murack* does not limit substantial compliance to acts that occurred within the 20-day appeal period. *See Murack*, 957 N.W.2d at 130. Moreover, although Addow submitted an explanation for her untimely appeal when she moved for reconsideration of the dismissal, the ULJ did not order an evidentiary hearing so that Addow could supplement the record with evidence supporting her explanation. And the ULJ did not address the *Murack* factors in considering whether Addow’s explanation showed substantial compliance with the deadline. We therefore conclude that the ULJ erred as a matter of law.

In turn, we are unable to provide meaningful review on appeal. Because the ULJ did not address the *Murack* factors, we cannot determine whether the record supports the ULJ’s dismissal of Addow’s appeal of the ineligibility determination. *See Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 68 n.2 (Minn. 1979) (explaining that appellate courts correct errors rather than find facts).

When a ULJ’s decision prejudiced the relator’s substantial rights, we may remand an unemployment-benefits case, or reverse or modify the ULJ’s decision. Minn. Stat.

§ 268.105, subd. 7(d) (2020). We conclude that the ULJ's application of a substantial-compliance standard that is too narrow and failure to consider the *Murack* factors prejudiced Addow's substantial rights.

Because Addow's substantial rights were prejudiced by the ULJ's error, we reverse and remand for further proceedings.² On remand, the ULJ should address (1) whether Addow took steps to comply with the statutory administrative appeal deadline, (2) whether Addow's explanation for untimely filing the appeal is reasonable, (3) whether Addow generally complied with the purpose of the statute, and (4) the degree of notice and prejudice to other parties. *See Murack*, 957 N.W.2d at 130. The ULJ is permitted to open the record and conduct an evidentiary hearing should the ULJ elect to do so. *See Minn. Stat. § 268.105, subd. 1a(c)* (2020).

Reversed and remanded.

² Recently, in a similar case, *In re Moose*, No. A21-0881, 2022 WL 433340 (Minn. App. Feb. 14, 2022), we reversed a ULJ's dismissal of an ineligibility determination and remanded for further proceedings. The circumstances here differ from those in *Moose* in one respect, however. The relator in *Moose* provided no explanation in the proceedings below for her failure to timely appeal. By contrast, Addow submitted an explanation for her untimely appeal with her request for reconsideration of the dismissal.