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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1078**

Richard D. Patton,
Relator,

vs.

Bwana Archery, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 19, 2011
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 24621182-3

Richard D. Patton, St. Paul, Minnesota (pro se relator)

Bwana Archery, Inc., Little Canada, Minnesota (respondent)

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

Considered and decided by Johnson, Chief Judge; Peterson, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Richard Patton challenges an unemployment law judge's (ULJ) dismissal of his administrative appeal of an initial determination that he is ineligible for unemployment benefits. We conclude that the ULJ properly dismissed the administrative appeal because it was not filed within the 20-day appeal period and, therefore, affirm.

FACTS

Patton was employed by Bwana Archery, Inc., until approximately January 2010. He sought unemployment benefits later that month. The Department of Employment and Economic Development (DEED) made an initial determination that he is ineligible for benefits because he quit his job for personal reasons not related to the employment. *See* Minn. Stat. § 268.095, subd. 1 (2008). DEED mailed notice of the initial determination of ineligibility to Patton on March 17, 2010.

The document that DEED sent to Patton stated why he is ineligible and also explained his right to an administrative appeal. The document stated that DEED's initial determination "will become final unless an appeal is filed by Tuesday, April 6, 2010," which was 20 days after the initial determination. The document also explained that the "'filed' date is the postmark date" or the date an appeal is received electronically, via fax or Internet. The document further explained how an applicant may file an appeal online.

Despite the information provided by DEED, Patton did not file an administrative appeal until March 3, 2011, which was almost one year after the initial determination. On March 9, 2011, a ULJ issued an order dismissing the appeal as untimely. Patton

requested reconsideration of the dismissal, stating that he was unaware of the requirements for filing an administrative appeal. The ULJ affirmed the dismissal on May 9, 2011. Patton appeals to this court by way of a writ of certiorari.

D E C I S I O N

In his *pro se* letter brief, Patton argues that he is entitled to unemployment benefits because he did not quit his job. He contends that, due to a medical condition, he did not understand the timeline for pursuing an administrative appeal. The ULJ dismissed Patton's administrative appeal on the ground that it was untimely. Thus, we must address the question whether his administrative appeal was timely filed. We apply a *de novo* standard of review to an agency's decision to dismiss an administrative appeal for untimeliness. *Kennedy v. American Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006).

If a person is determined to be ineligible for unemployment benefits, DEED must send notice of the determination to the employer and to the applicant by mail or electronic transmission. Minn. Stat. § 268.101, subd. 2(a) (2008). "A determination of eligibility or determination of ineligibility is final unless an appeal is filed by the applicant or notified employer within 20 calendar days after sending. The determination must contain a prominent statement indicating the consequences of not appealing." *Id.*, subd. 2(f) (2008).

The statutory requirement concerning the time for an administrative appeal is unforgiving. In *Semanko v. Department of Employment Services*, 309 Minn. 425, 244 N.W.2d 663 (1976), the supreme court concluded that an applicant's appeal period (then

seven days) was “absolute and unambiguous” such that the applicant was not entitled to a hearing to show “compelling good cause” for his late appeal. *Id.* at 428, 430, 244 N.W.2d at 665-66; *see also Jackson v. Minnesota Dep’t of Manpower Servs.*, 296 Minn. 500, 501, 207 N.W.2d 62, 63 (1973) (holding that administrative appeal mailed one day late was untimely). This court came to the same conclusion in *Kennedy*, holding that the rule of *Semanko* applied to the then-existing 30-day appeal period. 714 N.W.2d at 739-40. After our opinion in *Kennedy*, the legislature amended the statute to establish a 20-day period for an administrative appeal. 2007 Minn. Laws. ch. 128, art. 5, § 7, at 979-80. Although the length of the period for an administrative appeal has changed over time, the reasoning of *Semanko* and *Kennedy* continues to apply.

In this case, it is undisputed that DEED mailed the determination of ineligibility to Patton on March 17, 2010. As stated in the determination itself, Patton’s time for filing an administrative appeal expired on April 6, 2010. Patton did not file his administrative appeal until March 3, 2011. Thus, his administrative appeal was untimely. *See Semanko*, 309 Minn. at 430, 244 N.W.2d at 666; *Kennedy*, 714 N.W.2d at 739-40. Accordingly, the ULJ did not err by dismissing Patton’s administrative appeal. Therefore, we do not reach the merits of the ULJ’s initial ineligibility determination.

Affirmed.