

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1652, A12-1653**

Nasheed Marzuq,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed May 28, 2013
Affirmed
Kirk, Judge**

Department of Employment and Economic Development
File Nos. 29743269-3, 29702529-3, 29743410-3, 30016892-2

Nasheed Marzuq, St. Paul, Minnesota (pro se relator)

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

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

In these consolidated appeals, relator argues that the unemployment-law judge
(ULJ) erred by (1) dismissing one of his appeals as untimely, and (2) determining that his

overpayment debt was recoverable under the Revenue Recapture Act, Minn. Stat. §§ 270A.01-.12 (2012). We affirm.

FACTS

In April 2011, relator Nasheed Marzuq applied for, and began receiving, unemployment benefits. Marzuq also applied for social security disability benefits and, in April 2012, the Social Security Administration (SSA) notified Marzuq that he is entitled to benefits and that he would begin receiving a monthly payment of \$901. SSA further determined that Marzuq's entitlement to benefits began in September 2011, and notified him that he would be issued a payment of \$6,194 for the benefits he was entitled to receive from September 2011 through March 2012. On May 1, 2012, Marzuq notified respondent Minnesota Department of Employment and Economic Development (DEED) that he was approved for social security disability benefits.

On May 14, DEED issued three determinations of ineligibility to Marzuq, each addressing a different time period. The determinations informed Marzuq that, under Minn. Stat. § 268.085, subd. 4 (2012), his unemployment benefits were reduced by 50% of his social security disability benefits. Because Marzuq received a lump-sum social security disability benefits payment for September 2011 through March 2012, the determinations also notified Marzuq that he was overpaid a total of \$3,416 in unemployment benefits during that time period. Each determination included a section titled "Right of Appeal," which stated that the "determination will become final unless an appeal is filed by Monday, June 4, 2012."

In May and June, DEED applied toward the overpayment two separate credits from unemployment benefits that were due to Marzuq. On June 11, DEED referred Marzuq's remaining debt of \$2,840 to the Minnesota Department of Revenue for collection under the Revenue Recapture Act. The following day, DEED notified Marzuq that it had filed a claim against his state tax refund for \$2,840 under the Revenue Recapture Act and that he could request a hearing to address the issue of whether the claim was filed according to law. On June 21, Marzuq requested a hearing.

Marzuq appealed the ineligibility determinations on July 10. The next day, a ULJ dismissed Marzuq's appeal as untimely. Marzuq requested reconsideration, arguing that he was not overpaid because he did not work or receive money from any source other than through unemployment benefits during the time period in question.

In August, a ULJ held an evidentiary hearing regarding Marzuq's challenge to DEED's claim against his state tax refund under the Revenue Recapture Act. At the hearing, Marzuq argued that he was not overpaid because he followed the law and met the requirements to receive both unemployment benefits and social security disability benefits. Following the hearing, the ULJ issued an order finding that because DEED complied with the procedures of the Revenue Recapture Act, Marzuq's debt is properly recoverable under that law. The ULJ found that Marzuq filed the appeal in order to dispute the amount of overpayment of unemployment benefits, but that the ULJ has no jurisdiction to consider that argument because a hearing on a notice of revenue recapture is limited to the issue of whether the debt is collectable under the Revenue Recapture Act. Marzuq requested reconsideration of the ULJ's decision.

In September, the ULJ affirmed the dismissal of Marzuq’s appeal of the ineligibility determinations, finding that the determinations were final because a timely appeal was not filed and, as a result, the ULJ had no authority to address the merits of the case. Shortly afterward, the ULJ affirmed its decision that Marzuq’s overpayment debt is properly recoverable under the Revenue Recapture Act.

Marzuq petitioned this court for writs of certiorari to review the ULJ’s decision affirming dismissal of Marzuq’s appeal of the ineligibility determinations and the ULJ’s decision affirming her decision that Marzuq’s debt is recoverable under the Revenue Recapture Act. This court consolidated the appeals.

D E C I S I O N

When reviewing a ULJ’s unemployment-benefits decision, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2012).

I. The ULJ did not err by dismissing Marzuq’s appeal as untimely.

A ULJ’s decision to dismiss an appeal as untimely is a question of law, which this court reviews de novo. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012). An ineligibility determination is final unless an unemployment-benefits applicant appeals the determination within 20 days after DEED sends the determination. Minn. Stat. § 268.101, subd. 2(f) (2012). The “20–day deadline is absolute and unambiguous, and a ULJ must dismiss an untimely appeal from an

eligibility determination for lack of jurisdiction.” *Kangas v. Indus. Welders & Machinists, Inc.*, 814 N.W.2d 97, 100 (Minn. App. 2012) (quotation omitted). There are no exceptions to the 20-day appeal deadline. *See* Minn. Stat. § 268.101, subd. 2(f) (providing no exceptions to the appeal deadline); *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 740 (Minn. App. 2006) (stating that there are no exceptions to what was then a statutory 30-day appeal period).

It is undisputed that Marzuq failed to appeal the ineligibility determination within the statutory 20-day period. DEED sent him the determination on May 14, 2012, but Marzuq did not appeal until July 10. Because Marzuq’s appeal was untimely, the ULJ lacked jurisdiction to consider his appeal. Accordingly, the ULJ properly dismissed Marzuq’s appeal.

II. The ULJ did not err by determining that Marzuq’s overpayment debt is recoverable under the Revenue Recapture Act.

Marzuq also challenges the ULJ’s determination that his overpayment debt is recoverable under the Revenue Recapture Act. Under that statute, a state agency may recover debts owed to the agency by applying the amount of the debtor’s property tax refund, income tax refund, or state lottery prize to the amount the debtor owes the state agency. Minn. Stat. §§ 270A.03, subds. 2, 7, .06. “Debt” is defined as “a legal obligation of a natural person to pay a fixed and certain amount of money, which equals or exceeds \$25 and which is due and payable to a claimant agency.” Minn. Stat. § 270A.03, subd. 5. The Revenue Recapture Act requires the state agency to send a written notice to the debtor that asserts the state agency’s right to the debtor’s refund and

notifies the debtor that he or she can request a hearing to contest the validity of the claim. Minn. Stat. § 270A.08.

Here, DEED sent Marzuq notice of its revenue recapture claim on June 12, 2012, and Marzuq timely requested a hearing on June 21. A ULJ held a hearing, and Marzuq testified at the hearing. However, Marzuq's sole argument at the hearing was that he should not be required to pay back unemployment benefits he received; he did not contest the validity of DEED's claim under the Revenue Recapture Act. Thus, the ULJ properly concluded that she did not have jurisdiction to consider Marzuq's argument, and did not err by concluding that DEED's claim under the Revenue Recapture Act was valid. Accordingly, the ULJ did not err by concluding that Marzuq's overpayment debt is recoverable under the Revenue Recapture Act.

Affirmed.