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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2108**

Linda Oftedahl,
Relator,

vs.

Allina Health System,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 5, 2013
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 29785895-5

Paul Onkka, Southern Minnesota Regional Legal Services, Inc., Shakopee, Minnesota;
and

Charles H. Thomas, Southern Minnesota Regional Legal Services, Inc., St. Paul,
Minnesota (for relator)

Allina Health System, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Kalitowski, Judge; and
Cleary, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Linda Oftedahl challenges the unemployment-law judge's (ULJ) decision that she did not file a timely appeal from a determination of ineligibility for unemployment-compensation benefits. Alternatively, relator argues that the ULJ failed to fully develop the record at her hearing. We affirm.

DECISION

“An agency decision to dismiss an appeal as untimely is a question of law, which we review de novo.” *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006). If an applicant for unemployment-compensation benefits fails to appeal an ineligibility determination within 20 days after DEED sends it, the determination becomes final. Minn. Stat. § 268.101, subd. 2(f) (2012). An untimely appeal from a determination must be dismissed for lack of jurisdiction. *Kennedy*, 714 N.W.2d at 740. The statutory time period is “absolute and unambiguous,” *Semanko v. Dep't of Emp't Servs.*, 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976), and no statutory provision authorizes this court to extend it. *Kennedy*, 714 N.W.2d at 739-40.

Oftedahl argues that she timely appealed DEED's June 7, 2012 determination that she is ineligible for unemployment-compensation benefits. The record indicates that on or around June 10, 2012, Oftedahl attempted to appeal the determination through DEED's online system. Oftedahl entered the required information and received a proposed hearing date and time but, when questioned at her hearing, indicated that she

does not recall clicking the “Confirm” button. The ULJ found that she did not click “Confirm.” As a result, DEED did not receive her appeal.

Oftedahl acknowledges that DEED had no record of her appeal but makes two arguments to support her position that the ULJ erred by dismissing her appeal as untimely. First, she asserts that she did, in fact, timely appeal by delivering a written statement pursuant to Minn. Stat. § 268.103, subd. 2(b) (2012). Second, she asserts that the ULJ failed to fully develop the record regarding the timeliness of her appeal.

“A written statement delivered or mailed to the department that could reasonably be interpreted to mean that an involved applicant is in disagreement with a specific determination or decision is considered an appeal. No specific words need be used for the written statement to be considered an appeal.” Minn. Stat. § 268.103, subd. 2(b). Although subdivision 2(b) falls under the heading “Applicant’s appeal by mail,” we previously have concluded that it also applies to statements submitted electronically via DEED’s website. *Kangas v. Indus. Welders & Machinists, Inc.*, 814 N.W.2d 97, 100-01 (Minn. App. 2012).

In *Kangas*, relator received two separate determinations of ineligibility for unemployment-compensation benefits on two different grounds. *Id.* at 99. Prior to the deadline for appeal on either determination, relator appealed one determination via the DEED website but entered facts related to both determinations. *Id.* Despite relator’s failure to specifically indicate that he was appealing both determinations, we held that relator’s statement regarding the facts of both was sufficient to constitute a “written

statement delivered” under Minn. Stat. § 268.103, subd. 2(b). *Id.* at 101. Thus, the ULJ properly exercised jurisdiction by hearing the appeal on both notices of ineligibility. *Id.*

Here, Oftedahl argues that, similar to *Kangas*, she submitted a written statement to the department by clicking “appeal,” entering information regarding the facts of her appeal, and obtaining a hearing date and time. But in *Kangas*, there was no question that relator’s statement was delivered to DEED. Here, by failing to click “Confirm,” Oftedahl failed to make a “written statement delivered” to DEED as required by section 268.103, subdivision 2(b). Thus, the ULJ did not err by dismissing her appeal as untimely.

Oftedahl also argues that the ULJ failed to fully develop the factual record as to whether she properly appealed the determination of ineligibility. Under Minn. Stat. § 268.105, subd. 1(b) (2012), “The [ULJ] must ensure that all relevant facts are clearly and fully developed.”

Oftedahl asserts that the ULJ should have ascertained whether DEED had records related to applicant log-ins. But even if DEED did track all log-ins, Oftedahl does not allege that any records would reveal that she clicked “Confirm.” And on appeal, DEED explained that it did not track every log-in and did not track whether Oftedahl logged in on June 10, 2012, the date Oftedahl asserts she filed an appeal. The evidence presented to the ULJ established that Oftedahl failed to timely submit her appeal; no further evidence was necessary for the ULJ to dismiss her appeal because it has no authorization to accept jurisdiction of an untimely appeal. *See Kennedy*, 714 N.W.2d at 739-40 (no exception to 20-day deadline).

Oftedahl also asserts that the ULJ failed to fully develop the factual record because the ULJ did not assist her in determining whether the DEED website had “a ‘time out’ mechanism,” whether any warning was provided when the time limit for entering data was close, or whether the website provided notice that data had not been received. But the ULJ found that Oftedahl did not click “Confirm.” Thus, the ULJ had no reason to develop the record any further because clicking “Confirm” was required for the appeal to be submitted through the website. Because evidence in the record supports the ULJ’s finding, the ULJ did not fail to sufficiently develop the factual record and did not err by dismissing Oftedahl’s appeal as untimely.

Affirmed.